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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2014–0275]

RIN 3150–AJ52

List of Approved Spent Fuel Storage Casks: Holtec HI–STORM Flood/Wind System; Certificate of Compliance No. 1032, Amendment No. 1, Revision 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the Holtec International, Inc. (Holtec), HI–STORM Flood/Wind (FW) System listing within the ''List of approved spent fuel storage casks'' to add Amendment No. 1, Revision 1, to Certificate of Compliance (CoC) No. 1032. Amendment No. 1, Revision 1, allows these casks to accept 14X14B fuel assemblies with minor changes in the internal diameter of the fuel cladding, diameter of the fuel pellet, and spacing between the fuel pins. The amendment also updates testing requirements for the fabrication of Metamic HT neutron-absorbing structural material.

DATES: The direct final rule is effective June 2, 2015, unless significant adverse comments are received by April 20, 2015. If the direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0275. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Email comments to: *Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Robert D. MacDougall, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–5175, email: *Robert.MacDougall@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0275 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0275.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0275 in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission.

Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Procedural Background

This direct final rule is limited to adding Amendment No. 1, Revision 1, which will supersede Amendment No. 1 (effective December 17, 2014), to CoC No. 1032 to the ''List of approved spent fuel storage casks,'' and does not include other aspects of the Holtec HI–STORM FW System design. Amendment No. 1 continues to be effective but is now being modified with respect to certain specified provisions, as outlined in Amendment No. 1, Revision 1, and in Section IV of this document, which apply to all general licensees using the casks for Independent Spent Fuel Storage Installations (ISFSIs). Therefore, Amendment No. 1, Revision 1, supersedes the previously issued Amendment No. 1 (effective December 17, 2014). In requesting this revision, Holtec indicated that no ISFSI licensee has placed such a cask into service under CoC No. 1032, Amendment No. 1.

The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. The amendment to the rule will become effective on June 2, 2015. However, if the NRC receives significant adverse comments on this direct final rule by April 20, 2015, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rule section of this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or Technical Specifications (TSs).

For detailed instructions on filing comments, please see the **ADDRESSES** section of this document.

III. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that ''the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR) entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled, ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on October 3, 2014 (79 FR 59623), that approved the HI–STORM FW System design amendment and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1032, Amendment No. 1.

IV. Discussion of Changes

On July 31, 2013, Holtec submitted a revision request for the Holtec HI–STORM FW System CoC No. 1032, Amendment No. 1. Holtec supplemented its request on November 5, 2013. As a revision, the CoC will supersede the previous version of the CoC and its TSs, effective December 17, 2014, in their entirety. Amendment No. 1, Revision 1, revises the authorized contents of the cask in Appendix B to the TSs to include 14X14B fuel assemblies with minor changes in the internal diameter of the fuel cladding, diameter of the fuel pellet, and fuel rod pitch (distance from fuel pin centerlines). The amendment also updates testing requirements for the fabrication of Metamic HT neutron-absorbing aluminum alloy structural material used to secure the spent fuel inside the cask. These changes to Appendix B of the TSs are identified with revision bars in the margin of the document.

Specifically, Amendment No. 1, Revision 1, changes the fuel cladding internal diameter, the fuel pellet diameter, and the fuel rod pitch (distance from fuel pin centerlines) of the fuel assembly class 14X14B. These changes in spacing between the fuel pins would result in a volumetric increase of 0.6 percent of the fuel and a reduction of 0.13 percent of the original flow area. Because this reduced flow area is still larger than the 17X17 assembly flow area used as the bounding scenario, the flow resistance factor is still less restrictive than the bounding scenario, and the passive decay heat removal of the proposed 14X14B assembly is still conservative.

Amendment No. 1, Revision 1, also removes fabrication testing requirements for the thermal expansion coefficient and thermal conductivity of Metamic HT neutron-absorbing structural material, as these properties have little variability in this aluminum alloy when fabricated according to the manufacturer's manual.

As documented in the safety evaluation report (SER), the NRC staff performed a detailed safety evaluation of the proposed CoC Amendment No. 1, Revision 1 request. There are no significant changes to cask design requirements in the proposed Revision 1 to the CoC Amendment No. 1. Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. If there is no loss of containment, shielding, or criticality control, the environmental impacts

would be insignificant. Amendment No. 1, Revision 1 does not reflect a significant change in design or fabrication of the cask. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 1, Revision 1, would remain well within 10 CFR part 20 radiation protection limits. Therefore, the proposed CoC changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the October 3, 2014 (79 FR 59623), final rule that approved the HI–STORM FW System design Amendment 1. There will be no significant change in the types or amounts of any effluent released, no significant increase in individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents.

This direct final rule revises the Holtec HI–STORM FW System listing in 10 CFR 72.214 by superseding Amendment 1 to CoC No. 1032 (effective December 17, 2014) with Amendment No. 1, Revision 1. The revision consists of the changes previously described, as set forth in the revised CoC and TSs. Appendix A and the revised Appendix B of the TSs are identified in the SER and are also available in ADAMS.

The amended Holtec HI–STORM FW System design, when used under the conditions specified in the CoC, the TSs, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, persons who hold a general license under 10 CFR 72.210 may load spent nuclear fuel into Holtec HI–STORM FW Systems that meet the criteria of Amendment No. 1, Revision 1, to CoC No. 1032 under 10 CFR 72.212.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the Holtec HI–STORM FW System design listed in § 72.214, ''List of approved spent fuel storage casks.'' This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

VIII. Environmental Assessment and Finding of No Significant Environmental Impact

A. The Action

This direct final rule amends 10 CFR 72.214 by revising the CoC for the Holtec HI–STORM FW System design listing within the ''List of approved spent fuel storage casks'' to add Amendment No. 1, Revision 1, to CoC No. 1032. Under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

B. The Need for the Action

This direct final rule revises the CoC for the Holtec HI–STORM FW System within the list of approved systems that can be used for dry storage of additional fuel assembly designs now in reactor spent fuel storage pools.

C. Environmental Impacts of the Action

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was initially analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this Amendment No. 1, Revision 1, of CoC 1032 tiers off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act.

Holtec HI–STORM FW Systems are designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an ISFSI, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of confinement, shielding, and criticality control. If there is no loss of confinement, shielding, or criticality control, the environmental impacts would be insignificant. This amendment does not reflect a significant change in design or fabrication of the cask. There are no significant changes to cask design requirements in the proposed CoC amendment. In addition, because there are no significant design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 1, Revision 1, would remain well within 10 CFR part 20 radiation protection limits. Therefore, the proposed CoC changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or amounts of any effluents released, no significant increase in individual or cumulative radiation exposure, and no significant

increase in the potential for or consequences from radiological accidents. The staff has documented its safety findings in the SER.

D. Alternative to the Action

The alternative to this action is to deny approval of Amendment No. 1, Revision 1, and end this direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into the Holtec HI–STORM FW System in accordance with the changes described in proposed Amendment No. 1, Revision 1, would have to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, interested licensees would have to prepare, and the NRC would have to review, each separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee. Therefore, the environmental impacts of the alternative to the action would be the same or more than the impacts of the action.

E. Alternative Use of Resources

Approval of Amendment No. 1, Revision 1, to CoC No. 1032 would result in no irreversible commitments of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in 10 CFR part 51. Based on the foregoing environmental assessment, the NRC concludes that this direct final rule entitled, ''Holtec HI–STORM Flood/Wind System; Certificate of Compliance No. 1032, Amendment No. 1, Revision 1,'' will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

IX. Paperwork Reduction Act Statement

This rule does not contain any information collection requirements, and is therefore not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and Holtec International, Inc. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XI. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On March 28, 2011 (76 FR 17019), the NRC issued an amendment to 10 CFR part 72 that approved the Holtec HI–STORM FW System design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214.

On July 31, 2013, and as supplemented on November 5, 2013, Holtec submitted an application to amend the HI–STORM FW System as described in Section IV, ''Discussion of Changes,'' of this document.

The alternative to this action is to withhold approval of Amendment No. 1, Revision 1, and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into a Holtec HI–STORM FW System under the changes described in Amendment No. 1, Revision 1, to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of the direct final rule is consistent with previous NRC actions. Further, as documented in the SER and the environmental assessment, the direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and therefore, this action is recommended.

XII. Backfitting and Issue Finality

This direct final rule revises the CoC No. 1032 for the Holtec HI–STORM FW System, as currently listed in 10 CFR 72.214, ''List of approved spent fuel storage casks.'' Amendment No. 1, Revision 1, revises authorized contents of the cask to include 14X14B fuel assemblies with minor changes in the internal diameter of the fuel cladding, diameter of the fuel pellet, and spacing between the fuel pins. The revision also updates testing requirements for the fabrication of Metamic HT neutron-absorbing aluminum alloy structural material used to secure the spent fuel inside the cask.

Although Holtec has manufactured some casks under the existing CoC 1032, Amendment No. 1 that is being revised by this direct final rule, Holtec, as the vendor, is not subject to backfitting protection under 10 CFR 72.62. Moreover, Holtec requested the change and has requested to apply it to the existing casks manufactured under Amendment No. 1. Therefore, even if the vendor were deemed to be an entity protected from backfitting, this request represents a voluntary change and is not backfitting.

Additionally, because Holtec has not delivered any cask certified under CoC No. 1032, Amendment No. 1, no ISFSI licensee has placed such a cask into service. Therefore, the changes in Amendment 1, Revision 1 which are approved in this direct final rule do not fall within the definition of backfitting under 10 CFR 72.62 or 10 CFR 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52.

Finally, the changes in CoC No. 1032, Amendment 1, Revision 1 do not apply to casks manufactured to the initial CoC 1032, and therefore, have no effect on current ISFSI licensees using these casks. While any current CoC user may comply with the new requirements in Amendment No. 1, Revision 1, this would be a voluntary decision on the part of the user. For these reasons, NRC approval of CoC No. 1032, Amendment

No. 1, Revision 1, does not constitute backfitting under 10 CFR 72.62 or 10 CFR 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions in 10 CFR part 52 for users of the Holtec HI–STORM FW System manufactured to the initial CoC No. 1032.

For the reasons set forth above, the NRC has not prepared a backfit analysis or additional documentation addressing the issue finality criteria in 10 CFR part 52.

XIII. Congressional Review Act

This action is not a major rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

XIV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated below.

Document	ADAMS Accession No./ Web link/ **Federal Register** citation
CoC No. 1032, Amendment No. 1, Revision 1	ML14276A621
CoC No. 1032, Amendment No. 1, Revision 1, Appendix A to the Technical Specifications	ML14276A618
CoC No. 1032, Amendment No. 1, Revision 1, Appendix B of the Technical Specifications	ML14276A617
CoC No. 1032, Amendment No. 1, Revision 1, Preliminary SER	ML14276A620
Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, License Amendment Request 1032–2, July 31, 2013.	ML13214A023
Submittal of Response to First Request for Additional Information for License Amendment Request No. 2 to the Holtec International HI-STORM Flood/Wind Multi-Purpose Canister Storage System, November 5, 2013.	ML13311A103

The NRC may post materials related to this document, including public comments, on the Federal rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2014–0275. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2014–0275); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH–LEVEL RADIOACTIVE WASTE, AND REACTOR–RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2239, 2273, 2282, 2021); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 131, 132, 133, 135, 137, 141 148 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 788 (2005).

Section 72.44(g) also issued under Nuclear Waste Policy Act secs. 142(b) and 148(c), (d) (42 U.S.C. 10162(b), 10168(c), (d)).

Section 72.46 also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154).

Section 72.96(d) also issued under Nuclear Waste Policy Act sec. 145(g) (42 U.S.C. 10165(g)).

Subpart J also issued under Nuclear Waste Policy Act secs. 117(a), 141(h) (42 U.S.C. 10137(a), 10161(h)).

Subpart K also issued under Nuclear Waste Policy Act sec. 218(a) (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance No. 1032 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1032.

Initial Certificate Effective Date: June 13, 2011.

Amendment Number 1 Effective Date: December 17, 2014, superseded by Amendment Number 1, Revision 1, on June 2, 2015.

Amendment Number 1, Revision 1, Effective Date: June 2, 2015.

SAR Submitted by: Holtec International, Inc.

SAR Title: Final Safety Analysis Report for the Holtec HI–STORM FW System.

Docket Number: 72–1032.

Certificate Expiration Date: June 12, 2031.

Model Number: HI–STORM FW MPC–37, MPC–89.

* * * * *

Dated at Rockville, Maryland, this 9th day of March, 2015.

For the Nuclear Regulatory Commission.

Mark A. Satorius,

Executive Director for Operations.

[FR Doc. 2015–06367 Filed 3–18–15; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0633; Directorate Identifier 2015–CE–005–AD; Amendment 39–18121; AD 2015–06–03]

RIN 2120–AA64

Airworthiness Directives; Stemme AG Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Stemme AG TSA–M Models S6 and S6–RT gliders. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a bending defect of the fork head installed in the aileron, speed brake, and flap control systems. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective March 24, 2015.

We must receive comments on this AD by May 4, 2015.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For information concerning this action, contact Stemme AG, Flugplatzstraße F2, Nr. 6–7, D–15344 Strausberg, Germany; phone: +49 (0) 3341/3612 0; fax: none; email: *info@stemme.de;* internet: *www.stemme.info.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0633; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2015–0034–E, dated February 27, 2015, (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> A report was received concerning a broken fork head, installed in the speed brake control circuit of a TSA–M Model S6–RT powered sailplane. Preliminary investigation results revealed additional cases of bending defect of the same part, which were installed in the aileron and flaps control systems of the TSA–M type design. The same fork heads are also installed in the control systems of ASP Model S15–1 aeroplanes.
>
> This condition, if not corrected, could lead to failure of the flight control system, possibly resulting in loss of control of the aeroplane.
>
> For the reasons described above, this AD prohibits the operation of the affected aeroplanes pending the availability of a modification of the affected flight control systems in accordance with approved instructions.

This AD is a temporary measure and further AD action may follow. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0633.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because a bending defect of the fork head could lead to failure of the flight control system, possibly resulting in loss of control. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–0633; Directorate Identifier 2015–CE–005–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD will affect 6 products of U.S. registry.

At the time of issuance of this AD, no design solution is available to restore the airworthiness of the respective type designs to a level corresponding to their approved type design specifications. Therefore, the FAA cannot determine the cost of returning the affected gliders to service.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2015–06–03 Stemme AG: Amendment 39–18121; Docket No. FAA–2015–0633; Directorate Identifier 2015–CE–005–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective March 24, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Stemme AG TSA–M Models S6 and S6–RT gliders, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a bending defect of the fork head installed in the aileron, speed brake, and flap control systems. We are issuing this AD to detect and correct the bending defect of the fork head that could result in failure of the flight control system, possibly resulting in loss of control.

(f) Actions and Compliance

Unless already done, before further flight, after March 24, 2015 (the effective date of this AD), modify the affected flight control systems, or take other actions, following a method approved specifically for this AD by the FAA, Small Airplane Directorate. Contact Stemme AG to obtain FAA-approved repair instructions approved specifically for compliance with this AD and incorporate those instructions. You can find contact information for Stemme AG in paragraph (i)(2) of this AD.

Note 1 to paragraph (f) of this AD: At the time of issuance of this AD, no design solution is available to restore the airworthiness of the respective type designs to a level corresponding to their approved type design specifications.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Special Flight Permit

Special flight permits are prohibited.

(i) Related Information

(1) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2015–0034–E, dated February 27, 2015, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0633.

(2) For information concerning this action, contact Stemme AG, Flugplatzstraße F2, Nr. 6–7, D–15344 Strausberg, Germany; phone: +49 (0) 3341/3612 0; fax: none; email: *info@stemme.de;* internet: *www.stemme.info.*

Issued in Kansas City, Missouri, on March 12, 2015.

Robert Busto,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–06296 Filed 3–18–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0579; Directorate Identifier 2014–SW–020–AD; Amendment 39–18115; AD 2015–05–05]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2014–04–14 for Agusta S.p.A. (Agusta) Model A109S, AW109SP, A119, and AW119 MKII helicopters. AD 2014–04–14 required removing certain rod end assemblies from service because of reports of fractures. This new AD retains the requirements of AD 2014–04–14 but expands the scope of applicable rod end assemblies. This AD was prompted by reports of additional fractured rod end assemblies. We are issuing this AD to prevent failure of a rod end assembly, which could result in damage to the main rotor assembly and loss of control of the helicopter.

DATES: This AD is effective April 23, 2015.

ADDRESSES: For service information identified in this AD, contact AgustaWestland, Product Support Engineering, Via del Gregge, 100, 21015 Lonate Pozzolo (VA) Italy, ATTN: Maurizio D'Angelo; telephone 39–0331–664757; fax 39–0331–664680; or at *http://www.agustawestland.com/technical-bulletins.* You may view this referenced service information at the FAA, Office of the Regional Counsel,

Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov or* in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *robert.grant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to remove AD 2014–04–14, Amendment 39–17773 (79 FR 11699, March 3, 2014) for Agusta Model A109S, AW109SP, A119, and AW119 MKII helicopters with a main rotor lag damper assembly (lag damper), part number (P/N) 109–0112–39–103, 109–0112–39–105, 109–0112–05–105, or 109–0112–05–107, installed with a rod end assembly, P/N M004–01H007–041 or P/N M004–01H007–045, with a serial number from 84 through 132 or from 4964 through 5011, and add a new AD. The NPRM published in the **Federal Register** on August 18, 2014 (79 FR 48698). AD 2014–04–14 required removing the rod end assemblies from service. AD 2014–04–14 was prompted by AD No. 2012–0208, dated October 5, 2012, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Agusta Model A109LUH, A109S, AW109SP, A119, and AW119 MKII helicopters. EASA advises of cases of in-flight fractures of rod end assembly, P/N M004–01H007–045, installed on main rotor lag dampers on Model A109LUH and AW109SP helicopters. An investigation revealed that two batches of rod end assemblies, P/N M004–01H007–041 and M004–01H007–045, could have cracks, according to EASA. EASA states that this condition, if not corrected, could lead to main rotor damage, possibly resulting in loss of control of the helicopter. The actions of AD 2014–04–14 were intended to prevent such damage and loss of control of the helicopter.

Actions Since AD 2014–04–14 Was Issued

Between the time we published the NPRM for AD 2014–04–14 (78 FR 44042, July 23, 2013) and the Final Rule for AD 2014–04–14 (79 FR 11699, March 3, 2014), EASA issued AD No. 2013–0290, dated December 9, 2013. EASA advises in AD No. 2013–0290 that a new case of a fractured rod end assembly has been reported and that additional batches of rod end assembly, P/N M004–01H007–041 and P/N M004–01H007–045, as well as batches of P/N 109–0112–11–101 and P/N 109–0112–22–105 could also have cracks. EASA expanded the applicability of its AD to include the additional rod end assemblies.

We consequently issued the NPRM (79 FR 48698, August 18, 2014) to amend 14 CFR part 39 to remove AD 2014–04–14 and add a new AD. The NPRM proposed to retain the requirements of AD 2014–04–14 but expand the scope of applicable rod end assemblies. The NPRM also proposed to add a provision requiring compliance with the AD if the rod end assembly is removed during maintenance before 25 hours time-in-service (TIS).

Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (79 FR 48698, August 18, 2014).

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed, except we have correctly stated the design holder's name as Agusta S.p.A. instead of AgustaWestland S.p.A. as specified by the current FAA type certificate. This change is consistent with the intent of the proposals in the NPRM (79 FR 48698, August 18, 2014) and will not increase the economic burden on any operator nor increase the scope of the AD.

Differences Between This AD and the EASA AD

The EASA AD calls for replacing certain rod end assemblies with airworthy rod end assemblies within 25 hours TIS, 2 months, or the next time maintenance of the applicable helicopters involves removing the rod end assembly. This AD does not have a calendar time requirement. The EASA AD applies to Agusta Model A109LUH helicopters. This AD does not apply to Model A109LUH helicopters because that model does not have a U.S. type certificate.

Related Service Information

We reviewed AgustaWestland Bollettino Tecnico (BT) No. 109S–49 for Model A109S helicopters, BT No. 109SP–052 for Model AW109SP helicopters, and BT No. 119–50 for Model A119 and AW119 MKII helicopters. All of the BTs are revision A, and dated December 3, 2013. The BTs specify a one-time inspection of each rod end assembly to determine its serial number. The BTs then require removal from service of certain serial-numbered rod end assemblies because fractures had been reported on rod ends in these batches. According to the BTs, no one was injured in the helicopters, and no helicopters were damaged because of these fractures.

Costs of Compliance

We estimate that this AD affects 91 helicopters of U.S. Registry and that labor costs average $85 a work-hour. Based on these estimates, we expect the following costs:

- Replacing a rod end assembly requires 1.5 work-hours for a labor cost of $128. Parts cost $3,918 for a total cost of $4,046 per helicopter, $368,186 for the U.S. fleet.

According to the manufacturer's service information, costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage by manufacturers. Accordingly, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2014–04–14, Amendment 39–17773 (79 FR 11699, March 3, 2014), and adding the following new AD:

2015–05–05 Agusta S.p.A.: Amendment 39–18115; Docket No. FAA–2014–0579; Directorate Identifier 2014–SW–020–AD.

(a) Applicability

This AD applies to the following helicopters, certificated in any category:

(1) Agusta S.p.A. (Agusta) Model A109S and AW109SP helicopters, with a main rotor lag damper assembly (lag damper), part number (P/N) 109–0112–39–103 or 109–0112–39–105, installed on rod end assembly, P/N M004–01H007–041 with a serial number (S/N) 1 through 202; or rod end assembly, P/N M004–01H007–045 with a S/N 1RW through 202RW or 4964 through 5011.

(2) Agusta Model A119 and AW119 MKII helicopters, with a lag damper, P/N 109–0112–05–105 or 109–0112–05–107, installed on rod end assembly, P/N 109–0112–11–101 with a S/N 1 through 78; or rod end assembly, P/N 109–0112–11–105 with a S/N 1RW through 78RW; or rod end assembly, P/N M004–01H007–045 with a S/N 1RW through 202RW or 4964 through 5011.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in a rod end assembly, which could result in fracture of the rod end assembly, damage to the main rotor, and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD supersedes AD 2014–04–14, amendment 39–17773 (79 FR 11699, March 3, 2014).

(d) Effective Date

This AD becomes effective April 23, 2015.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) Within 25 hours time-in-service or the next time maintenance of the helicopter involves removing the rod end assembly, whichever occurs first, remove the rod end assembly from service.

(2) Do not install a rod end assembly, P/N M004–01H007–041 with a S/N 1 through 202; P/N M004–01H007–045 with a S/N 1RW through 202RW or 4964 through 5011; P/N 109–0112–11–101 with a S/N 1 through 78; or P/N 109–0112–11–105 with a S/N 1RW through 78RW, on any helicopter.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *robert.grant@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

(1) AgustaWestland S.p.A. Bollettino Tecnico (BT) No. 109S–49, BT No. 109SP–052, and BT No. 119–50, all Revision A, and all dated December 3, 2013, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact AgustaWestland, Product Support Engineering, Via del Gregge, 100, 21015 Lonate Pozzolo (VA) Italy, ATTN: Maurizio D'Angelo; telephone 39–0331–664757; fax 39–0331–664680; or at *http://www.agustawestland.com/technical-bulletins.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in the European Aviation Safety Agency (EASA) AD No. 2013–0290, dated December 9, 2013. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2014–0579.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6200, Main Rotor System.

Issued in Fort Worth, Texas, on March 4, 2015.

Bruce E. Cain,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2015–05715 Filed 3–18–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–1001; Directorate Identifier 2014–CE–034–AD; Amendment 39–18103; AD 2015–04–01]

RIN 2120–AA64

Airworthiness Directives; Short Brothers & Harland Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to all Short Brothers & Harland Ltd. Model SC–7 Series 3 airplanes. The amendment number in the Agency Identification Numbers in the preamble section of the AD is incorrect. Although no other part of the preamble or regulatory information has been corrected, we are publishing the entire rule in the **Federal Register**.

DATES: This final rule is effective March 30, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://*

www.regulations.gov by searching for and locating Docket No. FAA–2014–1001; or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact Short Brothers & Harland Ltd. service information identified in this proposed AD, contact Airworthiness, Short Brothers PLC, P.O. Box 241, Airport Road, Belfast, BT3 9DZ Northern Ireland, United Kingdom; phone: +44–2890–462469, fax: 44–2890–733647, email: *michael.mulholland@aero.bombardier.com,* internet: None; and for SAFRAN Messier-Buggatti-Dowty service information contact Messier-Dowty Limited, Cheltenham Road, Gloucester GL2 9QH, ENGLAND; phone: +44(0)1452 712424; fax: +44(0)1452 713821; email: *americacsc@safranmbd.com,* Internet: *http://www.safranmbd.com.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1001.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION: Airworthiness Directive 2015–04–01, Amendment 39–18003 (80 FR 9382, February 23, 2015), currently requires a visual inspection of the NLG sliding tube and a fluorescent penetrant inspection of the sliding tube. If any crack is detected during either inspection, before further flight, obtain FAA-approved repair instructions approved specifically for compliance with this AD by reporting the findings, and incorporating those instructions for Short Brothers & Harland Ltd. Model SC–7 Series 3 airplanes, all serial numbers, certificated in any category.

As published, the amendment number in the Agency Identification Numbers in the preamble section of the AD is incorrect. It has been corrected in this document.

Although no other part of the preamble or regulatory information has been corrected, we are publishing the entire rule in the **Federal Register**.

The effective date of this AD remains March 30, 2015.

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2015–04–01 Short Brothers & Harland Ltd: Amendment 39–18103; Docket No. FAA–2014–1001; Directorate Identifier 2014–CE–034–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective on March 30, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Short Brothers & Harland Ltd. Model SC–7 Series 3 airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 32: Landing Gear.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as fatigue cracking which could lead to structural failure of the nose landing gear (NLG). We are issuing this AD to detect and correct fatigue cracking which, if not detected and corrected, could lead to structural failure of the NLG, possibly resulting in loss of control of the airplane during take-off or landing.

(f) Actions and Compliance

Unless already done, comply with this AD within the compliance times specified in paragraphs (f)(1) through (f)(5) of this AD.

(1) Within 30 days after March 30, 2015 (the effective date of this AD), accomplish a visual inspection of the NLG sliding tube following the instructions of paragraph 3.A of SAFRAN Messier-Buggatti-Dowty Service Bulletin No. 32–17M, dated November 1, 2014.

Note 1 to paragraphs (f)(1), (f)(2), (f)(4), and (f)(5) of this AD: Instructions provided by SAFRAN Messier-Buggatti-Dowty Service Bulletin No. 32–17M, dated November 1, 2014, are referenced in Shorts Service Bulletin Number 32–74, dated November 1, 2014.

(2) Within 90 days after March 30, 2015 (the effective date of this AD), do a fluorescent penetrant inspection of the sliding tube following the instructions of paragraph 3.B of SAFRAN Messier-Buggatti-Dowty Service Bulletin No. 32–17M, dated November 1, 2014.

(3) If any crack is detected during the inspection required by paragraph (f)(1) or (f)(2) of this AD, before further flight, obtain FAA-approved repair instructions approved specifically for compliance with this AD by reporting the findings to Short Brothers & Harland Ltd. and incorporating those instructions. You can find contact information for Short Brothers & Harland Ltd. in paragraph (h) of this AD.

(4) Within 30 days after any inspection required by paragraphs (f)(1) and (f)(2) of this AD or within 30 days after March 30, 2015 (the effective date of this AD), whichever occurs later, report the inspection results to Short Brothers & Harland Ltd. by completing the Inspection Results Proforma following the instructions of paragraph 3.C.(2) of SAFRAN Messier-Buggatti-Dowty Service Bulletin No. 32–17M, dated November 1, 2014. You can find contact information for Short Brothers & Harland Ltd. in paragraph (h) of this AD.

(5) From March 30, 2015 (the effective date of this AD), you may install a sliding tube on an NLG provided that, before next flight after installation, the NLG sliding tube passes the inspections in paragraphs (f)(1) and (f)(2) of this AD following the instructions of paragraph 3 of SAFRAN Messier-Buggatti-Dowty Service Bulletin No. 32–17M, dated November 1, 2014.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to

be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2014–0246, dated November 12, 2014; and Shorts Service Bulletin Number 32–74, dated November 1, 2014, for related information. The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2014-1001-0002.* For Short Brothers & Harland Ltd. service information identified in this AD, contact Airworthiness, Short Brothers PLC, P.O. Box 241, Airport Road, Belfast, BT3 9DZ Northern Ireland, United Kingdom; phone: +44–2890–462469, fax: 44–2890–733647, email: *michael.mulholland@aero.bombardier.com,* internet: None.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) SAFRAN Messier-Buggatti-Dowty Service Bulletin No. 32–17M, dated November 1, 2014.

(ii) Reserved.

(3) For SAFRAN Messier-Buggatti-Dowty service information identified in this AD, contact Messier-Dowty Limited, Cheltenham Road, Gloucester GL2 9QH, ENGLAND; phone: +44(0)1452 712424; fax: +44(0)1452 713821; email: *americacsc@safranmbd.com,* Internet: *http://www.safranmbd.com.*

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1001.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on March 11, 2015.

Robert Busto,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–06235 Filed 3–18–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AB68

Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans—Timing of Annual Disclosure

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Direct final rule.

SUMMARY: This direct final rule amends the Department of Labor's ''participant-level fee disclosure'' regulation. The amendment makes a technical adjustment to a timing requirement in the current regulation. As amended, the regulation provides plan administrators with flexibility as to when they must furnish annual disclosures to participants and beneficiaries.

DATES: *Effective date:* This rule is effective June 17, 2015, without further action or notice, unless significant adverse comment is received by April 20, 2015. If significant adverse comment is received, the Employee Benefits Security Administration (EBSA) will publish a timely withdrawal of the rule in the **Federal Register**.

Applicability date: The amendment is applicable to disclosures made on or after June 17, 2015.

ADDRESSES: You may submit comments, identified by RIN 1210–AB68, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: e-ORI@dol.gov.* Include RIN 1210–AB68 in the subject line of the message.
- *Mail or personal delivery:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Instructions: All submissions received must include the agency name and Regulation Identifier Number (RIN) for this rulemaking. Comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and made available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210. Persons submitting comments electronically are encouraged not to submit paper copies.

FOR FURTHER INFORMATION CONTACT: Eric A. Raps, Office of Regulations and Interpretations, Employee Benefits Security Administration, Department of Labor, at (202) 693–8532. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

In General

On October 20, 2010, the Department of Labor (Department) published a final regulation requiring plan administrators to disclose certain plan and investment-related information, including fee and expense information, to participants and beneficiaries in participant-directed individual account plans.[1] The regulation requires certain information to be furnished on or before the date on which a participant can first direct his or her investments and ''at least annually thereafter.'' The regulation defines this term as ''at least once in any 12-month period, without regard to whether the plan operates on a calendar or fiscal year basis.'' [2] The regulation was effective on December 20, 2010, but was not applicable until plan years beginning on or after November 1, 2011.[3]

On July 30, 2012, the Department's Employee Benefits Security Administration (EBSA) issued Field Assistance Bulletin 2012–02R (FAB 2012–02R) providing guidance on frequently asked questions. Q&A 35 clarified that, for most plans, including calendar year plans, the first initial disclosures under the new regulation were required no later than August 30, 2012. FAB 2012–02R did not, however, specifically address the deadline for subsequent annual disclosures.[4]

In Field Assistance Bulletin 2013–02, issued July 22, 2013, the Department made clear that the regulation requires annual disclosures to be made no more than one year exactly (*e.g.,* 365 days) after the prior annual disclosures. Specifically, FAB 2013–02, in relevant part, states ''[f]or example, a plan administrator that furnished the first required chart on August 25, 2012, must furnish the next comparative chart no

[1] 29 CFR 2550.404a–5; 75 FR 64910.

[2] 29 CFR 2550.404a–5(h)(1).

[3] The specified applicability date was subsequently delayed by amendment published on July 19, 2011. 76 FR 42539. Under the amendment, the initial disclosures required on or before the date on which a participant or beneficiary can first direct his or her investments must be furnished no later than the later of 60 days after such applicability date or 60 days after the effective date of 29 CFR 2550.408b–2(c). 29 CFR 2550.404a–5(j)(3)(i)(A).

[4] FAB 2012–02R supersedes FAB 2012–02 issued on May 7, 2012. Changes in the superseding bulletin did not affect Question 35.

later than August 25, 2013.'' This interpretation was intended to prevent inconsistencies, delays, and possible manipulation of the timing of annual disclosures. It also was responsive to the views expressed by some plan administrators, which contrary to EBSA's intent, interpreted ''at least once in any 12-month period'' to allow the furnishing of the annual disclosures, for example, on January 1 of one year and December 31 of the following year, thus allowing for approximately 24 months in between disclosures. At the same time, however, EBSA was concerned that the requirement that disclosures be made no more than one year exactly from the prior annual disclosures (as interpreted in FAB 2013–02) might impose undue administrative burdens on plans. Consequently, FAB 2013–02 solicited public comments on whether EBSA should amend the regulation to provide plan administrators with more flexibility as to when they must furnish the annual disclosures.[5] For example, instead of a permanently fixed annual deadline set at one year exactly from the last annual disclosure, EBSA requested comments on whether the deadline should have some degree of elasticity, such as a 30-day or 45-day window from the one-year anniversary of the last annual disclosure.

The Department received comments from several organizations representing employers, plans, recordkeepers and other service providers who furnish annual disclosures to participants and beneficiaries on behalf of plan administrators. These commenters raised multiple practical and logistical concerns about the current definition.

For instance, the commenters maintain that the current definition may prevent them from consolidating the annual disclosures under the regulation with other annual plan disclosures. One commenter stated ''many plan sponsors and service providers try, where possible, to consolidate participant communications in a way that ensures effective disclosures and avoids overloading participants with information too frequently.'' On this point, a different commenter observed ''it is helpful for employers to have a flexible deadline in case they need to change the dates of their annual enrollment periods or other annual plan-related mailings. A 45-day window would provide them with the flexibility to timely provide the annual disclosures to participants without concern that they may miss the deadline.''

Another concern raised by the commenters is that the current definition requires them to track the specific date of annual disclosures on a plan-by-plan or participant-by-participant basis, even though large recordkeepers may have responsibility for tens of thousands of plan clients and millions of plan participants. The commenters also maintain that the current definition is a disincentive or punishment to plans that provide early disclosures in a given year. The commenters also maintain that certain investment information needed on a comparative chart, such as a designated investment alternative's 1-year, 5-year, and 10-year performance, often comes from different investment vendors and may not always be predictably delivered and consolidated by the 12-month anniversary deadline.

Each of these concerns stems from the fact that the furnishing of a required annual disclosure before the expiration of the 12-month deadline (365th day) in any year necessarily changes and accelerates the deadline for subsequent plan years (*i.e.,* the deadline ''creeps'' forward for all future years when there is early compliance during the current year). One commenter, for example, stated ''the requested flexibility mitigates the incentive that plan sponsors and service providers may have to delay furnishing the materials when they may otherwise be able to send them sooner, in order to avoid accelerating subsequent compliance deadlines.'' The commenters overwhelmingly support a regulatory amendment that provides some flexibility as to the timing of annual disclosures. A reasonable interpretation of their comments is that they support a buffer zone of no less than 45 days, and that such flexibility would abate the concerns mentioned above. Commenters also identified special or irregular events that warrant flexibility, including corporate mergers and changes in recordkeepers, investment lineups, plan years (*e.g.,* from fiscal to calendar year), or law.

No commenter objected to giving plan administrators some flexibility, or suggested that flexibility would harm participants and beneficiaries or hinder their ability to direct their investments. Two commenters, in fact, suggested just the opposite. One of them observed that ''[r]esolving this concern will also benefit plan participants because it will facilitate expedited furnishing of the materials when it is feasible for providers and plan sponsors to do so.'' The other observed ''it is common for plans to periodically change the menu of investment options available to participants and, in such circumstances, a plan may find it helpful to slightly delay distribution of an otherwise due comparative chart until the new investment options are set.''

The overall objective of the ''participant-level fee disclosure'' regulation is to make sure participants and beneficiaries in participant-directed individual account plans are furnished the information they need, on a regular and periodic basis, to make informed decisions about the management of their individual accounts and the investment of their retirement savings. While deadlines are needed to avoid irregular and non-periodic disclosures, flexible deadlines alone do not undermine the overall objective of the regulation.

Based on the foregoing, the Department has decided to replace the definition contained in paragraph (h)(1) of the current regulation with a new definition that provides a buffer requested by the commenters. The current regulatory language states that the term *at least annually thereafter* ''means at least once in any 12-month period, without regard to whether the plan operates on a calendar or fiscal year basis.'' Today's direct final rule replaces ''12-month period'' with ''14-month period.'' Thus, the definition, as amended by this rulemaking, states that the term *at least annually thereafter* ''means at least once in any 14-month period, without regard to whether the plan operates on a calendar year or fiscal year basis.'' It is the Department's view that this definition achieves the correct balance by ensuring that participants and beneficiaries will receive annual disclosures on a consistent and regular basis, and without unwarranted delays in-between disclosures, while at the same time offering plan administrators some flexibility.

The Department also requests comments on whether a similar adjustment is needed for the ''at least quarterly'' definition in paragraph (h)(2) of the regulation.[6] Today's direct final

[5] FAB 2013–02 also provided a one-time ''re-set'' opportunity under which EBSA, as an enforcement matter, would treat a plan administrator as satisfying the ''at least annually thereafter'' requirement of the regulation if the administrator furnished certain annual disclosures no later than 18 months from the prior annual disclosures. This temporary relief was granted to plan administrators so that the annual deadline for furnishing comparative charts and other annual disclosures under the regulation could be aligned with the furnishing of other participant notices and disclosures. FAB 2013–02 is not affected by the direct final regulation. Thus, to the extent it is otherwise available, an administrator does not lose the re-set relief in FAB 2013–02 for the second annual disclosure (described as the ''2014 comparative chart'' in FAB 2013–02) as a result of the direct final regulation.

[6] The ''at least quarterly'' timing requirement in paragraph (h)(2) applies to disclosures detailing

rule has no effect on the definition contained in paragraph (h)(2). No commenter identified problems with this definition or requested an adjustment similar to the adjustment being made to the ''at least annually'' definition. Consequently, the Department today has no basis to make any change to this definition. The lack of comment on this definition may be due, in whole or in part, to EBSA Field Assistance Bulletin 2006–03 (providing a 45-day window for furnishing quarterly pension benefit statements required under section 105 of ERISA) and paragraph (e)(2) of 29 CFR 2550.404a–5 (which allows quarterly fee disclosures to be furnished with quarterly pension benefit statements). Commenters are encouraged to consider FAB 2006–03 if making a comment.

Temporary Enforcement Policy

The Department is adopting an enforcement policy, effective immediately, under which plan administrators may rely on the new definition in paragraph (h)(1) prior to the effective date of the amendment. Some plans may be preparing their next set of annual disclosures, which may be due before the effective date of the amendment. Accordingly, EBSA, as an enforcement matter, will treat a plan administrator as satisfying the timing requirement in paragraph (h)(1) of the regulation if the plan administrator complies with the new definition establishing a 2-month grace period for annual disclosures, provided that the plan administrator reasonably determines that doing so will benefit participants and beneficiaries. This enforcement policy expires on the effective date of the direct final rule without notice or any other action by the Department. If the direct final rule is withdrawn because of significant adverse comment, EBSA will provide further guidance on this enforcement policy in the **Federal Register** notice announcing the withdrawal of the rule. The relief under this policy is in addition to the relief previously granted under FAB 2013–02 and is available regardless of whether a plan has used the relief in such FAB 2013–02 to reset the first or second applicable annual disclosure.

Good Cause Finding That Proposed Rulemaking Unnecessary

Rulemaking under section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) ordinarily involves publication of a notice of proposed rulemaking in the **Federal Register** and provides the public with the opportunity to comment on the proposed rule. However, an agency may issue a rule without prior notice and comment if it determines for good cause that prior notice and comment is impracticable, unnecessary, or contrary to the public interest.

The Department finds it unnecessary to publish a notice of proposed rulemaking. The Department, in FAB 2013–02, already solicited public comment on the issue of flexible timing for annual disclosures. Additional notice and comment is not likely to change the Department's conclusion that there is a need for greater flexibility, but it will delay the relief sought by the affected parties. Such delay also makes ordinary notice and comment procedures impracticable for those plan administrators who would benefit from the new definition in paragraph (h)(1) in connection with disclosures that must be furnished in the early part of 2015.

The Department is concurrently publishing a notice of proposed rulemaking in the ''Proposed Rules'' section of today's **Federal Register** that will serve as a notice of proposal to amend part 2550 as described in this direct final rule. If the Department receives significant adverse comment during the comment period, it will withdraw this direct final rule. The Department will then address public comments in a subsequent final rule. The Department does not intend to institute a second comment period on this rule. Any parties interested in commenting must do so during this comment period.

Regulatory Impact Analysis

Executive Orders 12866

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, OMB has determined that this regulatory action is significant within the meaning of section 3(f)(4) of the Executive Order, and therefore it will be reviewed by OMB. As discussed in the Paperwork Reduction Act section below, the Department expects this amendment to benefit plan administrators by providing flexibility when the annual disclosures are furnished with no additional cost impact.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the APA (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Under Section 553(b) of the APA, a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. This direct final regulation is exempt from the APA's notice and comment requirements because the Department made a good cause finding earlier in this preamble that a general notice of proposed rulemaking is not necessary. Therefore, the RFA does not apply and the Department is not required to either certify that this regulation would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the

administrative and individual expenses ''actually charged'' to individual accounts.

Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

In accordance with the requirements of the PRA (44 U.S.C. 3506(c)(2)), the Department submitted an information collection request (ICR) to OMB in accordance with 44 U.S.C. 3507(d) for the current rule that was published on October 20, 2010. The information collection request was approved by OMB on October 5, 2010, under OMB Control Number 1210–0090, which currently is scheduled to expire on April 30, 2017.

Currently, the Department has submitted an information collection for the ICR as revised by the direct final rule under the emergency procedures for review and clearance contained in 5 CFR 1320.13. A copy of the ICR may be obtained by contacting the PRA addressee shown below. The Department is hereby soliciting comments concerning the revision to the ICR currently approved under OMB Control Number 1210–0090. The Department and OMB are interested particularly in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Comments should be sent to the PRA Addressee within the same 30-day comment period that applies for comments on the direct final rule. Any comments received will be considered when the Department submits an extension request for the emergency ICR to OMB.

PRA Addressee: Address requests for copies of the ICR to G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N–5718, Washington, DC 20210. Telephone (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers. ICRs submitted to OMB also are available at *http://www.RegInfo.gov.*

The Department expects this amendment to have no impact on the cost or hour burden associated with the ICR, because it solely determines when the disclosures are distributed but does not affect the content of the disclosures. The timing flexibility provided by the amendment will benefit plan administrators by allowing them to combine and distribute annual disclosures with other employment and annual employee benefits communication materials, which may result a small decrease in burden; however, the Department does not have sufficient data to estimate this decrease. The Department welcomes comments regarding this assessment.

Congressional Review Act

This direct final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, the direct final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments in the aggregate of more than $100 million, adjusted for inflation, or increase expenditures by the private sector of more than $100 million, adjusted for inflation.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. The direct final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Fiduciaries, Pensions, Disclosure.

For the reasons set forth in the preamble, the Department is amending Subchapter F, Part 2550 of Title 29 of the Code of Federal Regulations as follows:

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 1. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135 and Secretary of Labor's Order No. 1–2011, 77 FR 1088 (January 9, 2012). Sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. at 727 (2012). Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sec. 2550.404a–1 also issued under sec. 657, Pub. L. 107–16, 115 Stat 38. Sec. 2550.404a–2 also issued under sec. 657 of Pub. L. 107–16, 115 Stat. 38. Sections 2550.404c–1 and 2550.404c–5 also issued under 29 U.S.C. 1104. Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1). Sec. 2550.408b–19 also issued under sec. 611, Pub. L. 109–280, 120 Stat. 780, 972. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

■ 2. In § 2550.404a–5, revise paragraph (h)(1) to read as follows:

§ 2550.404a–5 Fiduciary requirements for disclosure in participant-directed individual account plans.

* * * * *

(h) * * *

(1) *At least annually thereafter* means at least once in any 14-month period, without regard to whether the plan operates on a calendar year or fiscal year basis.

* * * * *

Signed at Washington, DC, this 12th day of March 2015.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2015–06211 Filed 3–18–15; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0164]

Drawbridge Operation Regulation; York River, Yorktown and Gloucester Point, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the draw of the Coleman Memorial Bridge (US 17/George P. Coleman Memorial Swing Bridge) across the York River, mile 7.0, between Gloucester Point and Yorktown, VA. This deviation is necessary to facilitate maintenance work on the moveable spans on the Coleman Memorial Bridge. This temporary deviation allows the drawbridge to remain in the closed to navigation position.

DATES: This deviation is effective from 7 a.m. on March 29, 2015 to 5 p.m. on April 4, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0164] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Jim Rousseau, Bridge Administration Branch Fifth District, Coast Guard; telephone (757) 398–6557, email *James.L.Rousseau2@uscg.mil.* If you have questions on reviewing the docket, call Cheryl Collins, Program Manager, Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Virginia Department of Transportation, who owns and operates this swing bridge, has requested a temporary deviation from the current operating regulation set out in 33 CFR 117.1025, to facilitate maintenance of the moveable spans on the structure.

Under the regular operating schedule, the Coleman Memorial Bridge, mile 7.0, between Gloucester Point and Yorktown, VA, opens on signal except from 5 a.m. to 8 a.m. and 3 p.m. to 7 p.m. Monday through Friday, except Federal holidays, the bridge shall remain closed to navigation. The Coleman Memorial Bridge has vertical clearances in the closed position of 60 feet above mean high water.

Under this temporary deviation, the drawbridge will be closed to navigation from 7 a.m. to 5 p.m. on Sunday March 29, 2015; with an inclement weather date from 7 a.m. to 5 p.m. on Sunday April 4, 2015. The bridge will operate under normal operating schedule at all other times. Emergency openings cannot be provided. There are no alternate routes for vessels transiting this section of the York River. Vessels able to pass under the bridge in the closed position may do so at anytime and are advised to proceed with caution. All other vessels may pass before 7 a.m. and after 5 p.m.

The York River is used by a variety of vessels including military, tugs, and recreational vessels. The Coast Guard has carefully coordinated the restrictions with these waterway users. The Coast Guard will also inform additional waterway users through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 10, 2015.

James L. Rousseau,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2015–06465 Filed 3–18–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0436]

RIN 1625–AA09

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, St. Petersburg Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the Pinellas Bayway Structure ''E'' (SR 679) Bridge, Gulf Intracoastal Waterway mile 113.0, St. Petersburg Beach, FL. This will extend the time period when the bridge is subject to periodic closings. During this extended time period the bridge will not open on demand.

DATES: This rule is effective April 20, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0436]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Robert Glassman, Seventh Coast Guard District, Bridge Branch, 305–415–6946, email *Robert.s.glassman@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section Symbol
U.S.C. United States Code

A. Regulatory History and Information

On August 11, 2014, we published a notice of proposed rulemaking (NPRM) entitled, ''Drawbridge Operation Regulations; Gulf Intracoastal Waterway, St Petersburg Beach, FL'' in the **Federal Register** (79 FR 46740). We received 173 comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

The Pinellas Bayway Structure ''E'' Bridge provides a vertical clearance of 25 feet at mean high water in the closed position and a horizontal clearance of 89 feet. Vessels with a height of less than 25 feet may pass through the bridge at any time. The current regulation, 33 CFR 117.287(d)(4), states Pinellas

Bayway Structure ''E'' (SR 679) bridge, mile 113.0 at St. Petersburg Beach ''shall open on signal, except that from 9 a.m. to 7 p.m. the draw need open only on the hour and 30 minutes past the hour.'' This modification will extend the time by two hours in the morning and two hours in the evening, allowing this Bridge to open on the hour and half-hour from 7 a.m. to 9 p.m., seven days a week and continue to open on demand all other times.

C. Discussion of Comments, Changes and the Final Rule

Of the 173 comments received, 171 were in favor of extending the half-hour schedule by two hours in the morning and two hours in the evening. Two comments opposed extending the scheduled opening period.

Two commenters asked if afternoon scheduled openings should end prior to 9 p.m. Vehicles exiting Fort de Soto Park to the mainland must use Pinellas Bayway Structure ''E'' Bridge. Fort de Soto Park closes at 8:30 p.m. Extending scheduled openings until 9 p.m. will reduce traffic for departing park visitors.

One commenter indicated that one hour is too long to wait for a bridge opening. This rule will provide for passage two times in an hour during the period of scheduled openings. From 7 a.m. to 9 p.m. the bridge will open on the hour and on the half hour.

One commenter voiced concern for the safety of vessels transiting to a dock or marina in a storm. Other comments recommended extending scheduled openings for the entire day, in part because it serves as a means of ingress and egress for emergency vehicles. Under Title 33 Code of Federal Regulations, Section 117.31, drawtenders are required to make reasonable efforts to have drawspans closed for emergency vehicles and opened for vessels in distress or seeking shelter from severe weather.

One commenter asked for an exception for boat parades. If an extended closure period is necessary for a special event, the bridge owner may request a temporary change to the drawbridge operating schedule.

No changes were made to the proposed regulatory text as a result of the comments. Therefore, paragraph (d)(4) of 33 CFR 117.287 will be revised to require opening on signal, except that from 7 a.m. to 9 p.m. the draw need open only on the hour and 30 minutes past the hour.

This rule will not unreasonably impact navigation. Both vehicle traffic and vessel traffic may need to adjust schedules to ensure that they are not unreasonably delayed.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This rule is not a significant regulatory action because vessels may still transit the Bridge at scheduled intervals and these changes will continue to meet the reasonable needs of navigation. Therefore, the rule will only have a minor impact on vessels transiting the Gulf Intracoastal Waterway in the vicinity of St. Petersburg Beach, Florida.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels transiting the Gulf Intracoastal Waterway. However, this action will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessels that can safely transit under the Bridge may do so at any time. Vessels unable to transit under the Bridge will be able to transit the Bridge at specific intervals which can be taken into account by vessel owners and operators.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We analyzed this rule under that Order and determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or

more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards; therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 117.287, revise paragraph (d)(4) to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(d) * * *

(4) Pinellas Bayway Structure ''E'' (SR 679) bridge, mile 113.0 at St. Petersburg Beach. The draw shall open on signal, except that from 7 a.m. to 9 p.m. the draw need open only on the hour and 30 minutes past the hour.

* * * * *

Dated: February 27, 2015.

J. H. Korn,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2015–06357 Filed 3–18–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0170]

Drawbridge Operation Regulation; Lake Washington Ship Canal, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Washington State Department of Transportation Montlake Bridge across the Lake Washington Ship Canal, mile 5.2, at Seattle, WA. This deviation allows the bridge to remain in the closed-to-navigation position to accommodate the safe movement of ''Beat the Bridge Run'' event participants.

DATES: This deviation is effective from 7:30 a.m. on May 17, 2015 to 9 a.m. on May 17, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0170] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Washington State Department of Transportation requested a temporary deviation from the operating schedule, 33 CFR 117.1051, for the Montlake Bridge across the Lake Washington Ship Canal, mile 5.2, at Seattle, WA. The requested deviation is necessary to accommodate safe movement of ''Beat the Bridge Run'' event participants. This deviation allows the bridge to remain in the closed-to-navigation position. This deviation is effective from 7:30 a.m. on May 17, 2015 to 9 a.m. on May 17, 2015.

The Montlake Bridge crosses the Lake Washington Ship Canal at mile 5.2 and while in the closed position provides 30 feet of vertical clearance throughout the navigation channel and 46 feet of vertical clearance throughout the center 60-feet of the bridge; vertical clearance referenced to the Mean Water Level of Lake Washington. Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. Waterway users on the Lake Washington Ship Canal range from commercial tug and barge to small pleasure craft. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridge so that vessels can arrange their

transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 11, 2015.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2015–06289 Filed 3–18–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900–AO96

Schedule for Rating Disabilities—Mental Disorders and Definition of Psychosis for Certain VA Purposes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final, without change, an interim final rule amending its Schedule for Rating Disabilities (VASRD) dealing with mental disorders and its adjudication regulations that define the term ''psychosis.'' Outdated references are replaced with references to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM–5). Nomenclature used to refer to certain mental disorders is amended to conform to DSM–5. This rule also provides clarification of the applicability date.

DATES: *Effective Date:* This rule is effective on March 19, 2015. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of March 19, 2015.

Applicability Date: The provisions of this final rule shall apply to all applications for benefits that are received by VA or that are pending before the agency of original jurisdiction on or after August 4, 2014. The Secretary does not intend for the provisions of this final rule to apply to claims that were pending before the Board of Veterans' Appeals (*i.e.,* certified for appeal to the Board of Veterans' Appeals on or before August 4, 2014), the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on August 4, 2014, even if such claims are subsequently remanded to the agency of original jurisdiction.

FOR FURTHER INFORMATION CONTACT: Ioulia Vvedenskaya, Medical Officer, VASRD Regulations Staff (211C), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: VA published an interim final rule in the **Federal Register** at 79 FR 45093 on August 4, 2014, to amend the portion of the VASRD dealing with mental disorders and its adjudication regulations which define the term ''psychosis.'' The DSM–5, which was published by the American Psychiatric Association in May 2013, provides a common language and standard criteria for the classification of mental disorders. The amendments in the interim final rule deleted outdated references to the DSM–IV and DSM–IV–TR and replaced them with references to DSM–5. Additionally, the rulemaking updated the nomenclature in the VASRD to refer to certain mental disorders to conform to DSM–5 terminology.

VA provided a 60-day public comment period, which ended on October 3, 2014, and received no public comments in response to the publication of this interim final rule. One non-comment was received from a VA employee suggesting additional changes to Part 3 regulations which are outside the scope of this rulemaking. No changes were made as a result of the non-comment. Although no comments were received on this issue, in reviewing the interim final rule to prepare for publication of the final rule, VA determined that the applicability date should be clarified. For the reasons set forth in the interim final rule and below, we are adopting the interim final rule as final, with changes to the applicability date, as explained below.

Upon further review, VA has amended the language of the applicability date to ensure clarity and avoid potential misapplication of this final rule. In the interim final rule, VA stated that the provisions applied to all applications for benefits that are received by VA or that are pending before the agency of original jurisdiction on or after the effective date of the interim final rule. For clarity, this language has been amended to specify that the provisions of the final rule apply to claims received by VA or pending before the agency of original jurisdiction as of August 4, 2014, the date the interim final rule was published in the **Federal Register** and became effective. Similarly, the interim final rule stated that the provisions did not apply to claims that were certified for appeal to the Board of Veterans' Appeals or were pending before the Board of Veterans' Appeals, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit. For clarity, this language has been amended to specify that the provisions of the final rule do not apply to claims that were pending before the Board of Veterans' Appeals (*i.e.,* certified for appeal to the Board of Veterans' Appeals on or before August 4, 2014), the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on August 4, 2014, even if such claims are subsequently remanded to the agency of original jurisdiction. No other changes or amendments to the applicability date language are made.

Incorporation by Reference

The Director of the Federal Register approves the incorporation by reference of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM–5) (2013) for the purposes of 38 CFR 4.125(a) in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American Psychiatric Association, 1000 Wilson Boulevard, Arlington, VA 22209–3901. You may inspect a copy at the Office of Regulation Policy and Management, Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420 or the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Although §§ 3.384 and 4.130 also mention DSM–5, incorporation by reference is not required because those sections merely refer to the DSM–5 as a source and not as a requirement. In contrast, § 4.125 requires claims adjudicators to use the DSM–5.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), VA found that there was good cause to dispense with advance public notice and opportunity to comment on the interim final rule and good cause to publish that rule with an immediate effective date. The interim final rule was necessary to implement immediately the Secretary's decision that health professionals must utilize the latest diagnostic standards—the DSM–5—the same standards used to diagnose and treat veterans with mental disorders—to adjudicate claims pertaining to mental

disorders. Delay in the implementation of this rule would have been impracticable, unnecessary, and contrary to public interest, particularly to veterans.

It would have been impracticable to provide opportunity for prior notice and comment for this rulemaking because a delay in implementation would have required the Veterans Health Administration (VHA) to continue to diagnose mental disorders under two versions of the DSM until this regulation became effective, one for clinical purposes (under DSM–5) and one for compensation purposes (under DSM–IV). It would have been unnecessary because it was inevitable that the Veterans Benefits Administration (VBA) would adopt the DSM–5 for diagnostic purposes because VHA clinicians have a professional duty as licensed medical practitioners to use the most current medical guidelines, in this case the DSM–5. It would have been contrary to the public interest because a delay in VBA's transition to the DSM–5 would have denied veterans timely access to benefits based on current and accurate clinical diagnostic criteria already adopted by the psychiatric community.

The change to the references from DSM–IV and DSM–IV–TR to DSM–5 in VBA's adjudication regulations did not present a change in how mental disorders are evaluated under the VASRD, nor were any disorders removed from the VASRD. VA has reviewed the contents of the DSM–5 to ensure that, while some disabilities have been renamed, re-categorized, or consolidated into another diagnosis, all mental disorders currently listed in the VASRD are accounted for. In cases of periodic updates of clinical guidelines and medical terminology used by the medical community, such as DSM–5, VA has no authority to comment, challenge, or change the content, terminology, or nomenclature based on public comment. VA's use of the DSM–5 is limited to conforming to the most current medical standards and practices in diagnosing mental disabilities.

For the foregoing reasons, and as explained in further detail in the interim final rule, the Secretary issued the rule as an interim final rule with immediate effect.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of this rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will not affect any small entities. Only certain VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.009, Veterans Medical Care Benefits; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on March 12, 2015, for publication.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

38 CFR Part 4

Disability benefits, Incorporation by reference, Pensions, Veterans.

Dated: March 13, 2015.

Jeffrey M. Martin,

Office Manager, Office of Regulation Policy & Management, Office of the General Counsel, U.S. Department of Veterans Affairs.

Based on the rationale set forth in the interim final rule published in the **Federal Register** at 79 FR 45093 on August 4, 2014, and in this document, VA is adopting the provisions of the interim final rule as a final rule without change.

[FR Doc. 2015–06212 Filed 3–18–15; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0186; FRL–9924–57–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Preconstruction Requirements—Nonattainment New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the District Department of the Environment (DDOE) for the District of Columbia (DC) on April 5, 2013. EPA is approving this revision to DC's nonattainment New Source Review (NSR) program in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on April 20, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2014–0186. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of the Environment, Air Quality Division, 1200 1st Street NE., 5th Floor, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814–2117, or by email at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 11, 2014 (79 FR 73508), EPA published a notice of proposed rulemaking (NPR) for the District of Columbia. In the NPR, EPA proposed approval of revisions to DC's nonattainment NSR program, notably provisions for Plantwide Applicability Limits (PALs) and preconstruction permitting requirements for major sources of fine particulate matter ($PM_{2.5}$). The formal SIP revision was submitted by DDOE on April 5, 2013.

II. Summary of SIP Revision

Generally, the revision submitted by DDOE involves amendments to sections 199.1 (Definitions and Abbreviations) and 200 (General Permit Requirements), repealing and replacing section 204 (Permit Requirements for Sources Affecting Non-attainment Areas), repealing section 206 (Notice and Comment Prior to Permit Issuance), adding sections 208 (General and Non-attainment Areas) and 210 (Notice and Comment Prior to Permit Issuance), and adding specific definitions to section 299 (Definitions and Abbreviations). Additionally, several non-substantive, clarifying and organizational revisions to the sections mentioned herein were submitted. As described in detail in the NPR, the revisions incorporate provisions related to two Federal rulemaking actions: The 2002 ''Prevention of Significant Deterioration (PSD) and Nonattainment NSR (NSR): Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects'' (2002 NSR Rules); and the 2008 ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' (2008 NSR $PM_{2.5}$ Rule). 67 FR 80186 (December 31, 2002) (2002 NSR Rules) and 73 FR 28321 (May 16, 2008) (2008 NSR Rule). The 2008 NSR $PM_{2.5}$ Rule (as well as the 2007 ''Final Clean Air Fine Particle Implementation Rule'' (2007 $PM_{2.5}$ Implementation Rule) [1]), was the subject of litigation before the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) in *Natural Resources Defense Council* v. *EPA*.[2] On January 4, 2013, the court remanded to EPA both the 2007 $PM_{2.5}$ Implementation Rule and the 2008 NSR $PM_{2.5}$ Rule. The court found that in both rules EPA erred in implementing the 1997 $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) solely pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA (subpart 1), rather than pursuant to the additional implementation provisions specific to particulate matter in subpart 4 of part D of title I (subpart 4).[3] As a result, the court remanded both rules and instructed EPA ''to re-promulgate these rules pursuant to subpart 4 consistent with this opinion.''

As was noted in the NPR, with respect to $PM_{2.5}$, DDOE submitted an attainment plan for the Metropolitan Washington, DC–MD–VA nonattainment area on April 2, 2008. On January 12, 2009, EPA finalized a clean data determination for the area for the 1997 $PM_{2.5}$ NAAQS, which suspended the requirement for DDOE to submit, among other things, an attainment plan SIP for the area. 74 FR 1146. Accordingly, on February 6, 2012, DDOE withdrew the attainment plan SIP, and it is no longer before EPA. Moreover, on October 6, 2014, EPA took final action to redesignate the Metro-Washington area to attainment for the 1997 $PM_{2.5}$ NAAQS. 79 FR 60081. As a result, DDOE is no longer obligated to submit a nonattainment NSR SIP revision under section 189 of the CAA addressing nonattainment NSR permitting requirements for $PM_{2.5}$, including the requirements under subpart 4. Therefore, EPA has not evaluated the April 5, 2013 submittal for the purposes of determining compliance with the subpart 4 requirements. To the extent that any area is designated nonattainment for $PM_{2.5}$ in the future in the Metropolitan Washington, DC area, DDOE will have to make a submission under Section 189 of the CAA addressing how its nonattainment permitting program in the D.C. SIP satisfies the CAA statutory requirements as to $PM_{2.5}$, including subpart 4 and any applicable $PM_{2.5}$ Federal implementation rules.

Other specific requirements of DDOE's April 5, 2013 submittal and the rationale for EPA's approval are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving DDOE's April 5, 2013 submittal as a revision to the D.C. SIP.

IV. Incorporation by Reference

In this rulemaking action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the

[1] 72 FR 20586 (April 25, 2007).

[2] 706 F.3d 428 (D.C. Cir. 2013).

[3] The DC Circuit's opinion did not specifically address the point that implementation under subpart 4 requirements would still require consideration of subpart 1 requirements, to the extent that subpart 4 did not override subpart 1. EPA assumes that the court presumed that EPA would address this issue of potential overlap between subpart 1 and subpart 4 requirements in subsequent actions.

incorporation by reference of revisions to D.C.'s nonattainment NSR program, notably provisions for PALs and preconstruction permitting requirements for major sources of $PM_{2.5}$ as discussed in section II of this action. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 18, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to D.C.'s nonattainment NSR program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 6, 2015.

William C. Early,

Acting Regional Administrator, Region III.

Therefore, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart J—District of Columbia

■ 2. In § 52.470, the table in paragraph (c) is amended by:

■ a. Revising the entries for sections 199, 200, 204, and 299.

■ b. Removing the entry for section 206.

■ c. Adding in numerical order entries for sections 208 and 210.

The revisions and additions read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS AND STATUTES IN THE DISTRICT OF COLUMBIA SIP

State citation	Title/subject	State effective date	EPA Approval date	Additional explanation
District of Columbia Municipal Regulations (DCMR), Title 20—Environment				
Chapter 1 General				
*	*	*	*	*
Section 199	Definitions and Abbreviations	11/16/12	3/19/2015 [*Insert* **Federal Register** *Citation*].	

EPA-APPROVED REGULATIONS AND STATUTES IN THE DISTRICT OF COLUMBIA SIP—Continued

State citation	Title/subject	State effective date	EPA Approval date	Additional explanation
*	* * * *	*	*	*
	Chapter 2 General and Non-attainment Area Permits			
Section 200	General Permit Requirements	11/16/12	3/19/2015 [*Insert* **Federal Register** *Citation*].	
*	* * * *	*	*	*
Section 204	Permit Requirements for Sources Affecting Non-attainment Areas.	11/16/12	3/19/2015 [*Insert* **Federal Register** *Citation*].	Previous version of Section 204 is replaced in its entirety
Section 208	Plantwide Applicability Limit (PAL) Permits for Major Sources.	11/16/12	3/19/2015 [*Insert* **Federal Register** *Citation*].	Added
Section 210	Notice and Comment Prior to Permit Issuance	11/16/12	3/19/2015 [*Insert* **Federal Register** *Citation*].	Added
Section 299	Definitions and Abbreviations	11/16/12	3/19/2015 [*[Insert* **Federal Register** *Citation*].	
*	* * * *	*	*	*

* * * * *

[FR Doc. 2015–06217 Filed 3–18–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2015–0134; FRL–9924–44–Region 7]

Approval and Promulgation of Air Quality Implementation Plans; State of Missouri; Reporting Emission Data, Emission Fees and Process Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State Implementation Plan (SIP) and the Operating Permits Program for the State of Missouri submitted on October 2, 2013. These revisions remove definitions that were in this rule but have been moved to the state's general definitions rule. These revisions also clarify the information required in emission reports and clarify the types and frequency of reports for the emission inventory. In addition, a revision to the emission fees section of this rule clarifies that the current emissions fee is only applicable for years 2013, 2014, and 2015 as set by Missouri statute.

DATES: This direct final rule will be effective May 18, 2015, without further notice, unless EPA receives adverse comment by April 20, 2015. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2015–0134, by one of the following methods:

1. *www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *Email: Higbee.paula@epa.gov*
3. *Mail or Hand Delivery:* Paula Higbee, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2015–0134. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30 excluding legal holidays. The interested persons wanting to examine these documents

should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Paula Higbee, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7028 or by email at *Higbee.paula@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?

EPA is taking direct final action to approve the SIP and Operating Permits Program revisions submitted by the state of Missouri for 10 CSR 10–6.110, ''Reporting Emission Data, Emission Fees, and Process Information,'' on October 3, 2013. Section (2) of the rule is being amended to move seven definitions from this rule to the state's general definifions rule 10 CSR 10–6.020 (and also the definitions for ''reportable pollutant'' and ''reporting threshold'' which have been moved to the state's general definitions rule but not yet submitted to EPA for SIP approval.) Section (3)(A) revised the emission fees section, which is approved under the Operating Permits Program only, and clarifies that the current emissions fee is only applicable for years 2013, 2014 and 2015 as set by Missouri statute. No changes were made to the emission fees in the rule. Section (4) of the rule is being amended to better reflect information required in emission reports and clarifies the types and frequencies of reports to be submitted to the Missouri Department of Natural Resources (MDNR) Air Pollution Control Program for the Emissions Inventory Questionnaire. Missouri clarifies the rule by providing a table which lists the type of installation, such as, any installation that is required to obtain an operating permit, and any installation with an intermediate operating permit or a small source. The table shows various installations in the timetable for the full emissions report and/or the reduced reporting form, if applicable. The revisons to this section ensure that Missouri's rule is equivalent to EPA's Federal Air Emission Reporting Rule.

II. Have the requirements for approval of a SIP revision and operating permits program been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations, as well as meeting the Title V requirements. MDNR received one comment from their Air Pollution Control program regarding capitalization of the term ''Full Emissions Report'' and the relevant term was corrected for rule clarity. Overall, these actions strengthen the Missouri SIP and Operating Permits program by providing clarifications for the regulated public. These revisions do not negatively impact air quality, nor relax the SIP or operating permits program.

III. What action is EPA taking?

We are publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the ''Proposed Rules'' section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to these SIP and Operating Permits revisions if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

Statutory and Executive Order Reviews

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Missouri's rule 10 CSR 10–6.110 described in the direct final amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 18, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: March 4, 2015.

Mark J. Hague,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR parts 52 and 70 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

■ 2. In § 52.1320(c) the table is amended by revising the entry for 10–6.110 to read as follows:

§ 52.1320 Identificaiton of Plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.110	Reporting Emission Data, Emission Fees, and Process Information.	10/30/13	3/19/15 *[Insert* **Federal Register** *citation].*	Section (3)(A), Emissions Fees, has not been approved as part of the SIP.
*	*	*	*	*

* * * * *

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 3. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 4. Appendix A to part 70 is amended by adding paragraph (dd) under Missouri to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Missouri

* * * * *

(dd) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.110, ''Reporting Emission Data, Emission Fees, and Process Information'' on October 2, 2013. The state effective date is October 30, 2013. This revision is effective May 18, 2015.

* * * * *

[FR Doc. 2015–06115 Filed 3–18–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0326; FRL–9924–24]

Sodium L-Lactate and Sodium DL-Lactate; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of sodium L-

lactate and sodium DL-lactate when used as inert ingredients (surfactants) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. Exponent, on behalf of Archer Daniels Midland Company, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of sodium L-lactate and sodium DL-lactate.

DATES: This regulation is effective March 19, 2015. Objections and requests for hearings must be received on or before May 18, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0326, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW. Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0326 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 18, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0326, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of August 1, 2014 (79 FR 44729) (FRL–9911–67), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–10693) by Exponent, 1150 Connecticut Ave. NW., Washington, DC 20036, on behalf of Archer Daniels Midland Company, 4666 E. Faries Parkway, Decatur, IL 62526. The petition requested that 40 CFR 180.910 be amended by establishing an exemption from the requirement of a tolerance for residues of sodium L-lactate (CAS Reg. No. 867–56–1) and sodium DL-lactate (CAS Reg. No. 72–17–3) when used as an inert ingredients (surfactants) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. That document referenced a summary of the petition prepared by Exponent, the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a

reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . . ''

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for sodium L-lactate and sodium DL-lactate including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with sodium L-lactate and sodium DL-lactate follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by sodium L-lactate and sodium DL-lactate as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

The Agency has reviewed the data submitted by the petitioner. The data submitted includes data on lactic acid. Sodium lactate, the sodium salt of lactic acid, is expected to readily disassociate into the lactate and sodium ions in the body upon ingestion. Lactic acid also typically converts to lactate in the body. Because sodium L-lactate and sodium DL-lactate readily disassociate into the lactate and sodium ions in the body, the Agency has concluded that the data on L-lactic acid (often referred to as lactic acid) can be used in conjunction with the data on another lactate salt, calcium lactate, and that these data are adequate to characterize the toxicity of sodium L-lactate and sodium DL-lactate.

Acute oral and inhalation toxicity of lactic acid to rats and acute dermal toxicity of lactic acid to rabbits are low (oral LD_{50} >3,500 milligrams/kilogram (mg/kg); inhalation LC_{50} >5 milligrams/Liter (mg/l); dermal LD_{50} >2,000 mg/kg). L-lactic acid is severely irritating and corrosive to rabbit skin. Dilute solutions of lactic acid are irritating to the eyes of rabbits. L-Lactic acid is not a dermal sensitizer in guinea pigs. In an oral feeding study, two groups of (strain not-specified) received daily doses of 1,000 and 2,000 mg/kg/day of sodium lactate (as lactic acid) over 14 to 16 days. Body analyses of the animals showed no accumulation of lactate. No developmental or reproductive toxicity studies are available for sodium L-lactate or sodium DL-lactate; however, a developmental toxicity study for lactic acid resulted in no maternal or developmental effects and none of the reproductive parameters were affected in mice at 570 mg/kg/day. Additionally, sodium L-lactate and DL-lactate are not expected to be mutagenic or carcinogenic based on the presence of the lactic acid metabolite in the human body. Lactic acid is transported to the liver and converted by lactic acid dehydrogenase to pyruvate. Pyruvate, in turn can be converted into free glucose, stored as glycogen, and utilized in other metabolic transformations (Krebs cycle). In addition, in a 2-year combined chronic toxicity/carcinogenicity study in rats with calcium lactate, there was no evidence of carcinogenicity or systemic toxicity at doses up to 5,000 mg/kg/day.

B. Toxicological Points of Departure/Levels of Concern

Sodium L-lactate and sodium DL-lactate are naturally occurring compounds and when disassociated, are normal constituents of the human body. No toxicological endpoint of concern has been identified.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to sodium L-lactate and sodium DL-lactate, EPA considered likely exposure from the use of sodium L-lactate and sodium DL-lactate as an inert ingredient in pesticides applied to growing crops or to raw agricultural commodities after harvest. Since no toxicological endpoint of concern has been identified and since the metabolic processes involving sodium L-lactate and sodium DL-lactate are well understood, the Agency has determined that a quantitative dietary exposure assessment is not necessary. While dietary exposure may result from the use of sodium L-lactate and sodium DL-lactate as an inert ingredient in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, the amount of sodium L-lactate and sodium DL-lactate contained in pesticide formulations and applied to growing crops or to raw agricultural commodities after harvest would be at levels far below its natural occurrence in foods and endogenous production in the human body.

By comparison, L-lactic acid (CAS Reg. No. 79–33–4) is a naturally occurring compound found in many foods and is also a human metabolite that results from various biochemical pathways. Humans are generally exposed to lactic acid on a daily basis in significant quantities because it is naturally present in many food products that are derived through natural fermentation, such as cheese, yogurt, soy sauce, sourdough, meat products, and pickled vegetables.

2. *Dietary exposure from drinking water.* Dietary exposure from drinking water to sodium L-lactate and sodium DL-lactate can occur by drinking water that has been contaminated by run-off from a pesticide treated area. Since an endpoint for risk assessment was not identified, a quantitative dietary exposure assessment from drinking water for sodium L-lactate and sodium DL-lactate was not conducted.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure

(*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

There is a potential for residential exposure to pesticide products containing sodium L-lactate and sodium DL-lactate, however, quantitative residential exposure assessment was not conducted since no endpoint of concern was identified.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found sodium L-lactate and sodium DL-lactate to share a common mechanism of toxicity with any other substances, and sodium L-lactate and sodium DL-lactate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that sodium L-lactate and sodium DL-lactate does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children.

Because of the non-toxic nature of sodium L-Lactate and sodium DL-lactate, there are no threshold effects that would trigger the application of section 408(b)(2)(C).

E. Aggregate Risks and Determination of Safety

Taking into consideration all available information on sodium L-lactate and sodium DL-lactate, EPA has determined that there is a reasonable certainty that no harm to any population subgroup will result from aggregate exposure to sodium L-lactate and sodium DL-lactate under reasonable foreseeable circumstances. Therefore, the establishment of an exemption from tolerance under 40 CFR 180.910 for residues of sodium L-lactate and sodium DL-lactate when used as an inert ingredient (surfactant) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, is safe under FFDCA section 408.

V. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

VI. Conclusion

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.910 for sodium L-lactate (CAS Reg. No. 867–56–1) and sodium DL-lactate (CAS Reg. No. 72–17–3) when used as an inert ingredient (surfactant) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

VII. Statutory and Executive Order Reviews

This action establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 12, 2015.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Amend § 180.910, by adding alphabetically the following inert ingredients to the table to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * *	*	*
Sodium DL-lactate (CAS Reg. No. 72–17–3)		Surfactant.
* * * * *	*	*
Sodium L-lactate (CAS Reg. No. 867–56–1)		Surfactant.
* * * * *	*	*

[FR Doc. 2015–06373 Filed 3–18–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket No. 15–01]

RIN 3072–AC59

Amendments to Rules Governing Service of Private Party Complaints and Documents Containing Confidential Materials

AGENCY: Federal Maritime Commission.

ACTION: Direct final rule, request for comments.

SUMMARY: The Federal Maritime Commission proposes to amend its rules governing service of private party complaints and the filing of documents containing confidential material. These revisions will add clarifying instructions for parties to proceedings.

DATES: This rule will become effective June 24, 2015 unless significant adverse comments are filed prior to May 26, 2015.

ADDRESSES: Address all comments concerning this proposed rule to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, Phone: (202) 523–5725, Email: *secretary@fmc.gov*.

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, Phone: (202) 523–5725, Email: *secretary@fmc.gov*.

SUPPLEMENTARY INFORMATION:

46 CFR 502.5

The Commission proposes to amend § 502.5 of title 46 of the Code of Federal Regulations in order to instruct parties on how to request confidential treatment of their documents and how to mark confidential material. The revision requires segregation and clear marking of confidential and non-confidential information. The current confidentiality provisions in part 502 will benefit from a more consistent format.

The revisions also correct an erroneous reference to § 502.201(i)(1)(vii) in the introductory text to § 502.5. The reference to § 502.201(i)(1)(vii) in the introductory text was intended to refer to confidential information within protective orders, but the currently cited provision does not exist. The revision corrects the citation to § 502.201(j)(1)(vii).

46 CFR 502.113

The Commission proposes to amend § 502.113 of title 46 of the Code of Federal Regulations concerning service of private party complaints. 46 U.S.C. 41301 requires the Commission to ''provide a copy of the complaint to the person named in the complaint.'' This revision would clarify and memorialize that the Commission will use U.S. mail or express mail to serve the complaint. A notice is published, and will continue to be published, in the **Federal Register** for each private party complaint for formal adjudication that is filed with the Commission. Additionally, a full copy of the formal complaint is available on the Commission's Web site, *www.fmc.gov,* and available in the Commission's Docket Library. The proposed rule continues to allow for alternative service by other means by the Complainant but specifies that it may only do so after the complaint has been filed with the Commission and must inform the Commission of the method, time, and place of service. To conform to this clarification, 46 CFR 502.62(b)(1) is amended to clarify the time an answer to the complaint is due. Sections 502.304 and 502.305 are also revised to reflect that the Secretary will also serve small claims complaints filed pursuant to 46 CFR subpart S.

List of Subjects in 46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Federal Maritime Commission amends 46 CFR part 502 as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 5 U.S.C. 571–584; 18 U.S.C. 207; 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. 305, 40103–40104, 40304, 40306, 40501–40503, 40701–40706, 41101–41109, 41301–41309, 44101–44106; E.O. 11222 of May 8, 1965.

Subpart A—General Information

■ 2. Revise § 502.5 to read as follows:

§ 502.5 Documents containing confidential materials.

Except as otherwise provided in the rules of this part, all filings that contain information for which confidential treatment is sought or information previously designated as confidential pursuant to §§ 502.13, 502.167, 502.201(j)(1)(vii), or any other rules of this part, or for which a request for protective order pursuant to § 502.201(j) is pending, are subject to the following requirements:

(a) *Two versions of filings.* Two versions of documents must be filed if a document:

(1) Contains information previously designated by the Commission or presiding officer as confidential; or

(2) Contains information for which confidential treatment is sought. Except

as specified below, both versions must be filed in accordance with the requirements of § 502.2.

(i) *Confidential version.* The confidential filing must include a cover page marked ''Confidential-Restricted.'' The specific confidential information must be conspicuously and clearly marked on each page, for example by highlighting or bracing. If confidentiality will end on a date certain or upon the occurrence of an event, this must be stated on the cover, *e.g.,* ''CONFIDENTIAL UNTIL [DATE],'' or ''CONFIDENTIAL DURING JUDICIAL REVIEW.'' The confidential version of a document may be provided to the presiding officer by email but should not be filed with the Office of the Secretary by email.

(ii) *Public version.* Within three business days of filing a confidential version of a filing, a public version must be filed. The public version must indicate on the cover page and on each affected page ''Public Version—confidential materials excluded.'' The public version must clearly indicate any information withheld, for example with blackout or braces, and its pagination and depiction of text on each page must be identical to that of the confidential version. For example, the confidential filing may read: ''On January 1, 2005, complainant entered into a {25} year lease with respondent for a monthly rent of {$1,000}.'' The public version would read: ''On January 1, 2005, complainant entered into a { } year lease with respondent for a monthly rent of { }.'' Public versions of confidential filings may be filed with the Secretary and presiding officer by email.

(iii) *Exhibits.* Confidential information in exhibits should be marked as specified above. If marking within the text is not feasible, individual pages may be replaced in the public version with a page indicating that confidential material is excluded. Entire exhibits should not be excluded, only those pages containing confidential material.

(b) *Motion for confidential treatment.* If confidentiality is sought for a filing containing information not previously designated as confidential by the Commission or presiding officer, the confidential filing must be accompanied by a motion justifying confidential treatment. This motion must identify the specific information in a document for which protection is sought and show good cause by demonstrating that the information is a trade secret or other confidential research, development, or commercial information pursuant to § 502.201(j)(1)(vii). The burden is on the party that wants to protect the information to show good cause for its protection. A motion is not required for information, including personal privacy and financial account numbers, redacted pursuant to § 502.13, Privacy protection for filings made with the Commission.

(c) *Use of confidential information.* Confidential treatment afforded by this section is subject to the proviso that any information designated as confidential may be used by the administrative law judge or the Commission if deemed necessary to a decision in the proceeding. [Rule 5.]

Subpart E—Proceeding; Pleadings; Motions; Replies

§ 502.62 [Amended]

■ 3. Amend § 502.62(b)(1) by adding ''or the Complainant'' after the phrase ''service of the complaint by the Commission''.

■ 4. Revise the heading for subpart H to read as follows:

Subpart H—Service of Documents

■ 5. Revise § 502.113 to read as follows:

§ 502.113 Service of private party complaints.

(a) Complaints filed pursuant to § 502.62, amendments to complaints (unless otherwise authorized by the presiding officer pursuant to § 502.66(b)), small claims complaints filed pursuant to § 502.304, and Complainant's memoranda filed in shortened procedure cases pursuant to § 502.182, will be served by the Secretary of the Commission.

(b) The Secretary will serve the complaint using first class mail or express mail service at the Respondent's address provided by the Complainant. If the complaint cannot be delivered, for example if the complaint is returned as undeliverable or not accepted for delivery, the Secretary will notify the Complainant.

(c) *Alternative service by Complainant.* The Complainant may serve the Complaint at any time after it has been filed with the Commission. If Complainant serves the complaint, an affidavit setting forth the method, time and place of service must be filed with the Secretary within five days following service.

(d) The presiding officer may dismiss a complaint that has not been served within thirty (30) days after the complaint was filed. [Rule 113.]

Subpart S—Informal Procedure for Adjudication of Small Claims

■ 6. Revise § 502.304(d) to read as follows:

§ 502.304 Procedure and filing fee.

* * * * *

(d) A copy of each claim filed under this subpart, with attachments, shall be served by the Secretary on the respondent named in the claim.

* * * * *

■ 7. Revise § 502.305(b) to read as follows:

§ 502.305 Applicability of other rules of this part.

* * * * *

(b) The following sections in subparts A through Q of this part apply to situations covered by this subpart: §§ 502.2(a) (Requirement for filing); 502.2(f)(1) (Email transmission of filings); 502.2(i) (Continuing obligation to provide contact information); 502.7 (Documents in foreign languages); 502.21 through 502.23 (Appearance, Authority for representation, Notice of appearance; substitution and withdrawal of representative); 502.43 (Substitution of parties); 502.101 (Computation); 502.113 (Service of private party complaints); 502.117 (Certificate of service); 502.253 (Interest in reparation proceedings); and 502.254 (Attorney's fees in reparation proceedings). [Rule 305.]

Karen V. Gregory,

Secretary.

[FR Doc. 2015–06239 Filed 3–18–15; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 140829733–5046–02]

RIN 0648–BE35

2015 Annual Determination To Implement the Sea Turtle Observer Requirement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its final Annual Determination (AD) for 2015, pursuant to its authority under the Endangered Species Act (ESA). Through the AD, NMFS identifies U.S. fisheries operating in the Atlantic Ocean, Gulf of Mexico, and Pacific Ocean that will be required to take observers upon NMFS' request. The purpose of observing

identified fisheries is to learn more about sea turtle interactions in a given fishery, evaluate measures to prevent or reduce sea turtle takes, and implement the prohibition against sea turtle takes. Fisheries identified on the 2015 AD (see Table 1) will be eligible to carry observers as of January 1, 2015 and will remain on the AD for a five-year period. The fisheries listed on the final determination will be required to carry observers upon NMFS' request until December 31, 2019.

DATES: Effective April 18, 2015.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for a listing of all Regional Offices.

FOR FURTHER INFORMATION CONTACT: Sara McNulty, Office of Protected Resources, 301–427–8402; Ellen Keane, Greater Atlantic Region, 978–282–8476; Dennis Klemm, Southeast Region, 727–824–5312; Dan Lawson, West Coast Region, 562–980–3209; Irene Kelly, Pacific Islands Region, 808–725–5141. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Availability of Published Materials

Information regarding the Marine Mammal Protection Act (MMPA) List of Fisheries (LOF) may be obtained at *http://www.nmfs.noaa.gov/pr/interactions/lof/* and information regarding Marine Mammal Stock Assessment Reports may be obtained at *http://www.nmfs.noaa.gov/pr/sars/* or from any NMFS Regional Office at the addresses listed below:

- NMFS, Greater Atlantic Region, 55 Great Republic Drive, Gloucester, MA 01930;
- NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701;
- NMFS, West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802;
- NMFS, Pacific Islands Region, Protected Resources, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Purpose of the Sea Turtle Observer Requirement

Under the ESA, 16 U.S.C. 1531 *et seq.,* NMFS has the responsibility to implement programs to conserve marine species listed as endangered or threatened. All sea turtles found in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta;* North Pacific distinct population segment), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta;* Northwest Atlantic distinct population segment), green (*Chelonia mydas*), and olive ridley (*Lepidochelys olivacea*) sea turtles are listed as threatened, except for breeding colony populations of green turtles in Florida and on the Pacific coast of Mexico, and breeding colony populations of olive ridleys on the Pacific coast of Mexico, which are listed as endangered. Due to the inability to distinguish between populations of green and olive ridley turtles away from the nesting beach, NMFS considers these turtles endangered wherever they occur in U.S. waters. While some sea turtle populations have shown signs of recovery, many populations continue to decline.

Incidental take, or bycatch, in fishing gear is the primary anthropogenic source of sea turtle injury and mortality in U.S. waters. Section 9 of the ESA prohibits the take (including harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, collecting or attempting to engage in any such conduct), including incidental take, of endangered sea turtles. Pursuant to section 4(d) of the ESA, NMFS has issued regulations extending the prohibition of take, with exceptions, to threatened sea turtles (50 CFR 223.205 and 223.206). The purpose of the sea turtle observer requirement and the AD is ultimately to implement ESA sections 9 and 4(d), which prohibit the incidental take of endangered and threatened sea turtles, respectively, and to conserve sea turtles. Section 11 of the ESA provides for civil and criminal penalties for anyone who violates a regulation issued pursuant to the ESA, including regulations that implement the take prohibition, as well as for the issuance of regulations to enforce the take prohibitions. NMFS may grant exceptions to the take prohibitions for activities that are covered by an incidental take statement or an incidental take permit issued pursuant to ESA section 7 or 10, respectively. To do so, NMFS must determine the activity that will result in incidental take is not likely to jeopardize the continued existence of the affected listed species. For some Federal fisheries and most state fisheries, NMFS has not granted an exception for incidental takes of sea turtles primarily because we lack information about fishery-sea turtle interactions.

The most effective way for NMFS to learn about sea turtle-fishery interactions, in order to implement management measures and prevent or minimize take, is to place observers aboard fishing vessels. In 2007, NMFS issued a regulation (50 CFR 222.402) establishing procedures to annually identify, pursuant to specified criteria and after notice and opportunity for comment, those fisheries in which the agency intends to place observers (72 FR 43176, August 3, 2007). These regulations specify that NMFS may place observers on U.S. fishing vessels, commercial or recreational, operating in U.S. territorial waters, the U.S. exclusive economic zone (EEZ), or on the high seas, or on vessels that are otherwise subject to the jurisdiction of the United States. Failure to comply with the requirements under this rule may result in civil or criminal penalties under the ESA.

NMFS will pay the direct costs for vessels to carry observers. These include observer salary and insurance costs. NMFS may also evaluate other potential direct costs, should they arise. Once selected, a fishery will be eligible to be observed for a period of five years without further action by NMFS. This will enable NMFS to develop an appropriate sampling protocol to investigate whether, how, when, where, and under what conditions incidental takes are occurring; evaluate whether existing measures are minimizing or preventing takes; and develop ESA management measures that implement the prohibitions against take and that conserve sea turtles.

Process for Developing an Annual Determination

Pursuant to 50 CFR 222.402, NOAA's Assistant Administrator for Fisheries (AA), in consultation with Regional Administrators and Fisheries Science Center Directors, developed a proposed AD identifying which fisheries are required to carry observers, if requested, to monitor potential interactions with sea turtles. NMFS provided an opportunity for public comment on any proposed determination. The determination is based on the best available scientific, commercial, or other information regarding sea turtle-fishery interactions; sea turtle distribution; sea turtle strandings; fishing techniques, gears used, target species, seasons and areas fished; and/or qualitative data from logbooks or fisher reports. The AD is based on the extent to which:

(1) The fishery operates in the same waters and at the same time as sea turtles are present;

(2) The fishery operates at the same time or prior to elevated sea turtle strandings; or

(3) The fishery uses a gear or technique that is known or likely to result in incidental take of sea turtles based on documented or reported takes in the same or similar fisheries; and

(4) NMFS intends to monitor the fishery and anticipates that it will have the funds to do so.

For the 2015 AD, the AA used the most recent version of the annually published MMPA List of Fisheries (LOF) as the comprehensive list of commercial fisheries for consideration. The LOF includes all known state and Federal commercial fisheries that occur in U.S. waters and on the high seas. However, in preparing the AD, we do not rely on the three-part MMPA classification scheme used for fisheries on the LOF. In addition, unlike the LOF, the AD may include recreational fisheries likely to interact with sea turtles on the basis of the best available information.

NMFS consulted with appropriate state and Federal fisheries officials to identify which fisheries, both commercial and recreational, should be considered on the AD. Recommendations were received from six state agencies. Gear types recommended for consideration included gillnet, trawl, trap/pot, pound net, seine, and hook-and line. NMFS considered all recommendations carefully in developing the proposed list of fisheries to be included. Although the comments and recommendations provided to NMFS by states were based upon the best available information on their fisheries, NMFS received more recommendations for fisheries to include on the 2015 AD than is practical based on the four previously noted criteria (50 CFR 222.402(a)). The AD is not an exhaustive or comprehensive list of all fisheries with documented or suspected takes of sea turtles. For some fisheries, NMFS may already be addressing incidental take through another mechanism (*e.g.,* rulemaking to implement modifications to fishing gear and/or practices), may be observing the fishery under a separate statutory authority, or will consider including them in future ADs based on the four previously noted criteria (50 CFR 222.402(a)). Note also that fisheries not included on the 2015 AD may still be observed under a different authority than the ESA (*e.g.,* MMPA, MSA).

Notice of the final determination will be published in the **Federal Register** and made in writing to individuals permitted for each fishery identified on the AD. NMFS will also notify state agencies and provide notification through publication in local newspapers, radio broadcasts, and other means, as appropriate. Once included in the final determination, a fishery will remain eligible for observer coverage for a period of five years to enable the design of an appropriate sampling program and to ensure collection of sufficient scientific data for analysis. If NMFS determines that more than five years are needed to obtain sufficient scientific data, NMFS will include the fishery in the proposed AD again prior to the end of the fifth year.

In the 2010 AD, NMFS identified 19 fisheries that were required to carry observers for a period of five years, through December 31, 2014, if requested by NMFS. Because of a lack of resources to implement new observer programs or expand existing programs, NMFS has not identified any additional fisheries on the AD since 2010. Eleven of the 19 fisheries included on the 2010 AD have been included on the 2015 AD, and are described further below. The remaining eight fisheries were summarized in the proposed 2015 AD (October 22, 2014, 79 FR 63066).

Implementation of Observer Coverage in a Fishery Listed in the 2015 AD

As part of the 2015 AD, NMFS has included, to the extent practicable, information on the fisheries or gear types to be observed, geographic and seasonal scope of coverage, and any other relevant information. For each of these fisheries or gear types, NMFS intends to monitor the fishery and anticipates that it will have the funds to do so. After publication of this final AD, a 30-day delay in the effective date for implementing observer coverage will follow, except for those fisheries where the AA has determined that there is good cause pursuant to the Administrative Procedure Act to make the rule effective without a 30-day delay.

The design of any observer program for fisheries identified through the AD process, including how observers would be allocated to individual vessels, will vary among fisheries, fishing sectors, gear types, and geographic regions and will ultimately be determined by the individual NMFS Regional Office, Science Center or observer program. During the program design, NMFS will be guided by the following standards for distributing and placing observers among fisheries identified on the AD and among vessels in those fisheries:

(1) The requirement to obtain the best available scientific information;

(2) The requirement that observers be assigned fairly and equitably among fisheries and among vessels in a fishery;

(3) The requirement that no individual person or vessel, or group of persons or vessels, be subject to inappropriate, excessive observer coverage; and

(4) The need to minimize costs and avoid duplication, where practicable.

Vessels subject to observer coverage under the AD must comply with observer safety requirements specified at 50 CFR 600.725 and 50 CFR 600.746. Specifically, 50 CFR 600.746(c) requires vessels to provide adequate and safe conditions for carrying an observer and conditions that allow for operation of normal observer functions. To provide such conditions, a vessel must comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 300, 600, 622, 635, 648, 660, and 679) and possess a current United States Coast Guard (USCG) Commercial Fishing Vessel Safety Examination decal or a USCG certificate of examination. A vessel that fails to meet these requirements at the time an observer is to be deployed on the vessel is prohibited from fishing (50 CFR 600.746(f)) unless NMFS determines that an alternative platform (*e.g.,* a second vessel) may be used, or determines that a vessel with inadequate or unsafe facilities is not be required to take an observer under 50 CFR 222.404. In any case, all persons on a vessel must cooperate in the operation of observer functions. Observer programs designed or carried out in accordance with 50 CFR 222.404 would be required to be consistent with existing observer-related NOAA policies and regulations, such as those under the Fair Labor and Standards Act (29 U.S.C. 201 *et seq.*), the Service Contract Act (41 U.S.C. 351 *et seq.*), Observer Health and Safety regulations (50 CFR part 600), and other relevant policies.

Again, note that fisheries not included on the 2015 AD may still be observed under statutory authority other than the ESA (*e.g.,* MMPA, MSA). Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's Web site: *http://www.st.nmfs.noaa.gov/observer-home/*; links to individual regional observer programs may also be found on this Web site.

Sea Turtle Distribution

The sea turtle distribution and ecological use of habitats that leads to the overlap of sea turtles and fisheries is critical information that NMFS uses to inform the development of the final AD. A summary of this information was included in the proposed AD (October 22, 2014, 79 FR 63066) and was considered in the development of the final 2015 AD.

Comments and Responses

NMFS received a total of seven comments on the proposed rule from members of the public, the State of North Carolina, and Turtle Island Restoration Network. Commenters expressed general support of the rule or fishery observer programs, some with additional suggestions and requests for the inclusion or exclusion of particular fisheries. All substantive comments are specifically addressed below. Comments on issues outside the scope of the AD were noted, but are not responded to in this final rule.

General Comments

Comment 1: Six commenters expressed general support of the rule.

Response: NMFS agrees, and has included 14 fisheries on the 2015 AD to allow for increased data gathering on sea turtle bycatch in order to accomplish the purposes of the rule.

Comment 2: The Turtle Island Restoration Network recommended that the Atlantic, Caribbean, and Gulf of Mexico pelagic longline and highly-migratory species fisheries be divided into independent fishery listings rather than treated as a whole, to ensure that adequate observer coverage is applied and subsequent independent ESA authority given.

Response: This recommendation is outside the scope of this rulemaking given the criteria for including fisheries on the AD as codified in the 2007 regulation (50 CFR 222.402), which specifies that NMFS will use the most recently published LOF as the comprehensive set of commercial fisheries to be considered for inclusion on the AD.

Comments on Gillnet Fisheries

Comment 3: The North Carolina Department of Environment and Natural Resources (NCDENR) expressed concern on the inclusion of the North Carolina inshore gillnet fishery and recommended that the fishery not be included on the 2015 AD. This concern was based on several factors including the low level of Federal observer effort expended on the fishery since it was included in the 2010 AD, the relatively high level of observer effort associated with the state observer program, communication difficulties that inclusion can create when both state and federal observer programs interact with fishers, existence of permits and regulations to reduce sea turtle interactions within the fishery, and NMFS observer effort is already in place under MMPA authority.

Response: After considering this recommendation, NMFS has determined the best course of action is to include the North Carolina inshore gillnet fishery on the 2015 AD. In 2013, NMFS issued an ESA section 10(a)(1)(B) incidental take permit (ITP) to NCDENR, Division of Marine Fisheries, for the incidental take of sea turtles in the North Carolina inshore gillnet fishery. As a requirement of the permit, NCDENR must maintain a specific level of observer coverage to monitor and track the level of incidental take that is occurring. Although NCDENR is currently observing this fishery under the authority of the ITP, the observer coverage required by the ITP does not include all areas where the fishery operates. NMFS has evaluated the entire North Carolina inshore gillnet fishery based on the AD criteria, and has determined that this fishery meets the criteria for inclusion on the 2015 AD. However, NMFS does not intend to place observers on vessels in a fishery subject to observer requirements under an ITP without discussion and coordination with the state.

NMFS understands there may be confusion when multiple government agencies have regulatory authority to observe, resulting in both Federal and state observers within a fishery. NMFS strives to clarify and improve the communication process regarding fishery observer requirements with local, state, and other federal entities to achieve the highest possible level of compliance and coordination.

Comment 4: The Turtle Island Restoration Network recommended that all drift gillnet fisheries be monitored, particularly the California thresher shark/swordfish drift net fishery, due to the impacts these fisheries have on sea turtles.

Response: NMFS acknowledges that there are other fisheries, in addition to those listed on the 2015 AD, that may be a concern for sea turtles. The 2015 AD is not meant to be a comprehensive list of fisheries that interact with sea turtles or fisheries that require monitoring, but rather a focused list, based on specific inclusion criteria (see Purpose of the Sea Turtle Observer Requirement section). NMFS evaluates fisheries for inclusion on the AD on an annual basis and will re-evaluate the gillnet fisheries recommend by Turtle Island Restoration Network in future AD's. The California thresher shark/swordfish drift gillnet fishery is currently listed as a Category I fishery on the LOF, and therefore NMFS may monitor this entire fishery for marine mammals, which also allows for the collection of information on sea turtle bycatch. Dedicated observer coverage of this fishery is currently a top priority of NMFS and is considered necessary and essential to the successful implementation and monitoring of the Pacific Offshore Cetacean Take Reduction Plan and Endangered Species Act requirements already in place for the fishery. Indications are that observer coverage goals and mandates for this fishery are likely to increase in the foreseeable future due to management considerations already in place. Because NMFS does not intend to monitor this fishery beyond its existing coverage under other authorities, NMFS is not including this fishery on the 2015 AD.

Comments on Seine/Weir/Pound Net Fisheries

Comment 5: The Turtle Island Restoration Network expressed concern that the Virginia Pound Net and U.S. Mid-Atlantic mixed species stop seine/weir/pound net fisheries were not included in the 2015 AD.

Response: In accordance with the criteria for listing a fishery on the AD, NMFS is not including the Virginia Pound Net or the Mid-Atlantic mixed species stop seine/weir/pound net on the 2015 AD because NMFS does not intend to monitor these fisheries for sea turtle takes at this time. NMFS has observed the Virginia Pound Net fishery for sea turtle takes in the past, and NMFS currently maintains the authority to observe for marine mammals. Although these fisheries are not included on the 2015 AD, the AD is published annually and these fisheries may be considered for inclusion on a future AD.

Comments on Longline Fisheries

Comment 6: The Turtle Island Restoration Network commented that, although sea turtle takes occur in association with longline fisheries, no longline fishery was included in the 2015 AD and recommended that longline fisheries (particularly the Hawaii deep-set and shallow-set longline fisheries, as well as the western Pacific pelagic deep-set fishery) be included and observed if funding becomes available for NMFS to undertake additional observing effort.

Response: NMFS agrees that sea turtle interactions occur in association with longline fisheries. However, in accordance with the criteria for listing a fishery on the AD, described above, NMFS is not including the longline fisheries noted by the Turtle Island Restoration Network on the 2015 AD because NMFS does not intend to monitor the fishery beyond the existing coverage. At this time, NMFS believes that monitoring efforts available through MMPA and MSA authorities provide

sufficient monitoring coverage for assessing sea turtle interactions in longline fisheries. As noted earlier, information on sea turtles is collected whenever an interaction occurs on an observed trip. NMFS does not currently have funding available to add observer coverage specifically for the purposes of monitoring for sea turtle bycatch, and therefore these fisheries did not meet the criteria for listing on the 2015 AD. NMFS will continue to assess these and other fisheries for inclusion on future ADs.

Fisheries Included on the 2015 Annual Determination

NMFS includes 14 fisheries (12 in the Atlantic Ocean/Gulf of Mexico and 2 in the Pacific Ocean) on the 2015 AD. The 14 fisheries, described below and listed in Table 1, represent several gear types, including trawl, gillnet, trap/pot, and weir/seine.

The 2014 LOF (79 FR 14418, March 14, 2014) was used as the comprehensive list of commercial fisheries to evaluate for inclusion on the AD. All of the fisheries included on the AD are also included in the 2015 LOF (79 FR 77919, December 29, 2014). The fishery name, definition, and number of vessels/persons for fisheries listed on the AD are taken from the most recent LOF. Additionally, the fishery descriptions below include a particular fishery's current classification on the MMPA LOF (*i.e.,* Category I, II, or III); Category I and II fisheries are required to carry observers under the MMPA if requested by NMFS. As noted previously, NMFS also has authority to observe fisheries in Federal waters under the MSA and collect sea turtle bycatch information.

Trawl Fisheries

Interactions with trawl fisheries are of particular concern for sea turtles, because forced submergence in any type of restrictive gear can lead to lack of oxygen and subsequent death by drowning. Metabolic changes that can impair a sea turtle's ability to function can occur within minutes of forced submergence (Lutcavage *et al.,* 1997).

Trawls that are not outfitted with turtle excluder devices (TEDs) may result in forced submergence. Currently, only otter trawl fisheries capable of catching shrimp and operating south of Cape Charles, Virginia, and in the Gulf of Mexico, as well as trawl fisheries targeting summer flounder south of Cape Charles, Virginia, in the summer flounder fishery-sea turtle protection area (50 CFR 222.102), are required to use TEDs.

Southeastern U.S. Atlantic, Gulf of Mexico Shrimp Trawl Fishery

The Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery (estimated 4,950 vessels/persons) targets shrimp using various types of trawls; NMFS will focus on the component of the fishery that uses skimmer trawls for the 2015 AD. Skimmer trawls are used primarily in inshore/inland shallow waters (typically less than 20 ft. (6.1 m)) to target shrimp. The skimmer trawl has a rigid ''L''-shaped or triangular metal frame with the inboard portion of the frame attached to the vessel and the outboard portion attached to a skid that runs along the seabed.

Skimmer trawl use increased in response to TED requirements for shrimp bottom otter trawls. Skimmer trawls currently have no TED requirement, but are subject to tow time limits of 55 minutes from April 1 to October 31, and 75 minutes from November 1 to March 31. Skimmer trawls are used in North Carolina, Florida (Gulf Coast), Alabama, Mississippi, and Louisiana. There are documented takes of sea turtles in skimmer trawls in North Carolina and the Gulf of Mexico. All Gulf of Mexico states, except Texas, include skimmer trawls as an allowable gear. In recent years, the skimmer trawl has become a major gear in the inshore shrimp fishery in the Northern Gulf and also has some use in inshore North Carolina. Louisiana hosts the vast majority of skimmer boats, with 2,248 skimmer and butterfly net trawlers reporting landings in 2008. In 2008, Mississippi had approximately 62 active skimmer, butterfly, and chopstick boats, Alabama had 60 active skimmer boats, and North Carolina had 97 skimmer vessels (NMFS 2014). However, skimmer vessels in North Carolina have declined in recent years to 64 active vessels in 2010.

Skimmer trawl effort overlaps with sea turtle distribution and, as noted above, takes have been observed in this fishery. In response to high numbers of sea turtle strandings since 2010, a portion of fishery observer effort was shifted from otter trawls to the nearshore skimmer trawls in the northern Gulf of Mexico during the summers of 2012, 2013, and 2014. In 2012, 119 sea days were observed in the skimmer trawl fishery resulting in 24 observed interactions with sea turtles. In 2013, 145 sea days were observed, resulting in 8 observed interactions with sea turtles. In 2014, 82 sea days were observed, resulting in 10 observed interactions with sea turtles.

Continued observer coverage to understand the scope and impact of turtle takes in this fishery is needed to inform management decisions on what additional actions may be necessary to minimize and prevent sea turtle takes, and further sea turtle conservation and recovery.

The Southeastern U.S. Atlantic/Gulf of Mexico shrimp trawl fishery is classified as Category II on the MMPA LOF, and mandatory observer coverage in Federal waters began in 2007 under the MSA. The fishery is currently observed at approximately 1% of total fishery effort. The fishery was previously included in the 2010 AD, which allowed for observer coverage to be shifted to skimmer trawls to specifically investigate bycatch of sea turtles. NMFS includes this fishery again pursuant to the criteria identified at 50 CFR 222.402(a)(1) for including a fishery on the AD, because sea turtles are known to occur in the same areas where the fishery operates, takes have been previously documented in this fishery, and NMFS intends to continue to focus observer coverage in the component of the fishery that uses skimmer trawls.

Gulf of Mexico Mixed Species Trawl Fishery

The Gulf of Mexico Mixed Species Trawl Fishery (estimated 20 vessels/persons) targets fish using various types of trawl gear, including bottom otter trawl gear targeting sheepshead. This fishery is located in state waters, and is classified as Category III on the MMPA LOF. NMFS has not previously required vessels operating in this fishery to carry an observer under MMPA authority, and this fishery was not included in the 2010 AD. NMFS includes this fishery in the 2015 AD pursuant to the criteria identified at 50 CFR 222.402(a)(1) for including a fishery on the AD, because sea turtles are known to occur in the same areas where the fishery operates, takes have been documented in similar gear types, mainly the shrimp trawl fishery, and NMFS intends to monitor this fishery.

Gillnet Fisheries

Sea turtles are vulnerable to entanglement and drowning in gillnets, especially when the gear is left unattended. The main risk to sea turtles from capture in gillnet gear is forced submergence. Sea turtle entanglement in gillnets can also result in severe constriction wounds and/or abrasions. Large mesh gillnets (*e.g.,* 10–12 in. [25.4–30.5 cm] stretched mesh or greater) have been documented as particularly effective at capturing sea turtles. Additionally, sea turtles have

been documented entangled in smaller mesh gillnets.

Given known interactions between sea turtles and this gear type, and the need to obtain more coverage on state inshore fisheries, NMFS includes the California Halibut, White Seabass and Other Species Set Gillnet Fishery; California Yellowtail, Barracuda, and White Seabass Drift Gillnet Fishery; Chesapeake Bay Inshore Gillnet Fishery; Long Island Inshore Gillnet Fishery; North Carolina Inshore Gillnet Fishery; and Gulf of Mexico Gillnet Fishery in the 2015 AD. Each of these fisheries, with the exception of the Gulf of Mexico Gillnet Fishery, was listed on the 2010 AD.

California Halibut, White Seabass and Other Species Set Gillnet Fishery (>3.5 in Mesh)

The California halibut, white seabass, and other species set gillnet fishery (estimated 50 vessels/persons) targets halibut, white seabass, and other species from the U.S.-Mexico border north to Monterey Bay using 200 fathom (1,200 ft.; 366 m) gillnets with a stretch mesh size of 8.5 in (31.6 cm). Net soak duration is typically 8–10, 19–24, or 44–49 hours at a depth ranging from 15–50 fathoms (90–300 ft.; 27–91 m), with most sets from 15–35 fathoms (90–210 ft.; 27–64 m). No more than 1500 fathoms (9,000 ft.; 2,743 m) of gill or trammel net may be fished in combination for California halibut and angel shark. Fishing occurs year-round, with effort generally increasing during summer months and declining during the last three months of the year. The central California portion of the fishery from Point Arguello to Point Reyes has been closed since September 2002, following a state ban on gillnets inshore of 60 fathoms (360 ft.; 110 m). Since 1990, set gill nets have been prohibited in state waters south of Point Arguello and within 70 fathoms (420 ft.; 128 m) or one mile (1.6 km), whichever is less, around the Channel Islands. The California Department of Fish and Game (CDFG) manages the fishery as a limited entry fishery with gear restrictions and area closures.

This fishery is classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery in state waters for marine mammal interactions and to collect information on sea turtles should a take occur on an observed trip. This fishery was included in the 2010 AD. This fishery was observed at 13% of all trips in 2010, 8% in 2011, and 6% in 2012. During that time, no sea turtle bycatch was observed in the fishery. Notwithstanding the fact that no sea turtle takes were documented in this fishery during this three year period, NMFS again includes this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for including a fishery on the AD, because it operates in the same waters that turtles are known to occur, this gear type is known to result in the incidental take of sea turtles based on documented takes, and NMFS intends to monitor this fishery.

California Yellowtail, Barracuda, and White Seabass Drift Gillnet Fishery (Mesh Size >3.5 in. and <14 in.)

The California yellowtail, barracuda, and white seabass drift gillnet fishery (30 vessels/persons) targets primarily yellowtail and white seabass, and secondarily barracuda, with target species typically determined by market demand on a short-term basis. Drift gillnets are up to 6,000 ft. (1,829 m) long and are set at the surface. The mesh size depends on target species and is typically 6.0–6.5 in (15–16.5 cm). When targeting yellowtail and barracuda, the mesh size must be ≥3.5 in (9 cm); when targeting white seabass, the mesh size must be ≥6 in (15.2 cm). From June 16 to March 14 not more than 20%, by number, of a load of fish may be white seabass with a total length of 28 in (71 cm). A maximum of ten white seabass per load may be taken if taken in gillnet or trammel nets with meshes from 3.5–6.0 in (9–15 cm) in length. The fishery operates year-round, primarily south of Point Conception with some effort around San Clemente Island and San Nicolas Island. This fishery is a limited entry fishery with various gear restrictions and area closures managed by the CDFG.

This fishery is classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery in state waters for marine mammal interactions and to collect information on sea turtles should a take occur on an observed trip. This fishery was included in the 2010 AD. This fishery was observed at 5% of all trips in 2010, 3% in 2011, and 1% in 2012. During that time, no sea turtle bycatch was observed in the fishery. Notwithstanding the fact that no sea turtle takes were documented in this fishery during this three year period, NMFS again includes this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for including a fishery on the AD because it operates in the same waters that turtles are known to occur, this gear type is known to result in the incidental take of sea turtles based on documented takes, and NMFS intends to monitor this fishery.

Chesapeake Bay Inshore Gillnet Fishery

The Chesapeake Bay inshore gillnet fishery (estimated 1,126 vessels/persons) targets menhaden and croaker using gillnet gear with mesh sizes ranging from 2.875–5 in (7.3–12.7 cm), depending on the target species. The fishery operates between the Chesapeake Bay Bridge-Tunnel and the mainland. The fishery is managed under the Interstate Fishery Management Plans (FMPs) for Atlantic menhaden and Atlantic croaker. Gillnets in Chesapeake Bay also target striped bass and spot croaker.

This fishery is classified as Category II on the MMPA LOF, and was included in the 2010 AD. There has been limited observer coverage in this fishery since 2010, with 12 observed trips in 2010, one observed trip in 2011, and three observed trips in 2013. To date, observer coverage in gillnet fisheries has focused on Federally-managed fisheries. There is a need to better understand the gear fished in state waters and the extent to which this gear interacts with sea turtles. Given the risk of interaction and the limited data currently available on interactions, NMFS again includes this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD because sea turtles are known to occur in the same areas where the fishery operates, takes have been previously documented in similar gear, the fishery operates during a period of high sea turtle strandings, and NMFS intends to monitor this fishery.

Long Island Inshore Gillnet Fishery

The Long Island Sound inshore gillnet fishery (estimated 20 vessels/persons) includes all gillnet fisheries operating west of a line from the north fork of the eastern end of Long Island, New York (Orient Point to Plum Island to Fishers Island) to Watch Hill, Rhode Island (59 FR 43703, August 25, 1994). Target species include bluefish, striped bass, weakfish, and summer flounder.

This fishery is classified as Category II on the MMPA LOF and was included in the 2010 AD. There has been limited observer coverage in this fishery since 2010. To date, observer coverage in gillnet fisheries has focused on Federally-managed fisheries. However, the NMFS Northeast Fisheries Observer Program has worked with the state of New York to develop a plan to achieve observer coverage in New York state waters between 2014 and 2017, which includes approximately 250 gillnet trips annually. There is a need to better understand the gear fished in state waters and the extent to which this gear

interacts with sea turtles. Given the risk of interaction and the limited data currently available on interactions, and the new partnership with the State of New York, NMFS again includes this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD. NMFS also makes this determination because sea turtles are known to occur in the same areas where the fishery operates, takes have been previously documented in similar gear, the fishery operates during a period of high sea turtle strandings, and NMFS intends to monitor this fishery.

North Carolina Inshore Gillnet Fishery

The North Carolina inshore gillnet fishery (approximately 1,323 vessels/persons) targets species including southern flounder, weakfish, bluefish, Atlantic croaker, striped mullet, spotted seatrout, Spanish mackerel, striped bass, spot, red drum, black drum, and shad. This fishery includes any fishing effort using any type of gillnet gear, including set (float and sink), drift, and runaround gillnet for any target species inshore of the COLREGS lines in North Carolina. This fishery is managed under state and Atlantic States Marine Fisheries Commission (ASMFC) interstate FMPs, applying net and mesh size regulations, and seasonal area closures in the Pamlico Sound Gillnet Restricted Area.

NMFS issued two ESA section 10(a)(1)(B) permits for the North Carolina state-wide inshore gillnet fishery to incidentally take sea turtles in 2013, and to incidentally take Atlantic sturgeon in 2014, which include all inshore, estuarine waters, including Core Sound and Pamlico Sound. The permits require the State of North Carolina to maintain a minimum of 7% observer coverage for large mesh gillnet in each state management area for the spring, summer, and fall seasons. It also requires a minimum of 2% observer coverage for small mesh gillnets. Since issuance of the sea turtle incidental take permit in September 2013, it is estimated that 261 green sea turtles (173 alive, 88 dead) and 15 Kemp's ridley sea turtles (all alive), have been incidentally taken in the inshore large mesh gillnet fishery. Additionally, one live green sea turtle was observed in the small mesh gillnet fishery.

This fishery is classified as Category II on the MMPA LOF, and was included in the 2010 AD. NMFS has observed this fishery with limited coverage since 2010, observing 42 trips in 2010, 18 trips in 2011, 22 trips in 2012, and 28 trips in 2013. Although the state is currently required to maintain observer coverage in inshore waters, NMFS again includes this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD because sea turtles are known to occur in the same areas where the fishery operates, takes have been previously documented in this fishery, the fishery operates during a period of high sea turtle strandings, and NMFS intends to monitor this fishery.

Gulf of Mexico Gillnet Fishery

The Gulf of Mexico Gillnet Fishery (estimated 724 vessels/persons) operates in state inshore waters, targeting finfish, including Spanish mackerel, king mackerel, striped mullet, Florida pompano, and southern flounder using sink gillnets and strike gillnets.

This fishery is classified as Category II on the MMPA LOF, which authorizes NMFS to observe this fishery for marine mammal interactions and to collect information on sea turtles should a take occur on an observed trip. To better characterize fishing effort and bycatch, the NMFS Southeast Gillnet Observer Program began placing observers on state commercial gillnet vessels in coastal Louisiana, Mississippi, and Alabama in 2012. NMFS includes this fishery in the 2015 AD because sea turtles are known to occur in the same areas where the fishery operates and takes have been documented in similar other fisheries using gillnet gear, and NMFS intends to monitor this fishery.

Trap/Pot Fisheries

Sea turtles are known to become entangled in the buoy lines (also called vertical lines) of trap/pot gear, and there have been anecdotal reports that sea turtles may interact with the trap/pot itself. Turtles entangled in trap/pot gear may drown or suffer injuries (and potential subsequent mortality) due to constriction by the rope or line. Takes of both leatherback and hard-shelled sea turtles have been documented in this gear type. NMFS Greater Atlantic Regional Fisheries Office (GARFO), formerly the Northeast Regional Office, established the Northeast Atlantic Sea Turtle Disentanglement Network (STDN) in 2002 to respond to entanglements in vertical lines associated with trap/pot gear. Reports of entangled sea turtles come from fishermen, boaters, and the general public. Since 2002, entanglements in vertical lines have averaged 20.4 annually. Takes in 2012 and 2013 increased significantly with 41 and 56 takes documented in each year, respectively. These numbers include all vertical line interactions, the vast majority of which were identified as trap/pot gear (as opposed to gillnet gear). A more systematic data collection on these interactions is needed to begin understanding the extent to which interactions occur in order to implement the prohibitions against takes, including preventing or minimizing takes.

Three pot/trap fisheries were included in the 2010 AD; Atlantic Blue Crab Trap/Pot Fishery, Atlantic Mixed Species Trap/Pot Fishery, and the Northeast/Mid-Atlantic American Lobster Trap/Pot Fishery. However, limited or no observer coverage has been achieved in these fisheries since listing on the 2010 AD. While some pot/trap vessels can be observed through traditional methods, other vessels participating in these fisheries, especially in state waters, may be too small to carry observers, which create challenges for observer programs. Further discussions regarding the most appropriate and effective methodologies for observing the pot/trap fisheries will be beneficial. On June 27, 2014, NMFS published a final rule under the MMPA that will reduce the volume of vertical lines in Atlantic waters (79 FR 36586). In addition to helping conserve and recover large whales, this reduction is expected to benefit sea turtles. NMFS will continue to monitor the implementation of this rule and evaluate its effectiveness. In addition, staff from GARFO, the Northeast Fisheries Science Center (NEFSC), and Fisheries and Oceans Canada met in December 2014 to discuss technologies that may apply to mitigating sea turtle interactions with vertical lines. Based on these discussions, the GARFO and NEFSC are developing a research plan related to vertical line and sea turtle interactions. This plan will consider observer coverage in these fisheries. New methods to more effectively monitor these fisheries may be developed and implemented as an outcome of this meeting. Based on the input from the states, NMFS again includes all three pot/trap fisheries in the 2015 AD, further described below.

Atlantic Blue Crab Trap/Pot Fishery

The Atlantic blue crab trap/pot fishery (estimated 8,557 vessels/persons) targets blue crab using pots baited with fish or poultry typically set in rows in shallow water. The pot position is marked by either a floating or sinking buoy line attached to a surface buoy. The fishery occurs year-round from the south shore of Long Island at 72° 30′ W. long. in the Atlantic and east of the fishery management demarcation line between the Atlantic Ocean and the Gulf of Mexico (50 CFR 600.105), including state waters. The fishery is managed under state FMPs.

This fishery is classified as Category II on the MMPA LOF and was included in the 2010 AD. However, since NMFS included this fishery in the 2010 AD, NMFS has been unable to observe the fishery, as discussed above. Accordingly, NMFS again includes this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD because sea turtles are known to occur in the same areas where the fishery operates, takes have been documented in similar gear types (*i.e.* lobster pot fishery), and NMFS intends to monitor this fishery.

Atlantic Mixed Species Trap/Pot Fishery

The Atlantic mixed species trap/pot fishery (estimated 3,467 vessels/persons) targets species including hagfish, shrimp, conch/whelk, red crab, Jonah crab, rock crab, black sea bass, scup, tautog, cod, haddock, pollock, redfish (ocean perch), white hake, spot, skate, catfish, and stone crab. The fishery includes all trap/pot operations from the Maine-Canada border south through the waters east of the fishery management demarcation line between the Atlantic Ocean and the Gulf of Mexico (50 CFR 600.105), but does not include the following trap/pot fisheries (as defined on the MMPA LOF): Northeast/Mid-Atlantic American lobster trap/pot; Atlantic blue crab trap/pot; Florida spiny lobster trap/pot; Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot; U.S. Mid-Atlantic eel trap/pot fisheries; and the Southeastern U.S. Atlantic, Gulf of Mexico golden crab fishery (68 FR 1421, January 10, 2003). The fishery is managed under various Interstate and Federal FMPs.

This fishery is classified as Category II on the MMPA LOF and was included in the 2010 AD. However, since listing this fishery on the 2010 AD, NMFS has been unable to observe the fishery, as discussed above. Accordingly, NMFS again includes this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD because sea turtles are known to occur in the same areas where the fishery operates, takes have been documented in similar gear types (*i.e.* lobster pot fishery), and NMFS intends to monitor this fishery.

Northeast/Mid-Atlantic American Lobster Trap/Pot Fishery

The Northeast/Mid-Atlantic American lobster trap/pot fishery (estimated 11,693 vessels/persons) targets American lobster primarily with traps, while approximately 2–3% of the target species is taken by mobile gear (trawls and dredges). The fishery operates in inshore and offshore waters from Maine to New Jersey, and may extend as far south as Cape Hatteras, North Carolina. Approximately 80% of American lobster is harvested from state waters; therefore, the ASMFC has the primary regulatory role. The fishery is managed in state waters under the ASMFC Interstate FMP and in Federal waters under the Atlantic Coastal Fisheries Cooperative Management Act.

This fishery is classified as Category I on the MMPA LOF and was included in the 2010 AD. Since that time, NMFS observed 22 lobster trips in 2013 and 32 trips in 2014, with 216 observation days planned for the 2014–2015 schedule. NMFS STDN has documented 83 leatherback entanglements in lobster trap gear operating in Maine, Massachusetts, Rhode Island, Connecticut, New York, and New Jersey since 2002. These entanglements have occurred between May and October (STDN, unpublished data), which is the time period when observer coverage for this fishery will be focused.

NMFS again includes this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD because sea turtles are known to occur in the same areas where the fishery operates, takes have been documented in this fishery, and NMFS intends to monitor this fishery.

Weir/Seine/Floating Trap Fisheries

Pound net, weir, seine and floating trap fisheries may use mesh similar to that used in gillnets, but the gear is prosecuted differently from traditional gillnets. For example, pound net leaders have a mesh component similar to a gillnet; yet sea turtles have been documented entangled in pound net leaders. Pound net leaders in the Virginia portion of the Chesapeake Bay are subject to requirements designed to reduce sea turtle bycatch. Purse seines, weirs and floating traps also have the potential to entangle and drown sea turtles, as they are set similarly to pound nets. Turtles have been documented in the pounds of pound net gear and/or weirs in Massachusetts, New York, Maryland, North Carolina, and Virginia. The turtles observed in these pounds have generally been alive and uninjured. In Virginia, sea turtles have been documented becoming entangled with the leader, which often results in mortality.

Four pound net/weir/seine fisheries were included on the 2010 AD: the Mid-Atlantic haul/beach seine, the Mid-Atlantic menhaden purse seine, the Mid-Atlantic mixed species stop seine/weir/pound net, and the Virginia pound net fishery. Based on the information provided by states and the best available scientific information, NMFS includes again two of these fisheries: the Mid-Atlantic haul/beach seine fishery, Mid-Atlantic menhaden purse seine fishery, and adds the Rhode Island floating trap fishery on the 2015 AD.

Mid-Atlantic Haul/Beach Seine Fishery

The Mid-Atlantic haul/beach seine fishery (estimated 565 vessels/persons) targets striped bass, mullet, spot, weakfish, sea trout, bluefish, kingfish, and harvest fish using seines with one end secured (*e.g.,* swipe nets and long seines) and seines secured at both ends or those anchored to the beach and hauled up on the beach. The beach seine system also uses a bunt and a wash net that are attached to the beach and extend into the surf. The beach seines soak for less than two hours. The fishery occurs in waters west of 72° 30′ W. long. and north of a line extending due east from the North Carolina-South Carolina border. Fishing on the Outer Banks, North Carolina occurs primarily in the spring (April to June) and fall (October to December). In the Chesapeake Bay, this gear has been historically fished in the southwest portion of the Bay with some effort in the northwest portion. Effort begins to increase in early May, peaks in early/mid-June, and continues into July. During this time, based on historical data from Virginia, approximately 100 haul seine trips occur. Beach haul seines have been documented to interact with sea turtles.

The fishery is managed under the Interstate FMPs for Bluefish and for Atlantic Striped Bass of the Atlantic Coast from Maine through North Carolina, and is subject to Bottlenose Dolphin Take Reduction Plan implementing regulations.

This fishery is classified as Category II on the MMPA LOF and was included in the 2010 AD. NMFS observed this fishery at low levels prior to 2008, but it has not been observed since then. NMFS again includes this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD based on suspected interactions with sea turtles given the nature of the gear and fishing methodology in addition to effort overlapping with sea turtle distribution. In the Chesapeake Bay, the fishery operates at the same time as historically elevated sea turtle strandings, and NMFS intends to monitor this fishery.

Mid-Atlantic Menhaden Purse Seine Fishery

The Mid-Atlantic menhaden purse seine fishery (estimated 5 vessels/

persons) targets menhaden and thread herring using purse seine gear. Most sets occur within 3 mi (4.8 km) of shore with the majority of the effort occurring off North Carolina from November to January, and moving northward during warmer months to southern New England. The fishery is managed under the Interstate FMP for Atlantic Menhaden. In the Chesapeake Bay, this fishery operates to a limited extent during a period of high sea turtle strandings (May and June). This fishery is classified as Category II on the MMPA LOF and was listed on the 2010 AD. NMFS has observed this fishery at low levels, with nine trips observed in 2010, and three trips observed in 2012. NMFS again includes this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD, given the nature of the gear and fishing methodology in addition to effort overlapping with sea turtle distribution, and NMFS intends to monitor this fishery.

Rhode Island Floating Trap Fishery

The Rhode Island Floating Trap Fishery (estimated nine vessels/persons) is a small fishery that sets traps similar to a weir/pound net seasonally (May-October) targeting scup, striped sea bass, and squid.

This fishery is classified as Category III on the MMPA LOF, and NMFS has not previously required vessels operating in this fishery to carry an observer under MMPA authority. This fishery was not included in the 2010 AD. Turtles have been documented in the pounds of pound net gear and/or weirs in Massachusetts, New York, Maryland, and Virginia, which operates similarly to the Rhode Island Floating Trap Fishery. There have also been anecdotal reports of sea turtle interactions in this fishery, but bycatch levels are unknown. NMFS includes this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD because sea turtles are known to occur in the same areas where the fishery operates, takes have been documented in similar gear types, such as the Virginia and Maryland pound nets, and NMFS intends to monitor this fishery.

TABLE 1—STATE AND FEDERAL COMMERCIAL FISHERIES INCLUDED ON THE 2015 ANNUAL DETERMINATION

Fishery	Years eligible to carry observers
Trawl Fisheries	
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	2015–2019
Gulf of Mexico mixed species fish trawl	2015–2019
Gillnet Fisheries	
California halibut, white seabass and other species set gillnet (>3.5 in mesh)	2015–2019
California yellowtail, barracuda, and white seabass drift gillnet (mesh size >3.5 in. and <14 in.)	2015–2019
Chesapeake Bay inshore gillnet	2015–2019
Long Island inshore gillnet	2015–2019
North Carolina inshore gillnet	2015–2019
Gulf of Mexico gillnet	2015–2019
Trap/pot Fisheries	
Atlantic blue crab trap/pot	2015–2019
Atlantic mixed species trap/pot	2015–2019
Northeast/Mid-Atlantic American lobster trap/pot	2015–2019
Pound Net/Weir/Seine Fisheries	
Mid-Atlantic haul/beach seine	2015–2019
Mid-Atlantic menhaden purse seine	2015–2019
Rhode Island floating trap	2015–2019

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. NMFS published the factual basis for that certification in the proposed rule, and does not repeat it here. NMFS received no comments on this certification. Accordingly, no regulatory flexibility analysis is required, and none was prepared.

The information collection for the AD is approved under Office of Management and Budget (OMB) under OMB control number 0648–0593.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) on the issuance of the regulations to implement this observer requirement in 50 CFR part 222, subpart D. The EA concluded that implementing these regulations would not have a significant impact on the human environment. This final rule would not make any significant change in the management of fisheries included on the AD, and therefore, this final rule would not change the analysis or conclusion of the EA. If NMFS takes a management action for a specific fishery, for example, requiring fishing gear modifications, NMFS would first prepare any environmental document required under NEPA and specific to that action.

This final rule would not affect species listed as threatened or endangered under the ESA or their associated critical habitat. The impacts

of numerous fisheries have been analyzed in various biological opinions, and this final rule would not affect the conclusions of those opinions. The inclusion of fisheries on the AD is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, requiring modifications to fishing gear and/or practices, NMFS would review the action for potential adverse effects to listed species under the ESA.

This final rule would have no adverse impacts on sea turtles and may have a positive impact on sea turtles by improving knowledge of sea turtles and the fisheries interacting with sea turtles through information collected from observer programs.

This final rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

Dated: March 12, 2015.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2015–06341 Filed 3–18–15; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140728622–5225–02]

RIN 0648–BE44

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS implements management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule revises the recreational accountability measures (AMs) by establishing a recreational annual catch target (ACT) and quota overage adjustment for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf). The purpose of this final rule is to help achieve optimum yield (OY) for the Gulf red snapper resource and better ensure red snapper recreational landings do not exceed the recreational quota established in the rebuilding plan.

DATES: This rule is effective April 20, 2015.

ADDRESSES: Electronic copies of the framework action, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act analysis may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/index.html.*

FOR FURTHER INFORMATION CONTACT: Peter Hood, Southeast Regional Office, NMFS, telephone 727–824–5305; email: *Peter.Hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On November 21, 2014, NMFS published a proposed rule for the framework action and requested public comment (79 FR 69418). The proposed rule and the framework action outline the rationale for the actions contained in this final rule. A summary of the actions implemented by the framework action and this final rule is provided below.

Management Measures Contained in This Final Rule

This final rule revises the red snapper recreational AMs to support management efforts to maintain landings within the recreational quota and to mitigate any recreational quota overages should they occur.

Red Snapper Recreational ACT and Season Length

This final rule establishes a red snapper recreational ACT by applying a buffer to the recreational quota that is based on the Council's annual catch limit (ACL)/ACT control rule developed in the Generic ACL/Amendment (76 FR 82044, December 29, 2011). The ACL/ACT control rule is used to determine the appropriate target catch levels that account for management uncertainty in maintaining catches at or below the ACL (quota). The control rule is intended to be applied separately to the recreational and commercial sectors because each sector has different levels of management uncertainty. The control rule recommends no buffer be applied to the quota for the red snapper commercial sector because the sector is managed by an IFQ program, has accurate landings data, and has not exceeded its quota in the last 7 years the IFQ program has been in effect. For the recreational sector, the control rule recommends applying a 20-percent buffer to the quota primarily because the recreational quota has been exceeded in 3 of the last 4 years. When the 20-percent buffer is applied to the quota, it results in an ACT of 4.312 million lb (1.956 million kg), round weight.

This final rule also revises the procedure for determining the recreational season length (closure date). Beginning in the 2015 fishing year, the red snapper recreational season closure date will be based on when the recreational ACT will be met instead of when the recreational quota will be met. Using the ACT to set the season length serves as an in-season AM and reduces the probability of exceeding the recreational quota during a fishing year from 50 percent to 15 percent.

Red Snapper Recreational Post-Season AM

This final rule also revises the recreational AMs to include a quota overage adjustment (payback) should the recreational quota be exceeded while the red snapper stock is overfished. If red snapper are overfished and the recreational quota is exceeded, then in the year following the overage, the recreational quota will be reduced by the amount of the recreational quota overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary. If the quota is adjusted, the recreational ACT will also be reduced to maintain the 20-percent buffer between the ACT and the adjusted quota.

Comments and Responses

NMFS received a total of 40 public comments on the proposed rule: 2 Comments from non-governmental organizations, 4 comments from fishing organizations, and the rest from individuals. Ten commenters submitted suggestions for the reef fish fishery that were outside the scope of the framework and the proposed rule, including comments related to reallocation between sectors, regional management, area closures, different fishing seasons, making red snapper a gamefish, and establishing a recreational tag system. A number of commenters also expressed opinions about the status of the red snapper stock. Eleven commenters stated general opposition to the rule, while 4 commenters expressed general

support for the rule. Only specific comments related to the actions contained in the framework and the proposed rule as well as NMFS' respective responses are summarized below.

Comment 1: Accountability measures, such as ACTs and payback provisions are unreasonable requirements because the Marine Recreational Information Program (MRIP) was never designed to count, in real-time, the number of red snapper being harvested by anglers, and so these measures cannot be used for in-season quota monitoring.

Response: NMFS disagrees that managing the recreational sector for Gulf red snapper with an ACT and requiring a payback is unreasonable. NMFS agrees that MRIP is not designed to count landings in real time. This is why the Federal red snapper recreational fishing season begins each year on June 1, and with implementation of this final rule, will remain open until the ACT is projected to be reached. The MRIP information, in combination with other landings and effort information, is used to project season lengths and is not used for in-season monitoring. Using the ACT to set the season accounts for uncertainty in the projections and is a reasonable method to help ensure the recreational quota is not exceeded. However, if the quota is exceeded, the payback provision mitigates possible biological consequences to the stock resulting from the overage. Using an ACT and a payback in this manner is consistent with the National Standard 1 Guidelines.

Comment 2: After any red snapper recreational quota overage, the ACT should be reset using the Council's ACL/ACT control rule rather than just reducing the recreational quota by a fixed percentage. This would allow the buffer to change in response to changing management conditions.

Response: NMFS disagrees that the ACT should be reset using the ACL/ACT control rule after a recreational quota overage. The ACT is not intended to address quota overages. The ACT is used to account for management uncertainty in setting the recreational season and is intended to help ensure that the quota is not exceeded. If a quota overage does occur, the payback provision, which reduces the quota by the amount of the overage and also reduces the ACT to keep a consistent 20 percent buffer, mitigates for that excess harvest. Keeping a consistent buffer of 20 percent between the quota and ACT provides for more stable management of the recreational sector. If new information indicates that a 20 percent buffer may no longer be appropriate, the Council can consider revising the ACT. The ACL/ACT control rule would be used to determine one alternative for an appropriate buffer. The Council would also consider other reasonable alternatives before deciding whether to adjust the ACT.

Comment 3: No AMs should be applied to the recreational sector until there is better data to determine red snapper recreational harvest.

Response: NMFS disagrees that no AMs should be applied to the recreational sector until some unspecified time in the future. AMs are required by the Magnuson-Stevens Act and the AMs implemented in this final rule are consistent with that requirement and the National Standard 1 Guidelines. Further, estimates of red snapper landings used to support implementation of the AMs in this final rule are based on the best scientific information available as required by National Standard 2. Currently, NMFS uses historical landings data to project the length of the Federal season. This landings information is obtained from MRIP-based private angler/charter survey; the Southeast Region Headboat Survey; the Louisiana Department of Wildlife and Fisheries creel survey, and the Texas Parks and Wildlife Department creel survey. NMFS agrees there are opportunities to improve the landings data collection process and is collaborating with many of the Gulf states' marine fisheries resource agencies to make improvements in both data collection and data analysis.

Comment 4: Because the red snapper allocation between the commercial and recreational sectors does not accurately reflect the actual use of the resource by the recreational sector, the AMs are unreasonable requirements.

Response: NMFS disagrees that the AMs implemented by this rule are unreasonable requirements. As explained above, AMs are required by the Magnuson-Stevens Act, and both the ACT and payback provision are consistent with the National Standard 1 Guidelines. The framework action developed by the Council did not consider and this rule does not address the red snapper allocation between the recreational and commercial sectors. Thus, to the extent this comment is advocating for a change in the current allocation, it is beyond the scope of the current rulemaking. However, NMFS notes that the Council is currently evaluating alternatives to the current red snapper allocation in Amendment 28 to the FMP.

Comment 5: Introducing further restrictions, like ACTs and paybacks, on the red snapper recreational sector would have detrimental economic impacts to the sector and coastal communities supported by recreational fishing. These impacts would be large because the recreational sector contributes more money into the local economies and creates more jobs than the commercial sector.

Response: NMFS recognizes the economic importance of the recreational sector to many coastal communities; however, as discussed in the proposed rule and above, the Council has determined that implementing the ACT and payback provisions are necessary for the management of the recreational sector. Although the AMs are expected to result in economic losses to recreational fishing participants and their communities, the AM alternatives that were selected are expected to best achieve the objectives of the framework action while minimizing, to the extent practicable, adverse economic effects.

Comment 6: The payback provision states that the AA will file a notification with the Office of the Federal Register to reduce the recreational quota by the amount of the quota overage unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary. How will this determination be made?

Response: NMFS will make the final determination about whether the best scientific information available shows that something other than a payback of 100 percent of the quota overage is necessary. However, NMFS anticipates that this scientific information will likely come from a red snapper stock assessment and would also be reviewed by the Council's Scientific and Statistical Committee. The rationale for an overage adjustment, if different from 100 percent, would be described in the **Federal Register** notice that is published when AMs are implemented.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of Gulf red snapper and is consistent with the framework action, the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared for this action. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comment, NMFS' responses to those comments,

and a summary of the analyses completed to support the action. The FRFA follows.

No public comments specific to the IRFA were received and, therefore, no public comments are addressed in this FRFA. Some comments with indirect socio-economic implications were received and these are addressed in the comments and responses section of this rule. No changes in the final rule were made in response to public comments.

This final rule establishes a red snapper recreational ACT; revises the procedure for determining the recreational season length (closure date); and, adds a quota overage adjustment (payback) should the recreational quota be exceeded while the red snapper stock is overfished.

NMFS agrees that the Council's choice of preferred alternatives will best achieve the Council's objectives for the framework action while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities. The preamble of the proposed rule and this final rule provide a statement of the need for and objectives of this final rule, and it is not repeated here.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule. Accordingly, this final rule does not implicate the Paperwork Reduction Act.

NMFS expects this final rule to directly affect federally permitted for-hire vessels operating in the Gulf reef fish fishery. The for-hire sector is comprised of charter boats and headboats (party boats). Although charter boats tend to be smaller in length, on average, than headboats, the key distinction between the two types of operations is how the fee is determined. On a charter boat trip, the fee charged is for the entire vessel, regardless of how many passengers are carried, whereas the fee charged for a headboat trip is paid per individual angler.

A Federal Gulf charter/headboat permit has been required for reef fish since 1996 and the sector currently operates under a limited access permit system. In 2013, there were 1,190 valid (non-expired) or renewable Gulf of Mexico Charter/Headboat Reef Fish Permits. A renewable permit is an expired permit that may not be actively fished, but is renewable for up to 1 year after expiration. Although the for-hire permit application collects information on the primary method of operation, the permit itself does not identify the federally permitted vessel as either a headboat or a charter boat. Operation as either a headboat or charter boat is not restricted by the Federal permitting regulations, and vessels may operate in both capacities. However, only federally permitted headboats are required to submit harvest and effort information to NMFS' HBS. Participation in the HBS is based on determination by the NMFS Southeast Fisheries Science Center (SEFSC) that the vessel primarily operates as a headboat. In 2013, 70 Gulf vessels were registered in the HBS. As a result, 1,120 of the vessels with a valid or renewable reef fish charter/headboat permit are expected to operate as charter boats. The average charter boat is estimated to earn approximately $83,000 (2013 dollars) in gross annual revenue and the average headboat is estimated to earn approximately $251,000 (2013 dollars) in gross annual revenue.

The Small Business Administration established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. A business involved in finfish harvesting is classified as a small business if independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of $20.5 million (NAICS code 114111, finfish fishing) for all of its affiliated operations worldwide. For for-hire vessels, all qualifiers apply except that the annual receipts threshold is $7.5 million (NAICS code 487210, recreational industries).

Based on the revenue figures above, all for-hire vessels expected to be directly affected by this final rule are determined for the purpose of this analysis to be small business entities. Because all entities expected to be affected by this rule are small entities, NMFS has determined that this final rule will affect a substantial number of small entities. In addition, because all entities affected by this rule are small entities, the issue of disproportionate effects on small versus large entities does not arise in the present case.

Establishing an ACT, which serves as the basis for estimating the length of the recreational red snapper fishing season, is expected to reduce net operating revenues (the return used to pay all labor wages, returns to capital, and owner profits) of all Gulf reef fish for-hire vessels (charter and headboats) by a combined total of approximately $2.286 million (2013 dollars) in the first year this rule is implemented. If there are no recreational quota overages, this amount will be the annual net operating revenue loss to the for-hire vessels. If recreational quota overages occur in a fishing year, and red snapper are overfished, net operating revenues will further decrease in the following fishing year with the application of 100 percent of the recreational quota overage reduction from the following year's quota. In effect, establishing a payback provision will tend to increase the potential losses in net operating revenue to the for-hire vessels.

An important feature associated with the payback provision is the uncertainty of the occurrence and level of overages. Under the proposed buffer of 20 percent for deriving the ACT from the recreational quota, the probability of exceeding the quota is estimated at 15 percent. At this probability level, the occurrence of an overage is relatively low. However, should an overage occur, the overage level could be insignificant or could be substantial. If the quota overage is low, the net operating revenue loss to the for-hire vessels will be approximately equivalent to the amount estimated above ($2.286 million). If the quota overage is substantial, it could result in setting the ACT at zero the following year. In this case, net operating revenue loss to the for-hire vessels will be relatively substantial, with some unknown number of for-hire businesses possibly exiting the industry as a result of revenue loss. The year after that overage adjustment, however, the recreational quota and the corresponding ACT will be restored as there would be no overages in the previous year if the ACT had been set at zero. Assuming no increases in the recreational red snapper quota, for-hire vessels will continue to lose the amount of net operating revenue estimated above. A recreational quota increase will alleviate some of the losses to the for-hire vessels.

The following discussion analyzes the alternatives that were not selected as preferred by the Council. Five alternatives, including the preferred alternative (as fully described in the preamble), were considered for setting a red snapper recreational ACT. The first alternative, the no action alternative, would not establish an ACT. This alternative is associated with the highest probability of exceeding the recreational quota and so would not address the need to better control the recreational harvest to the sector's quota. The other three alternatives would establish an ACT by applying a buffer of 30 percent, 40 percent, or 60 percent to the quota. Relative to the preferred alternative, each of these three alternatives would result in a lower ACT, and therefore greater loss in net operating revenues for

the for-hire component of the recreational sector. For this reason, the three alternatives were not selected.

Three alternatives, including the preferred alternative (as fully described in the preamble), were considered for establishing a payback provision in case of recreational quota overages. It is noted that the payback provision only applies when red snapper are overfished. The first alternative, the no action alternative, would not establish a payback provision. This alternative would not address the need to mitigate for overages that may negatively impact the rebuilding plan, and thus was rejected. The second alternative would establish a 100-percent recreational quota payback provision, similar to the preferred alternative, and in addition would further reduce the adjusted ACT in the following season by 100 percent, 50 percent, or 30 percent of the quota overage. The adjusted ACT is derived by applying the 20-percent buffer to the quota after the recreational quota is reduced by the amount of overage. This alternative, together with any of its additional options to further reduce the following season's overage adjusted ACT, would be expected to result in higher net operating revenue losses for the for-hire sector, and therefore was rejected.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all interested parties.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf, Quotas, Recreational, Red Snapper.

Dated: March 13, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.41, paragraph (q) is added to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(q) *Red snapper*—(1) *Commercial sector.* [Reserved]

(2) *Recreational sector.* (i) The AA will determine the length of the red snapper recreational fishing season based on when recreational landings are projected to reach the recreational ACT specified in paragraph (q)(2)(iii) of this section, and announce the closure date in the **Federal Register**. This will serve as an in-season accountability measure. On and after the effective date of the recreational closure notification, the bag and possession limit for red snapper is zero.

(ii) In addition to the measures specified in paragraph (q)(2)(i) of this section, if red snapper recreational landings, as estimated by the SRD, exceed the applicable quota specified in § 622.39(a)(2)(i), and red snapper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to reduce the recreational quota by the amount of the quota overage in the prior fishing year, and reduce the recreational ACT specified in paragraph (q)(2)(iii) of this section (based on the buffer between the ACT and the quota specified in the FMP), unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(iii) The recreational ACT for red snapper is 4.312 million lb (1.956 million kg), round weight.

[FR Doc. 2015–06294 Filed 3–18–15; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 80, No. 53
Thursday, March 19, 2015

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2014–0275]

RIN 3150–AJ52

List of Approved Spent Fuel Storage Casks: Holtec HI–STORM Flood/Wind System; Certificate of Compliance No. 1032, Amendment No. 1, Revision 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage regulations by revising the Holtec International, Inc. (Holtec), HI–STORM Flood/Wind (FW) System listing within the ''List of approved spent fuel storage casks'' to add Amendment No. 1, Revision 1, to Certificate of Compliance (CoC) No. 1032. Amendment No. 1, Revision 1, allows these casks to accept 14X14B fuel assemblies with minor changes in the internal diameter of the fuel cladding, diameter of the fuel pellet, and spacing between the fuel pins. The amendment also updates testing requirements for the fabrication of Metamic HT neutron-absorbing structural material.

DATES: Submit comments by April 20, 2015. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0275. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Email comments to: *Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Robert D. MacDougall, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–5175, email: *Robert.MacDougall@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0275 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0275.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0275 in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Procedural Background

This proposed rule is limited to adding Amendment No. 1, Revision 1, which will supersede Amendment No. 1 (effective December 17, 2014), to CoC No. 1032 to the ''List of approved spent fuel storage casks'' and does not include other aspects of the Holtec HI–STORM FW System design. Amendment No. 1 continues to be effective but is now being modified with respect to certain specified provisions, as outlined in Amendment No. 1, Revision 1, which apply to all general licensees using the casks for Independent Spent Fuel Storage Installations (ISFSIs). Therefore, Amendment No. 1, Revision 1, supersedes the previously issued Amendment No. 1 (effective December 17, 2014). In requesting this revision, Holtec indicated that no ISFSI licensee has placed such a cask into service under CoC No. 1032, Amendment No. 1.

Because the NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule

concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register.** The direct final rule will become effective on June 2, 2015. However, if the NRC receives significant adverse comments on this proposed rule by April 20, 2015, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to these proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or Technical Specifications (TSs).

For additional procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that ''the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR) entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled, ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on October 3, 2014 (79 FR 59623), that approved the HI–STORM FW System design amendment and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1032, Amendment 1.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated below.

Document	ADAMS Accession No./ Web link/ **Federal Register** citation
Proposed CoC No. 1032, Amendment No. 1, Revision 1	ML14276A621
Proposed CoC No. 1032, Amendment No. 1, Revision 1, Appendix A to the Technical Specifications	ML14276A618
Proposed CoC No. 1032, Amendment No. 1, Revision 1, Appendix B to the Technical Specifications	ML14276A617
CoC No. 1032, Amendment No. 1, Revision 1, Preliminary SER	ML14276A620
Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, License Amendment Request 1032–2, July 31, 2013.	ML13214A023
Submittal of Response to First Request for Additional Information for License Amendment Request No. 2 to the Holtec International HI-STORM Flood/Wind Multi-Purpose Canister Storage System, November 5, 2013.	ML13311A103

The NRC may post materials related to this proposed rule, including public comments, on the Federal rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2014–0275. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2014–0275); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974,

as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2239, 2273, 2282, 2021); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 131, 132, 133, 135, 137, 141, 148 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 788 (2005).

Section 72.44(g) also issued under Nuclear Waste Policy Act secs. 142(b) and 148(c), (d) (42 U.S.C. 10162(b), 10168(c), (d)).

Section 72.46 also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154).

Section 72.96(d) also issued under Nuclear Waste Policy Act sec. 145(g) (42 U.S.C. 10165(g)).

Subpart J also issued under Nuclear Waste Policy Act secs. 117(a), 141(h) (42 U.S.C. 10137(a), 10161(h)).

Subpart K also issued under Nuclear Waste Policy Act sec. 218(a) (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance No. 1032 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1032.

Initial Certificate Effective Date: June 13, 2011.

Amendment Number 1 Effective Date: December 17, 2014, superseded by Amendment Number 1, Revision 1, on [DATE 75 DAYS FROM DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

Amendment Number 1, Revision 1, Effective Date: [DATE 75 DAYS FROM DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

SAR Submitted by: Holtec International, Inc.

SAR Title: Final Safety Analysis Report for the Holtec HI–STORM FW System.

Docket Number: 72–1032.

Certificate Expiration Date: June 12, 2031.

Model Numbers: HI–STORM FW MPC–37, MPC–89.

* * * * *

Dated at Rockville, Maryland, this 9th day of March, 2015.

For the Nuclear Regulatory Commission.

Mark A. Satorius,

Executive Director for Operations.

[FR Doc. 2015–06366 Filed 3–18–15; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AB68

Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans—Timing of Annual Disclosure

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Labor's ''participant-level fee disclosure'' regulation by making a technical adjustment to an annual timing requirement. In the ''Rules and Regulations'' section of this issue of the **Federal Register**, we are making this same amendment as a direct final rule. If we receive no significant adverse comment, the direct final rule will go into effect and we will not take further action on this proposed rule. If, however, we receive significant adverse comment, we will withdraw the direct final rule and it will not take effect. In that case, we will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this rule. Any parties interested in commenting must do so during this comment period.

DATES: Comments must be received on or before April 20, 2015.

ADDRESSES: You may submit comments, identified by RIN 1210–AB68 (Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans—Timing of Annual Disclosure), by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: e-ORI@dol.gov.* Include RIN 1210–AB68 in the subject line of the message.

• *Mail or Hand Delivery:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Instructions: All submissions received must include the agency name and Regulation Identifier Number (RIN) for this rulemaking. Comments received by the Department of Labor will be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa*, and made available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210, including any personal information provided. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or other confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously. Persons submitting comments electronically are encouraged not to submit paper copies.

FOR FURTHER INFORMATION CONTACT: Eric A. Raps, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8532. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of today's **Federal Register**, the Department of Labor published a direct final rule that amends the definition of the term ''at least annually thereafter'' contained in 29 CFR 2550.404a-5(h)(1) by substituting the term ''14-month period'' for the term ''12-month period.'' This **Federal Register** notice incorporates by reference and proposes the same amendment contained in the direct final rule. Please refer to the preamble and the regulatory text of the direct final rule for details, including information and analyses under applicable Executive Orders, the Regulatory Flexibility Act, Paperwork Reduction Act, and Unfunded Mandates Reform Act.

Signed at Washington, DC, this 12th day of March 2015.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2015–06210 Filed 3–18–15; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0764]

RIN 1625–AA00, 1625–AA87

Safety Zones, St. Petersburg Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish several safety zones within the Sector St. Petersburg Captain of the Port Zone. This action would establish safety zones restricting port operations in the event of reduced or restricted visibility or disasters including hurricanes. It would also establish safety zones around firework platforms, structures or barges during the storage, preparation, and launching of fireworks.

DATES: Comments and related material must be received by the Coast Guard on or before April 20, 2015.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is (202) 366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Omar La Torre Reyes, Sector St. Petersburg Waterways Management Branch, U.S. Coast Guard; telephone (813) 228–2191, email *omar.latorereyes@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
COTP Captain of the Port

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number USCG–2014–0764 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2014–0764) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

B. Regulatory History and Information

This proposed regulatory amendment will add safety zone regulations regarding port restrictions due to hurricanes and other disasters, reduced or restricted visibility as well as a safety zone around all fireworks barges, structures, and piers.

C. Basis and Purpose

The legal basis for this proposed rule is the Coast Guard's authority to establish safety zones: 33 U.S.C. 1231; 33 U.S.C. 1225; 33 CFR 1.05–1, 6.04–1, 160.5; Department of Homeland Security Delegation No. 0170.1.

The purpose of these regulations are to ensure the safety of life on navigable waters of the United States through the addition of regulations regarding port regulations in the event of hurricanes and other disasters and reduced or restricted visibility. It will establish a safety zone around all firework barges, structures, and piers.

D. Discussion of Proposed Rule

This rule would establish three sections under 33 CFR 165.702: (1) A safety zones dictating port closures during hurricanes and other disasters; (2) seven segments of Tampa Bay's shipping channel to give the COTP flexibility in controlling and reconstituting vessel traffic during periods of reduced or restricted visibility; and (3) a safety zone around all fireworks launching platforms, structures, or piers while engaged in launching operations. Notice will be given via Local Notice to Mariners.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Due to the unexpected and quick nature of hurricanes and other disasters, emergency temporary final rules are implemented for each individual event. This regulation is not significant regulatory action and will reduce time and paper work since an emergency temporary final rule would not have to be implemented each time. This proposed rule provides advance notice of actions the Coast Guard intends to take in the event a natural disaster occurs.

There are already several special local regulations establishing regulated areas around fireworks events. The safety zone that is being added is not expected to have a significant regulatory action due to the use of safety zones temporary final rules for each event.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children From Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and Recordkeeping

Requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.780 to read as follows:

§ 165.780 Safety Zone; Hurricanes and other Disasters in Western Florida.

(a) *Regulated Areas.* The following areas are established as a safety zone during the specified conditions:

(1) All waters within the Sector St. Petersburg Captain of the Port zone encompassing all navigable waters or tributaries between or within Fenholloway River through Chokoloskee Pass, Florida.

(2) All coordinates are North American Datum 1983.

(b) *Definitions.*

(1) *Designated Representative* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the COTP, in the enforcement of regulated navigation areas, safety zones, and security zones.

(2) *Hurricane Port Condition WHISKEY* means condition set when weather advisories indicates sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 72 hours.

(3) *Hurricane Port Condition X-Ray* means condition set when weather advisories indicates sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 48 hours.

(4) *Hurricane Port Condition YANKEE* means condition set when weather advisories indicate that sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 24 hours.

(5) *Hurricane Port Condition ZULU* means condition set when weather advisories indicate that sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 12 hours.

(c) *Regulations.* (1) *Hurricane Port Condition WHISKEY.* All vessel and port facilities must exercise due diligence in preparation for potential storm impacts. Ports and waterfront facilities shall begin removing all debris and secure potential flying hazards. Container stacking plans shall be implemented. Waterfront facilities that, due to space constraints, are unable to reduce container stacking height to no more than four high, must submit a container stacking protocol to the Captain of the Port (COTP).

(2) *Hurricane Port Condition X-Ray.* All vessels and port facilities shall ensure that potential flying debris is removed or secured. Hazardous materials/pollution hazards must be secured in a safe manner and away from waterfront areas. Facilities continue to implement container stacking protocol. Containers must not exceed four tiers unless previously approved by the COTP. Containers carrying hazardous materials may not be stacked above the second tier. All oceangoing commercial vessels greater than 500-gross tons must prepare to depart the ports and anchorages within Tampa Bay. These vessels shall depart immediately upon the setting of Port Condition Yankee. Slow-moving vessels may be ordered to depart to ensure safe avoidance of the incoming storm. A COTP Order will be issued to vessels asked to depart early. COTP orders requiring vessel departure will be considered on a case-by-case basis. Vessels that are unable to depart the port must contact the COTP to request and receive permission to remain in port. Proof of facility owner/operator approval is required. Vessels with COTP's permission to remain in port must implement their approved mooring arrangement. Terminal operators shall prepare to terminate all cargo operations. The COTP may require additional precautions to ensure the safety of the ports and waterways. Coast Guard Port Assessment Teams will be deployed to validate implementation of Port Condition X-Ray. The COTP will convene the Port Heavy Weather Advisory Group (PHWAG) as deemed necessary.

(3) *Hurricane Port Condition YANKEE.* Affected ports are closed to inbound vessel traffic. All oceangoing commercial vessels greater than 500-gross tons must have departed Tampa Bay. Appropriate container stacking protocol must be completed. Terminal operators must terminate all cargo operations not associated with storm preparations: Cargo operations associated with storm preparations include moving cargo within or off the port for securing purposes, crane and other port/facility equipment preparations, and similar activities, but do not include moving cargo onto the port or vessel loading/discharging operations unless specifically authorized by the COTP. All facilities shall continue to operate in accordance with approved Facility Security Plans and comply with the requirements of the Maritime Transportation Security Act (MTSA). Anticipate drawbridges may be closed to vessel traffic as early as eight hours prior to the arrival of tropical storm force winds. Coast Guard Port Assessment Teams will conduct Port Condition Yankee validation. The COTP will convene the Port Heavy Weather Advisory Group (PHWAG) as deemed necessary.

(4) *Hurricane Port Condition ZULU.* All port waterfront operations are suspended excepting final preparations as expressly permitted by the COTP necessary to ensure the safety of the ports and facilities. Coast Guard Port Assessment Teams will conduct final port assessments.

(5) *Emergency Restrictions for Other Disasters.* Any natural or other disasters that are anticipated to affect the Sector St. Petersburg Captain of the Port zone will result in the prohibition of commercial vessel traffic transiting or remaining in the port or facility operations.

■ 3. Add § 165.781 to read as follows:

§ 165.781 Safety Zone; Restricted Visibility in Tampa Bay.

(a) *Regulated Areas.* The following areas are established as safety zones during the specified conditions:

(1) Zone 1 (Interbay) means all navigable waters within a box marked by the following coordinates: 27°52′56″ N, 82°29′44″ W; thence to 27°52′50″ N, 82°23′41″ W; thence to 27°57′27″ N, 82°23′50″ W thence to 27°57′19″ N, 82°29′39″ W. This encompasses all navigable waterways north of Hillsborough Cut ''C'' Channel LB ''25'' (LLNR 23445) & ''26'' (LLNR 23450).

(2) Zone 2 (East Tampa/Big Bend) means all navigable waters within a box marked by the following coordinates: 27°52′50″ N, 82°23′41″ W; thence to 27°46′36″ N; 82°24′04″ W; thence to 27°46′29″ N, 82°31′21″ W; thence to 27°52′59″ N, 82°31′24″ W. This zone encompasses all navigable waterways between Hillsborough Cut ''C'' Channel LB ''25'' (LLNR 23445) & ''26'' (LLNR 23450) to Cut ''6F'' (LLNR 22830) Channel.

(3) Zone 3 (Old Tampa Bay) means all navigable waters within a box marked by the following coordinates: 27°46′29″ N, 82°31′21″ W; 28°01′58″ N, 82°31′39″ W; thence to 28°02′01″ N, 82°43′20″ W;

thence to 27°46′15″ N, 82°43′24″ W. This zone encompasses all navigable waterways between all of Old Tampa Bay to Cut ''6F'' (LLNR 22830) Channel.

(4) Zone 4 (Middle Tampa Bay) means all navigable waters within a box marked by the following coordinates: 27°46′34″ N, 82°34′04″ W; thence to 27°38′40″ N, 82°31′54″ W; thence to 27°44′38″ N, 82°40′44″ W; thence to 27°46′15″ N, 82°40′46″ W. This zone encompasses all navigable waterways between Cut ''6F'' (LLNR 22830) Channel to Tampa Bay ''1C'' (LLNR 22590).

(5) Zone 5 (Lower Tampa Bay/Manatee) means all navigable waters within a box marked by the following coordinates: 27°44′33″ N, 82°40′37″ W; thence to 27°58′59″ N, 82°40′34″ W; thence to 27°36′18″ N, 82°38′57″ W; thence to 27°34′10″ N, 82°34′50″ W; thence to 27°37′56″ N, 82°31′15″ W. This zone encompasses all navigable waterways between Tampa Bay ''1C'' (LLNR 22590) to Sunshine Skyway Bridge.

(6) Zone 6 (Mullet Key) means all navigable waters within a box marked by the following coordinates: 27°38′59″ N, 82°40′35″ W; thence to 27°36′44″ N, 82°44′13″ W; thence to 27°32′20″ N, 82°44′37″ W; thence to 27°31′18″ N, 82°38′59″ W; thence to 27°34′09″ N, 82°34′53″ W; thence to 27°36′15″ N, 82°39′00″ W. This zone encompasses all navigable waterways between the Sunshine Skyway Bridge to Mullet Key Channel LB ''21'' (LLNR 22365) & ''22'' (LLNR 22370).

(7) Zone 7 (Egmont Entrance) means all navigable waters within the area encompassed by the following coordinates: 27°36′27″ N, 82°44′14″ W; thence to 27°39′46″ N, 82°44′45″ W; thence to 27°39′36″ N, 83°05′10″ W; thence to 27°32′29″ N, 83°04′50″ W; thence to 27°32′21″ N, 82°44′42″ W. This zone includes the fairway anchorages.

(b) *Definition.* (1) *Designated Representative* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the COTP, in the enforcement of regulated navigation areas, safety zones, and security zones.

(c) *Regulations.* (1) Vessel should not commence an inbound, shift, or outbound transit during periods where visibility is less than one nautical mile due to fog or inclement weather.

(2) The COTP may open or close Tampa Bay or specific zones to vessel traffic described in the regulated areas section of this chapter.

■ 4. Add § 165.782 to read as follows:

§ 165.782 Safety Zone; Firework Displays in Captain of the Port Zone St. Petersburg, Florida.

(a) *Regulated Area.* The following area is established as a safety zone during the specified conditions: All waters within the Sector St. Petersburg COTP Zone within a 500-yard radius of all firework platforms, structures or barges during the storage, preparation, and launching of fireworks. Designated representatives may reduce the 500-yard zone based on prevailing conditions and enforcement needs.

(1) The Coast Guard realizes that some large scale events, such as those with many participants or spectators, or those that could severely restrict navigation or pose a significant hazard, may still require separate special local regulations or safety zones that address the specific peculiarities of the event. In those situations, the Coast Guard will create special local regulations or safety zones specifically for the event, and those regulations will supersede the proposed regulations in this rule.

(2) All firework platforms, structures or barges will also have a sign on their port and starboard side labeled ''FIREWORKS—STAY AWAY''. This sign will consist of 10-inch high by 1.5-inch wide red lettering on a white background. Shore fireworks site that affect navigable waterways will display a sign with the aforementioned specifications.

(b) *Definition.*

Designated Representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the COTP, in the enforcement of regulated navigation areas, safety zones, and security zones. Captain of the Port (COTP) for the purpose of this section means the Commanding Officer of Coast Guard Sector St. Petersburg. Captain of the Port St. Petersburg Zone is defined in 33 CFR 3.35–35.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Coast Guard Captain of the Port St. Petersburg or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain in the regulated area may contact the Captain of the Port St. Petersburg via telephone at (727) 824–7506, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain in the regulated area is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative.

(3) The Coast Guard will provide notice of the regulated area via Broadcast Notice to Mariners or by on-scene designated representatives. Fireworks platforms, piers, and structures will also have signs to notify the public of the danger and to keep away.

(4) This regulation does not apply to authorized law enforcement agencies operating within the regulated area.

Dated: February 11, 2015.

G. D. Case,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 2015–05743 Filed 3–18–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2015–0134; FRL–9924–43–Region 7]

Approval and Promulgation of Air Quality Implementation Plans; State of Missouri; Reporting Emission Data, Emission Fees and Process Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) and the Operating Permits Program for the State of Missouri submitted on October 2, 2013. These revisions remove definitions that were in this rule but have been moved to the state's general definitions rule. These revisions also clarify the information required in emission reports and clarify the types and frequency of reports for the emission inventory. In addition, a revision to the emission fees section of this rule is being clarified so that the current emissions fee is only applicable for years 2013, 2014, and 2015 as set by Missouri statute.

DATES: Comments on this proposed action must be received in writing by April 20, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2015–0134, by mail to Paula

Higbee, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Paula Higbee, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7028, or by email at *higbee.paula@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP and Title V revisions to 10 C.S.R. 10–6.110 ''Reporting Emission Data, Emission Fees, and Process Information'' as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: March 4, 2015.

Mark J. Hague,

Acting Regional Administrator, Region 7.

[FR Doc. 2015–06126 Filed 3–18–15; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 845

RIN 3147–AA02

[Docket No. NTSB–GC–2012–0002]

Rules of Practice in Transportation: Investigative Hearings; Meetings; Reports; and Petitions for Reconsideration

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The NTSB is proposing to amend provisions within its regulations, which contains the NTSB's procedures for holding investigative hearings, various types of meetings, issuing reports, and responding to petitions for reconsideration. This notice proposes a number of substantive and technical changes. In particular, the NTSB proposes to reorganize parts of its regulations into different subparts to ensure the part is easy to follow.

DATES: Comments must be received by May 18, 2015. Comments received after the deadline will be considered to the extent possible.

ADDRESSES: A copy of this NPRM, published in the **Federal Register** (FR), is available for inspection and copying in the NTSB's public reading room, located at 490 L'Enfant Plaza SW., Washington, DC 20594–2003. Alternatively, a copy is available on the government-wide Web site on regulations at *http://www.regulations.gov* (Docket ID Number NTSB–GC–2012–0002).

You may send comments identified by Docket ID Number NTSB–GC–2012–0002 using any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

Mail: Send comments to NTSB Office of General Counsel, 490 L'Enfant Plaza SW., Washington, DC 20594–2003.

Facsimile: Fax comments to 202–314–6090.

Hand Delivery: Bring comments to 490 L'Enfant Plaza East SW., 6th Floor, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: David Tochen, General Counsel, (202) 314–6080.

SUPPLEMENTARY INFORMATION:

I. Background

On June 25, 2012, the NTSB published a notice indicating its intent to undertake a review of all NTSB regulations to ensure they are updated. 77 FR 37865. The NTSB initiated this review in accordance with Executive Order 13579, ''Regulation and Independent Regulatory Agencies'' (76 FR 41587, July 14, 2011). The purpose of Executive Order 13579 is to ensure all agencies adhere to the key principles found in Executive Order 13563, ''Improving Regulation and Regulatory Review'' (76 FR 3821, January 21, 2011), which include promoting public participation in rulemaking, improving integration and innovation, promoting flexibility and freedom of choice, and ensuring scientific integrity during the rulemaking process in order to create a regulatory system that protects public health, welfare, safety, and the environment while promoting economic growth, innovation, competitiveness, and job creation. The NTSB explained in its June 25, 2012, notice that it is committed to ensuring its regulations remain updated and comply with these principles.

The NTSB's notice concerning its plan for reviewing all NTSB regulations indicated the NTSB would specifically conduct a comprehensive review of 49 CFR part 831, which describes the NTSB's investigative process. The NTSB completed this review and published an NPRM proposing various changes to part 831 on August 12, 2014. 79 FR 47064.

The NTSB published an additional notice in the **Federal Register** on January 8, 2013, describing the NTSB's plan for updating all regulations. 78 FR 1193. In accordance with these two notices published in the **Federal Register**, the NTSB reviewed all sections within 49 CFR part 845, in the interest of ensuring they accomplish the objectives stated in Executive Order 13563. The NTSB publishes this NPRM in accordance with the NTSB's plan.

II. Description of Changes

The NTSB proposes reorganizing 49 CFR part 845 and adding two new sections to describe Board meetings concerning NTSB products. The current version of part 845 consists of three general sections (titled ''Applicability,'' ''Nature of hearing,'' and ''Sessions open to the public'') followed by four subparts (titled ''Initial procedure,'' ''Conduct of hearing,'' ''Board reports,'' and ''Public record''). The NTSB carefully has reviewed part 845 and determined the current format could be improved for clarity and ease of understanding. In addition, part 845 does not discuss Board meetings concerning investigations and NTSB products, even though meetings concerning such topics are a key component of the Board's work and provide transparency in agency activities and operations. Therefore, the NTSB proposes organizing part 845 into three subparts, titled ''Investigative hearings,'' ''Meetings,'' and ''Reports.''

Subject to a number of proposed changes, this NPRM would maintain most of the text from the existing sections addressing investigative hearings, which are currently codified at sections 845.2 (''Nature of hearing''), 845.3 (''Sessions open to the public''), 845.10 (''Determination to hold hearing''), 845.11 (''Board of inquiry''), 845.12 (''Notice of hearing''), 845.13 (''Designation of parties''), 845.20 (''Powers of chairman of board of inquiry''), 845.21 (''Hearing officer''), 845.22 (''Technical panel''), 845.23 (''Prehearing conference''), 845.24 (''Right of representation''), 845.25 (''Examination of witnesses''), 845.26 (''Evidence''), 845.27 (''Proposed findings''), 845.28 (''Stenographic transcript''), and 845.29 (''Payment of witnesses''). The NTSB suggests changes to the text of these sections, which include changing terminology to describe transportation events and substituting ''NTSB'' in place of the term ''Board,'' unless the term ''Board'' refers to the statutorily appointed members of the Board. The NTSB also proposes numbering these sections sequentially within the proposed subpart addressing investigative hearings.

In order to ensure the initial sections of part 845 are clear, the NTSB proposes removing the term ''formal issues'' from § 845.2, which currently states (in part), ''[s]uch hearings are fact-finding proceedings with no formal issues and no adverse parties . . .'' The term ''formal issues'' is not a legal term of art, and is not defined in NTSB regulations. The NTSB does not believe the inclusion of this term in § 845.2 is necessary. In addition, the NTSB proposes reorganizing the text of § 845.2 to explain the purpose of an investigative hearing is to develop further the facts, conditions, and circumstances of the transportation event. The NTSB also proposes including text stating investigative hearings are not conducted for the purpose of determining the rights or liabilities of any person. The NTSB proposes this language because, in recent years, witnesses and parties who attend investigative hearings have been involved in ongoing litigation relating to the subject of a hearing with greater frequency or may become involved in litigation. In this section, the NTSB seeks to emphasize the purpose of investigative hearings is to obtain accurate, complete, and well-documented factual information related to NTSB investigations.[1]

In addition, the NTSB proposes removing a sentence from the existing version of 845.11 (''Board of inquiry''), which currently states, ''[a]ssignment of a Member to serve as the chairman of each board of inquiry shall be determined by the Board.'' The NTSB believes such assignments are internal agency procedures. As a result, the agency does not believe it is necessary to codify a procedure specifying how the Board might assign a Member to serve as the chairman of each board of inquiry. The NTSB will handle such assignments via Board policies.

As a point of clarification, the NTSB notes it does not suggest changes to the text of proposed section § 845.15 (''Payment of witnesses''); this text is duplicative of the existing text of § 845.29. However, the NTSB notes its practice is to pay witnesses who would not attend if the agency did not pay the travel expenses associated with attendance. In addition, we note the Invitational Travel statute, codified at 5 U.S.C. 5703, allows the NTSB to reimburse a speaker or witness if the person is providing a direct service to the agency for which he or she is not receiving any compensation.

Regarding the proposed new subpart addressing Board meetings, the NTSB proposes two new sections. The first section, to be codified at 845.20 (''Meetings''), states the Board may hold a meeting when the Board determines such a meeting is in the public interest.

The NTSB also proposes adding § 845.21 (''Symposiums, forums, and conferences'') to apply some of the provisions of § 845.20 to symposiums, forums, and conferences. The NTSB proposes three paragraphs within the new § 845.21, the first of which will provide definitions for these three types of proceedings. The NTSB proposes adding within paragraph (a) of § 845.21 the statement, ''these proceedings are related to transportation safety matters and will be convened for the purpose of focusing attention, raising awareness, encouraging dialogue, educating the NTSB, or generally advancing or developing safety recommendations.'' This proposed version of paragraph (a)(2) will also state the ''goals of the proceeding will be clearly articulated and outlined, and will be consistent with the mission of the NTSB.'' The NTSB also proposes adding paragraph (b) within § 845.21, to clarify a quorum of the Board is not required to participate in symposiums, forums, or conferences.

Also in paragraph (b), the NTSB proposes adding a statement that symposiums, forums, and conferences are not intended to be used as a means to obtain evidence or establish facts for a particular NTSB investigation. The NTSB expects this language will provide clarity to potential participants or people who are interested in attending an NTSB symposium, forum, or conference. The proposed language also provides the proceedings may have a relationship to previous, ongoing, or future investigative activities, the purpose of which is to provide supporting and collaborative information, but not to obtain direct evidence for a specific investigation.

Following paragraph (b), the NTSB proposes paragraph (c), which simply states participation in a symposium, forum, or conference is voluntary. This statement will clarify the NTSB will not issue a subpoena for attendance at such proceedings. The paragraphs within § 845.21 will function to educate the public and the transportation community that the NTSB may hold forums, symposiums, and conferences, to fulfill Congress's intent of ensuring NTSB staff and Board Members remain educated and adhere to a well-rounded approach for improving transportation safety in a variety of ways.

In the new subpart C of part 845 (''Reports''), the NTSB proposes keeping the text of existing §§ 845.40 (currently titled ''Accident report''), 845.41 (''Petitions for reconsideration or modification''), 845.50 (''Public dockets''), and 845.51 (''Investigation to remain open'') largely unchanged, but updating the terminology in these sections, and re-codifying them with

[1] Part 845 does not apply to oral arguments before the Board under 49 CFR part 821, which governs appeals of aviation certificate enforcement actions.

sequential numbers beginning at § 845.30.

In § 845.30, to be titled, ''Board products,'' the NTSB proposes maintaining essentially unchanged within paragraph (a) the text currently in § 845.40(a), which describes reports. The NTSB proposes adding language to § 845.30(a)(2) pointing out the Board, consistent with longstanding agency process and procedure, allows the appropriate office director to issue a brief, which will include the probable cause and relevant facts, conditions, and circumstances concerning the event investigated. The Board has delegated to office directors the authority to issue such determinations in 49 CFR 800.25. Section 845.30(a)(2), as proposed, includes a description of ''brief'' as a document that includes the probable cause and relevant facts, conditions, and circumstances. The proposed language includes a citation to § 800.25, which provides office directors the authority to determine the probable cause by issuing such briefs. In addition, the NTSB proposes adding a new paragraph to § 845.30 to describe safety recommendations, which the Board may adopt and issue as a stand-alone Board product outside the context of a specific report or other type of Board product.

The NTSB proposes including the section discussing public dockets immediately following the section describing reports and briefs, as NTSB public dockets contain information supporting the statements in reports and briefs. Within § 845.31, the NTSB proposes only a few minor changes, such as including a reference to the definition of ''public docket'' in § 801.3 of this chapter, and removing the term ''accident,'' to ensure consistency with the NTSB's Notice of Proposed Rulemaking for changes to 49 CFR part 831.[2] The NTSB also proposes updating paragraph (c), which advises the public of how it might access material in the public docket. The NTSB places public dockets on its Web page at *www.ntsb.gov,* to allow the public to download them free of charge. Therefore, the NTSB proposes adding its Web site link to § 845.31(c).

The NTSB proposes moving the section currently located at 49 CFR 845.41 (''Petitions for reconsideration or modification'') to § 845.32. The NTSB also proposes organizing this section with headings for each paragraph, to ensure the public and interested parties can easily follow it. The first proposed heading will be titled ''requirements,'' and will state the requirements applicable to submissions of petitions for reconsideration or modification currently listed in scattered places within § 845.41. Therefore, the ''requirements'' paragraph (§ 845.32(a)) will state only individuals or entities having a ''direct interest'' in the investigation may submit petitions. The paragraph will also require petitions be in writing and be based on the discovery of new evidence or a showing the Board's findings were erroneous.

The NTSB proposes titling the second paragraph as ''acceptance of petitions,'' which will include some of the same text as is currently located in § 845.41. The NTSB, however, proposes to delete the statement the Board will not consider petitions filed by an individual or entity who could have submitted proposed findings, as described in the current version of § 845.27. Individuals and entities have interpreted § 845.41 to mean they cannot submit a petition for reconsideration. Under the current text, if the individual or entity failed to submit a comment, the individual or entity would ostensibly waive the right to petition the Board for reconsideration. However, the NTSB is unlikely to prohibit such an individual or entity from later filing a petition for reconsideration. As a result, in the proposed version of § 845.13, the NTSB removes the statement that it will not consider petitions for reconsideration from an individual or entity who could have submitted proposed findings.

The NTSB also proposes retaining the requirement that any individual or entity filing a petition for reconsideration or modification submit with its petition proof it served the petition on all parties to the investigation or investigative hearing. The paragraph will also include the deadline of 90 days, within which interested individuals or entities may file comments to the petition. These provisions within the ''proof of service'' paragraph are currently located at 49 CFR 845.41(b) of the NTSB's regulations.

Lastly, the NTSB proposes titling § 845.32(d) ''oral presentation.'' The current version of § 845.41(c) includes the same provisions as this new paragraph, but dividing it into two portions, the first of which states oral presentation will not normally be a part of the proceedings within part 845, and the second of which states the Board, upon granting a request for an oral presentation, will specify which issues will be addressed at the presentation. The NTSB believes dividing this paragraph into two numbered sentences, as well as using the term ''party or interested person,'' will provide greater clarity.

The NTSB proposes moving § 845.51 (''Investigation to remain open'') to § 845.33. The NTSB plans to retain the title ''investigation to remain open,'' with the addition of the word ''event.''

III. Regulatory Analysis

This NPRM is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of the potential costs and benefits under section 6(a)(3) of that Order. As such, the Office of Management and Budget has not reviewed this proposed rule under Executive Order 12866. Likewise, this proposed rule does not require an analysis under the Unfunded Mandates Reform Act, 2 U.S.C. 1501–1571, or the National Environmental Policy Act, 42 U.S.C. 4321–4347.

In addition, the NTSB has considered whether this NPRM would have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act (5 U.S.C. 601–612). The NTSB certifies under 5 U.S.C. 605(b) that this NPRM would not have a significant economic impact on a substantial number of small entities. Moreover, in accordance with 5 U.S.C. 605(b), the NTSB will submit this certification to the Chief Counsel for Advocacy at the Small Business Administration. Moreover, the NTSB does not anticipate this NPRM will have a substantial, direct effect on state or local governments or will preempt state law; as such, this NPRM does not have implications for federalism under Executive Order 13132, Federalism. This NPRM also complies with all applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. In addition, the NTSB has evaluated this NPRM under: Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights; Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks; Executive Order 13175, Consultation and Coordination with Indian Tribal Governments; Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use; and the National Technology Transfer and Advancement Act, 15 U.S.C. 272 note. The NTSB has concluded that this NPRM does not contravene any of the

[2] 79 FR 47064 (Aug. 12, 2014). The NPRM concerning proposed changes to 49 CFR part 831 explained the NTSB's proposal to modify its terminology within its regulations by utilizing the term ''event,'' and, in some sections, other descriptive terms. *Id.* at 47065.

requirements set forth in these Executive Orders or statutes, nor does this NPRM prompt further consideration with regard to such requirements.

The NTSB invites comments relating to any of the foregoing determinations and notes the most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data.

List of Subjects in 49 CFR Part 845

Administrative practice and procedure, Investigations, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons discussed in the preamble, the NTSB proposes to amend 49 CFR part 845 as follows:

Title 49—Transportation

PART 845—RULES OF PRACTICE IN TRANSPORTATION: INVESTIGATIVE HEARINGS; MEETINGS; AND REPORTS; PETITIONS FOR RECONSIDERATION

■ 1. The authority citation for 49 CFR part 845 is revised to read as follows:

Authority: Sec. 515, Pub. L. 106–554, App. C, 114 Stat. 2763, 2763A–153 (44 U.S.C. 3516 note); 49 U.S.C. 1112, 1113(f), 1116, 1131, unless otherwise noted.

■ 2. Revise part 845 to read as follows:

PART 845—RULES OF PRACTICE IN TRANSPORTATION: INVESTIGATIVE HEARINGS; MEETINGS; AND REPORTS; PETITIONS FOR RECONSIDERATION

§ 845.1 Applicability.

Unless otherwise specifically ordered by the National Transportation Safety Board (NTSB), the provisions of this part shall govern all NTSB proceedings conducted under the authority of 49 U.S.C. 1113 and 1131, and reports issued by the Board.

Subpart A—Investigative Hearings

§ 845.2 Investigative hearings.

Investigative hearings are convened to assist the NTSB in further developing the facts, conditions, and circumstances of the transportation event, which will ultimately assist the Board in determining the cause or probable cause of the event, and in ascertaining measures that will tend to prevent such events and promote transportation safety. Investigative hearings are fact-finding proceedings with no adverse parties. They are not subject to the provisions of the Administrative Procedure Act (5 U.S.C. 554), and are not conducted for the purpose of determining the rights, liabilities, or blame of any person or entity.

§ 845.3 Sessions open to the public.

(a) All investigative hearings shall normally be open to the public. However, no person shall be allowed at any time to interfere with the proper and orderly functioning of the hearing.

(b) Sessions shall not be open to the public when evidence of a classified nature or which affects national security is to be received.

§ 845.4 Determination to hold hearing.

(a) The Board may order an investigative hearing as part of an investigation whenever a hearing is deemed necessary in the public interest.

(b) If a quorum of the Board is not immediately available, the determination to hold an investigative hearing may be made by the Chairman of the Board.

§ 845.5 Board of inquiry.

(a) *Composition of board of inquiry.* The board of inquiry shall consist of a chairman of the board of inquiry, as specified in paragraph (c) of this section, and other members in accordance with Board policy.

(b) *Duties of board of inquiry.* The board of inquiry shall examine witnesses and secure, in the form of a public record, facts pertaining to the event under investigation and surrounding circumstances and conditions from which the Board may determine probable cause and may formulate recommendations and/or other documents for corrective or preventative action.

(c) *Chairman of board of inquiry.*

(1) The NTSB will provide notice of the time and place of the investigative hearing to all known interested persons.

(2) The chairman of the board of inquiry, or his or her designee, shall have the following powers:

(A) To designate parties to the investigative hearing and revoke such designations;

(B) To open, continue, or adjourn the investigative hearing;

(C) To determine the admissibility of and to receive evidence and to regulate the course of the investigative hearing;

(D) To dispose of procedural requests or similar matters; and

(E) To take any other appropriate action to ensure the orderly conduct of the investigative hearing.

§ 845.6 Designation of parties.

(a) The chairman of the board of inquiry shall designate as parties to the investigative hearing those persons and organizations whose participation in the hearing is deemed necessary in the public interest and whose special knowledge will contribute to the development of pertinent evidence. Parties to the investigative hearing shall be represented by suitable representatives who do not occupy legal positions.

(b) No party to the investigation and/or investigative hearing shall be represented by any person who also represents claimants or insurers. Failure to comply with this provision shall result in loss of status as a party to the investigative hearing.

§ 845.7 Hearing officer.

The investigative hearing officer, upon designation by the NTSB Chairman, shall have the following powers:

(a) To give notice concerning the time and place of investigative hearing;

(b) To administer oaths and affirmations to witnesses; and

(c) To issue subpoenas requiring the attendance and testimony of witnesses and production of documents. The investigative hearing officer may, in consultation with the chairman of the board of inquiry and the Managing Director, add witnesses until the time of the prehearing conference.

§ 845.8 Technical panel.

The appropriate office director(s) and/or the hearing officer, in consultation

with the NTSB Managing Director, shall determine if a technical panel is needed and, if so, shall designate members of the NTSB technical staff to participate in the investigative hearing. Members of the technical panel may conduct pre-screening of witnesses through interviews, and may take other actions to prepare for the hearing. At the hearing, the technical panel will initially examine the witnesses through questioning. The technical panel shall examine witnesses and secure, in the form of a public record, facts pertaining to the event under investigation and surrounding circumstances and conditions.

§ 845.9 Prehearing conference.

(a) Except as provided in paragraph (d) of this section, the chairman of the board of inquiry shall hold a prehearing conference with the parties to the investigative hearing at a convenient time and place prior to the hearing. At the prehearing conference, the parties shall be advised of the witnesses to be called at the investigative hearing, the areas in which they will be examined, and the exhibits that will be offered in evidence.

(b) At the prehearing conference, parties to the investigative hearing shall submit copies of any additional documentary exhibits they desire to offer for admission at the hearing.

(c) A party to the investigative hearing who, at the time of the prehearing conference, fails to advise the chairman of the board of inquiry of additional exhibits he or she intends to submit, or additional witnesses he or she desires to examine, shall be prohibited from introducing such evidence unless the chairman of the board of inquiry determines for good cause shown that such evidence should be admitted.

(d) *Expedited hearings.* The board of inquiry may hold an investigative hearing on an expedited schedule. The chairman of the board of inquiry may hold a prehearing conference for an expedited investigative hearing. When an expedited investigative hearing is held, the chairman of the board of inquiry may waive the requirements in paragraphs (b) and (c) of this section concerning the identification of witnesses, exhibits or other evidence.

§ 845.10 Right of representation.

Any person who appears to testify at an investigative hearing has the right to be accompanied, represented, or advised by counsel or by any other representative.

§ 845.11 Examination of witnesses.

(a) *Examination.* In general, the technical panel shall initially examine witnesses. Following such examination, parties to the investigative hearing shall be given the opportunity to examine such witnesses. The board of inquiry shall then conclude the examination following the parties' questions.

(b) *Objections.*

(1) Materiality, relevancy, and competency of witness testimony, exhibits, or physical evidence shall not be the subject of objections in the legal sense by a party to the investigative hearing or any other person.

(2) Such matters shall be controlled by rulings of the chairman of the board of inquiry on his or her own motion. If the examination of a witness by a party to the investigative hearing is interrupted by a ruling of the chairman of the board of inquiry, the party shall have the opportunity to show materiality, relevancy, or competency of the testimony or evidence sought to be elicited from the witness.

§ 845.12 Evidence.

In accordance with § 845.2, the chairman of the board of inquiry shall receive all testimony and evidence that may be of aid in determining the probable cause of the transportation event. He or she may exclude any testimony or exhibits that are not pertinent to the investigation or are merely cumulative.

§ 845.13 Proposed findings.

Following the investigative hearing, any party to the hearing may submit proposed findings to be drawn from the testimony and exhibits, a proposed probable cause, and proposed safety recommendations designed to prevent future events. The proposals shall be submitted within the time specified by the investigative hearing officer at the close of the hearing, and shall be made a part of the public docket. Parties to the investigative hearing shall serve copies of their proposals on all other parties to the hearing.

§ 845.14 Transcript.

A verbatim report of the investigative hearing shall be taken. Any interested person may obtain copies of the transcript from the NTSB or from the court reporting firm preparing the transcript upon payment of the fees fixed therefor. (See part 801, subpart G, Fee schedule.)

§ 845.15 Payment of witnesses.

Any witness subpoenaed to attend the investigative hearing under this part shall be paid such fees for travel and attendance for which the hearing officer shall certify.

Subpart B—Meetings

§ 845.20 Meetings.

The Board may hold a meeting concerning an investigation or Board product, as described in § 804.3 of this chapter or any other circumstance, when the Board determines holding a meeting is in the public interest.

§ 845.21 Symposiums, forums, and conferences.

(a)(1) *Definitions.* (i) A symposium is a public proceeding focused on a specific topic, where invited participants provide presentations of their research, views or expertise on the topic and are available for questions.

(ii) A forum is a public proceeding generally organized in a question-and-answer format with various invited participants who may make presentation and are available for questioning by the Board or designated NTSB staff as individuals in a panel format.

(iii) A conference is a large, organized proceeding where individuals present materials, and a moderator or chairperson facilitates group discussions.

(2) These proceedings are related to transportation safety matters and will be convened for the purpose of focusing attention, raising awareness, encouraging dialogue, educating the NTSB, or generally advancing or developing safety recommendations. The goals of the proceeding will be clearly articulated and outlined, and will be consistent with the mission of the NTSB.

(b) A quorum of Board Members is not required to attend a forum, symposium, or conference. All three types of proceedings described in paragraph (a) of this section may have a relationship to previous or ongoing investigative activities; however, their purpose is not to obtain evidence for a specific investigation.

(c) Symposiums, forums, and conferences are voluntary for all invited participants.

Subpart C—Miscellaneous Provisions

§ 845.30 Board products.

(a) *Reports of investigations.* (1) The Board will adopt a report on the investigation. The report will set forth the relevant facts, conditions and circumstances relating to the event and the probable cause thereof, along with any appropriate safety recommendations and/or safety alerts formulated on the basis of the

investigation. The scope and format of the report will be determined in accordance with Board procedures.

(2) The probable cause and facts, conditions, and circumstances of other events will be reported in a manner and form prescribed by the Board. The NTSB allows the appropriate office director, under his or her delegated authority as described in § 800.25 of this chapter, to issue a ''brief,'' which includes the probable cause and relevant facts, conditions, and circumstances concerning the event. In particular circumstances, the Board in its discretion may choose to approve a brief. Such briefs do not include recommendations.

(b) *NTSB studies and reports.* (1) The NTSB may issue reports describing investigations of more than one event that share commonalities. Such reports are similar to event investigation reports, as described in paragraph (a)(1) of this section. Such reports often include safety recommendations and/or safety alerts, which the Board adopts.

(2) Safety studies and reports. The NTSB issues safety studies and reports, which usually examine safety concerns that require the investigation of a number of related events to determine the extent and severity of the safety issues. Such studies and reports often include safety recommendations and/or safety alerts, which the Board adopts.

(c) *Safety recommendations.* The Board may adopt and issue safety recommendations, either as part of a Board report or as a stand-alone Board product.

§ 845.31 Public docket.

(a) *Investigations.* (1) As described in § 801.3 of this chapter, the public docket shall include factual information concerning the event. Proposed findings submitted pursuant to §§ 831.14 or 845.13 and petitions for reconsideration and modification submitted pursuant to § 845.32, comments thereon by other parties, and the Board's rulings on proposed findings and petitions shall also be placed in the public docket.

(2) The NTSB shall establish the public docket following the event, and material shall be added thereto as it becomes available. Where an investigative hearing is held, the exhibits will be introduced into the record at the hearing and will be included in the public docket.

(b) *Other Board reports and documents.* The NTSB may elect to open and place materials in a public docket concerning a safety study or report, special investigation report, or other agency product. The NTSB will establish the public docket following its issuance of the study or report.

(c) *Availability.* The public docket shall be made available to any person for review, as described in § 801.30 of this chapter. Records within the public docket are available at *www.ntsb.gov.*

§ 845.32 Petitions for reconsideration or modification of report.

(a) *Requirements.* (1) The Board will only consider petitions for reconsideration or modification of findings and determination of probable cause from a party or other person having a direct interest in an investigation.

(2) Petitions must be in writing and addressed to the NTSB Chairman. Please send your petition via email to *correspondence@ntsb.gov.* In the alternative, you may send your petition via postal mail to: NTSB Headquarters at 490 L'Enfant Plaza SW., Washington, DC 20594.

(3) Petitions must be based on the discovery of new evidence or on a showing that the Board's findings are erroneous.

(i) Petitions based on the discovery of new matter shall: identify the new matter; contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable; and state why the new matter was not available prior to Board's adoption of its findings. (ii) Petitions based on a claim of erroneous findings shall set forth in detail the grounds upon which the claim is based.

(b) *Acceptance of petitions.* The Board will not consider petitions that are repetitious of proposed findings submitted pursuant to § 845.13, or of positions previously advanced.

(c) *Proof of service.* (1) When a petition for reconsideration or modification is filed with the Board, copies of the petition and any supporting documentation shall be served on all other parties to the investigation or investigative hearing and proof of service shall be attached to the petition. (2) Any party served with a copy of the petition may file comments no later than 90 days after service of the petition.

(d) *Oral presentation.* Oral presentation normally will not form a part of proceedings under this section. However, oral presentation may be permitted where a party or interested person specifically shows the written petition for reconsideration or modification is an insufficient means by which to present the party's or person's position.

§ 845.33 Investigation to remain open.

The Board never officially closes, but provides for the submission of new and pertinent evidence by any interested person. If the Board finds such evidence is relevant and probative, the evidence shall be made a part of the public docket and, where appropriate, the Board will provide parties an opportunity to examine such evidence and to comment thereon.

Christopher A. Hart,

Acting Chairman.

[FR Doc. 2015–06187 Filed 3–18–15; 8:45 am]

BILLING CODE 7533–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2014–0065; 4500030114]

RIN 1018–BA03

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Black Pinesnake; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; correction.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), published a proposed rule in the **Federal Register** on March 11, 2015, to designate critical habitat for the black pinesnake (*Pituophis melanoleucus lodingi*) under the Endangered Species Act of 1973, as amended (Act). In that proposed rule, we provided the wrong address for the submission of hard-copy comments. With this document, we correct our error.

DATES: We will accept comments on the March 11, 2015 (80 FR 12846), proposed rule that are received or postmarked on or before May 11, 2015.

ADDRESSES: You may submit comments on the March 11, 2015, proposed rule by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2014–0065, which is the docket number for this rulemaking. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2014–0065; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service, MS: BPHC; 5275

Leesburg Pike; Falls Church, VA 22041–3803.

We request that you send comments only by one of the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (for more information, see the Information Requested section of the March 11, 2015, proposed rule at 80 FR 12846).

FOR FURTHER INFORMATION CONTACT: Stephen Ricks, Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Field Office, 6578 Dogwood View Parkway, Jackson, MS 39213; telephone: 601–321–1122; facsimile: 601–965–4340. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: In a proposed rule that published in the **Federal Register** on March 11, 2015, at 80 FR 12846, the **ADDRESSES** section provided the wrong address for the submission of hard-copy comments. The corrected **ADDRESSES** section appears above.

Dated: March 16, 2015.

Tina A. Campbell,

Chief, Division of Policy, Performance, and Management Programs, U.S Fish and Wildlife Service.

[FR Doc. 2015–06302 Filed 3–18–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

RIN 0648–BE53

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Seismic Surveys in Cook Inlet, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On February 23, 2015, the NMFS published its proposed rulemaking to govern the take of marine mammals, by harassment, incidental to conducting a marine geophysical (seismic) survey in Cook Inlet, Alaska from March 1, 2015 to February 29, 2020. The **Federal Register** document indicated that written comments are due by March 25, 2015. However, in response to a request to extend the public comment period, NMFS has decided to extend the public comment period by an additional 15 calendar days.

DATES: NMFS has extended the public comment period published on February 23, 2015 (80 FR 9509) to April 9, 2015. NMFS must receive written comments and information on or before April 9, 2015.

ADDRESSES: Address comments on the application to Jolie Harrison, Supervisor, Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Young@noaa.gov.* Please include 0648–BE53 in the subject line. Comments sent via email to *ITP.Young@noaa.gov*, including all attachments, must not exceed a 25-megabyte file size. NMFS is not responsible for email comments sent to addresses other than the one provided here.

Instructions: All submitted comments are a part of the public record and NMFS will post them to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Sara Young, NMFS, Office of Protected Resources, NMFS (301) 427–8484.

SUPPLEMENTARY INFORMATION: Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

On February 23, 2015, NMFS published a **Federal Register** notice (80 FR 9509, February 23, 2015) announcing proposed issuance of regulations to Apache Alaska Corporation (Apache) to take marine mammals, by harassment incidental to conducting a seismic survey in Cook Inlet, Alaska March 1, 2015 through February 29, 2020. The 30-day public comment period for the **Federal Register** notice (80 FR 9509, February 23, 2015) ends on March 25, 2015.

This is the first time that NMFS has proposed to issue regulations for harassment incidental to a seismic survey in Cook Inlet, Alaska.

On March 2, 2015, the Natural Resource Defense Council requested an extension of the public comment period to aid in their review of the proposed rulemaking. NMFS has considered the request and will extend the comment period to April 9, 2015. This extension provides a total of 45 days for public input and continuing Federal agency reviews to inform NMFS' final decision to issue or deny the regulations.

NMFS refers the reader to the February 23, 2015, notice of proposed regulations (80 FR 9509, February 23, 2015) for background information concerning the proposed rulemaking as this notice does not repeat the information here. For additional information about Apache's request and the environmental analyses, please visit the Web site at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

Dated: March 11, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2015–06342 Filed 3–18–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 150122067–5229–01]

RIN 0648–BE83

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations implementing the Atlantic Large Whale Take Reduction Plan. This action proposes to change the minimum number of traps per trawl to allow fishing with a single trap in certain Massachusetts and Rhode Island state

waters; and proposes to modify the requirement to use one endline on trawls within certain areas in Massachusetts state waters. NMFS also proposes a ¼ mile buffer in waters surrounding certain islands in Maine to allow fishing with a single trap. In addition, NMFS proposes additional gear marking requirements for those waters allowing single traps as well as two new high use areas for humpback whales (*Megaptera novaeangliae*) and North Atlantic right whales (*Eubalaena glacialis*).

DATES: Submit comments on or before April 20, 2015.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2015–0127, by either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0127*,

2. Click the ''Comment Now!'' icon, complete the required fields,

3. Enter or attach your comments.

• *Mail:* Submit written comments to Kim Damon-Randall, Assistant Regional Administrator for Protected Resources, NMFS Greater Atlantic Region, 55 Great Republic Dr., Gloucester, MA 01930, Attn: Large Whale Proposed Rule.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Kate Swails, NMFS Greater Atlantic Regional Fisheries Office, 978–282–8481, *Kate.Swails@noaa.gov;* or, Kristy Long, NMFS Office of Protected Resources, 206–526–4792, *Kristy.Long@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the Plan and the take reduction planning process can be downloaded from the Plan Web site at *http://www.greateratlantic.fisheries.noaa.gov/protected/whaletrp/index.html.* The complete text of the regulations implementing the Plan can be found in the Code of Federal Regulations (CFR) at 50 CFR 229.32 or downloaded from the Web site, along with a guide to the regulations. The draft Environmental Assessment for this action is also available online.

Background

NMFS published an amendment to the Atlantic Large Whale Take Reduction Plan (Plan) on June 27, 2014 (79 FR 36586) to address large whale entanglement risks associated with vertical line (or buoy lines) from commercial trap/pot fisheries. This amendment included gear modifications, gear setting requirements, a seasonal closure (Massachusetts Restricted Area) and gear marking for both the trap/pot and the gillnet fisheries.

In consultation with the Atlantic Large Whale Take Reduction Team (Team), we developed protocols for considering modifications or exemptions to the regulations implementing the Plan. Following these protocols, on August 18, 2014, the Massachusetts Division of Marine Fisheries (DMF) submitted a proposal to modify the Massachusetts Bay Restricted Area and exempted several areas from the gear setting requirements to address safety and economic concerns raised by their industry members.

The DMF proposal adequately addressed the protocols and criteria established by the Team for considering modifications or exemptions to the Plan's regulations enabling us to consult with the Team. We decided to address the modifications to the Massachusetts Restricted Area and the exemption of the minimum number of traps per trawl requirements separately, beginning with the Massachusetts Restricted Area. After discussions with the Team, NMFS published an amendment to the Plan on December 12, 2014 (79 FR 73848) changing the timing and size of the Massachusetts Restricted Area.

Along with the DMF proposal we also received proposals from other state partners requesting certain waters be exempt from the minimum number of traps per trawl requirements due to safety concerns. The conservation members of the Team also submitted a proposal in an effort to offset this potential increase in vertical lines should NMFS approve the proposed state exemptions. NMFS convened the team in January 2015 to discuss these proposals. At the conclusion of the January meeting, the Team, by near consensus, recommended that we amend the Plan as proposed by the states. The Team also recommended that the current gear marking scheme be updated to include unique marks for those fishing singles in the proposed exempted areas and a unique mark for both gillnets and trap/pots fished in Jeffreys Ledge and Jordan Basin. This recommendation forms the basis for the proposed alternative described below.

Changes Proposed to the Plan for Trap/Pot Gear

This action proposes to exempt Rhode Island state waters and portions of Massachusetts state waters from the minimum number of traps per trawl requirement and allow singles to be fished in certain state waters (see Figures 1 and 2, respectively). This exemption is based on safety and financial concerns raised by the industry. In addition, in Rhode Island state waters and portions of Massachusetts state waters (particularly in Southern Massachusetts waters) the co-occurrence of fishing effort and whale distribution is minimal. According to DMF along the Outer Cape there are dynamic tides and featureless substrate that dictate the use of single traps in this area. Massachusetts also has a student lobster permit that allows for permit holders to fish alone and with small boats. Single traps are used in this fishery and other inshore waters as a matter of safety.

In addition, those fishing in all Massachusetts state waters would be required to have one endline for trawls less than and equal to three traps. The current requirement of one endline for trawls less than or equal to five traps remains in place in all other management areas. Larger trawls (*i.e.,* > 5 traps/pots) will not be required to have only one endline.

An exemption from the minimum number of traps per trawl requirement is also proposed for a ¼ mile buffer in waters surrounding the following islands in Maine—Matinicus Island Group (Metinic, Small Green, Large Green, Seal, and Wooden Ball) and Isle of Shoals Island Group (Duck, Appledore, Cedar, and Smuttynose).

Boats within this ¼ mile buffer would be allowed to continue fishing single traps rather than multiple trap trawls due to safety issues since these waters are generally less than 30 fathoms deep with rocky edges and boats fishing close to shore areas are usually small. A similar exemption for the inhabited islands of Monhegan, Matinicus, and Ragged Islands was established in the June 2014 rule. The proposed islands in this rule have the same bottom habitat as the previously exempt islands and many residents from many island

communities fish around these islands. Similarly, the New Hampshire side of the Isle of Shoals group was also exempt from the minimum number of traps per trawl requirement in the June 2014 rule. Allowing the islands in the chain that fall on the Maine side of the border to have the same exemption would provide parity to fishermen using islands on both sides of the border. Maine Department of Marine Resources (ME DMR) estimates that the fishing effort within the proposed buffer areas is small (0.3% of total vertical lines in the Northeast), consists of around 20 fishermen and has peak use in the summer months. In addition, ME DMR is pursuing funding for aerial surveys that would determine the use of marine mammals in these coastal areas as well as document the gear density.

Changes Proposed to the Plan for Gear Marking

This action proposes to implement a gear marking scheme that builds off the current color combinations and the size and frequency of the current gear marking requirements. In an effort to learn if entanglements occur in these newly exempted areas, this action proposes to add a unique gear mark to those single vertical lines fished in the exempted areas of Rhode Island, Massachusetts, and Matinicus Island Group, Maine. Also, this action proposes unique trap/pot and gillnet gear marking in two important high use areas for both humpback and right whales—Jeffreys Ledge (Figure 3) and Jordan Basin (Figure 4). The mark must equal 12-inches (30.5 cm) in length and buoy lines must be marked three times (top, middle, bottom) with the appropriate unique color combination for that area.

NMFS proposes a phased-in implementation of the new gear marking. Industry would have 30 days from publication of the final rule to mark gear fished in the newly exempted areas and 90 days from publication of the final rule to mark gear in Jeffreys Ledge and Jordan Basin areas.

Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866. This proposed rule contains collection of information requirements subject to the Paperwork Reduction Act (PRA), specifically, the marking of fishing gear. The collection of information requirement was approved by OMB under control number (0648–0364). Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance and function of the agency, including: The practical utility of the information; the accuracy of the burden estimate; the opportunities to enhance the quality, utility, and clarity of the information to be collected; and the ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

This revision to the collection of information requirement applies to a total of 399 vessels. The estimated number of vessels affected by the overall gear marking provisions in the Plan is 4,008. The estimated number of those vessels affected only by the proposed amendment is 399. Model vessel types were developed for gillnet fisheries, lobster trap/pot fisheries, and other trap/pot fisheries. Total burden hours for all affected vessels in the Plan are 35,571 hours over three years or 11,857 hours per year. Total cost burden for all affected vessels in the Plan is $24,758 over three years or $8,253 per year. The total cost burden for those vessels affected by the proposed amendment is $3,450 over three years or $1,150 per year. For more information, please see the PRA submission associated with this rulemaking.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

As required by the Regulatory Flexibility Act, NMFS prepared an initial regulatory flexibility analysis (IRFA) for this proposed rule; a summary of the IRFA follows.

A description of the reasons why this action is being considered, its objectives, and the legal basis for this proposed action can be found in the Summary section and earlier in the Supplementary Information section of this proposed rule, and are not repeated here. This proposed rule would not duplicate, overlap, or conflict with any other federal rules.

The small entities affected by this proposed rule are commercial gillnet and trap/pot fishermen. The geographic range of the proposed rule is the Northeast Atlantic waters. By changing the minimum number of traps per trawl requirement to allow singles, in the lobster trap/pot fishery, there are potentially 182 vessels that would be affected. Additionally, in the other trap/pot fisheries, there are potentially 123 vessels that would be affected. All vessels are assumed to be small entities within the meaning of the Regulatory Flexibility Act.

Alternatives were evaluated using model vessels, each of which represents a group of vessels that share similar operating characteristics and would face similar requirements under a given regulatory alternative. Both an upper and lower bound of annual economic savings for lobster and other trap/pot were analyzed. A summary of analysis describing the potential range of savings resulting from allowing singles to be fished follows:

1. NMFS considered a ''no action'' or status quo alternative (Alternative 1) that would result in no changes to the current measures under the Plan and, as such, would result in no additional economic effects on the fishing industry.

2. *Alternative 2* would modify the Plan by allowing the use of single traps in Rhode Island state waters, in most Massachusetts state waters, and some waters around Maine Islands. This change would constitute an exemption to the minimum two-trap-per-trawl requirement specified for these areas under the 2014 vertical line rulemaking. Those who until now have fished singles in these areas would avoid the costs associated with converting their gear from singles to doubles, and would also avoid other possible costs, such as a loss in revenue due to a reduction in catch. The proposed action also revises gear marking requirements that would apply to vessels fishing in waters that would be exempt from trawling requirements, as well as to vessels fishing in two additional regions (Jordan Basin and Jeffreys Ledge). The changes would require the use of colors that would differentiate gear set in these areas from gear fished in other waters. NMFS has determined, however, that the marking requirements would introduce minimal additional burden for the affected vessels; thus, a substantial increase in compliance costs is unlikely. The proposed rule does not include any other reporting, recordkeeping, or compliance requirements.

Overall, the economic impacts of the preferred alternative results in a vessel cost savings that would equal or range from $163,200 to $345,700 for lobster trap/pot vessels and $257,000 to $512,500 for other trap/pot vessels when compared to the no action

alternative, resulting in a largely positive impact.

NMFS has determined that this action is consistent to the maximum extent practicable with the approved coastal management programs of Massachusetts. This determination was submitted for review by the responsible state agency under section 307 of the Coastal Zone Management Act.

This proposed rule contains policies with federalism implications as that term is defined in Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs will provide notice of the proposed action to the appropriate official(s) of affected state, local, and/or tribal governments.

BILLING CODE 3510–22–P

Figure 1. Proposed Rhode Island Exempted Waters

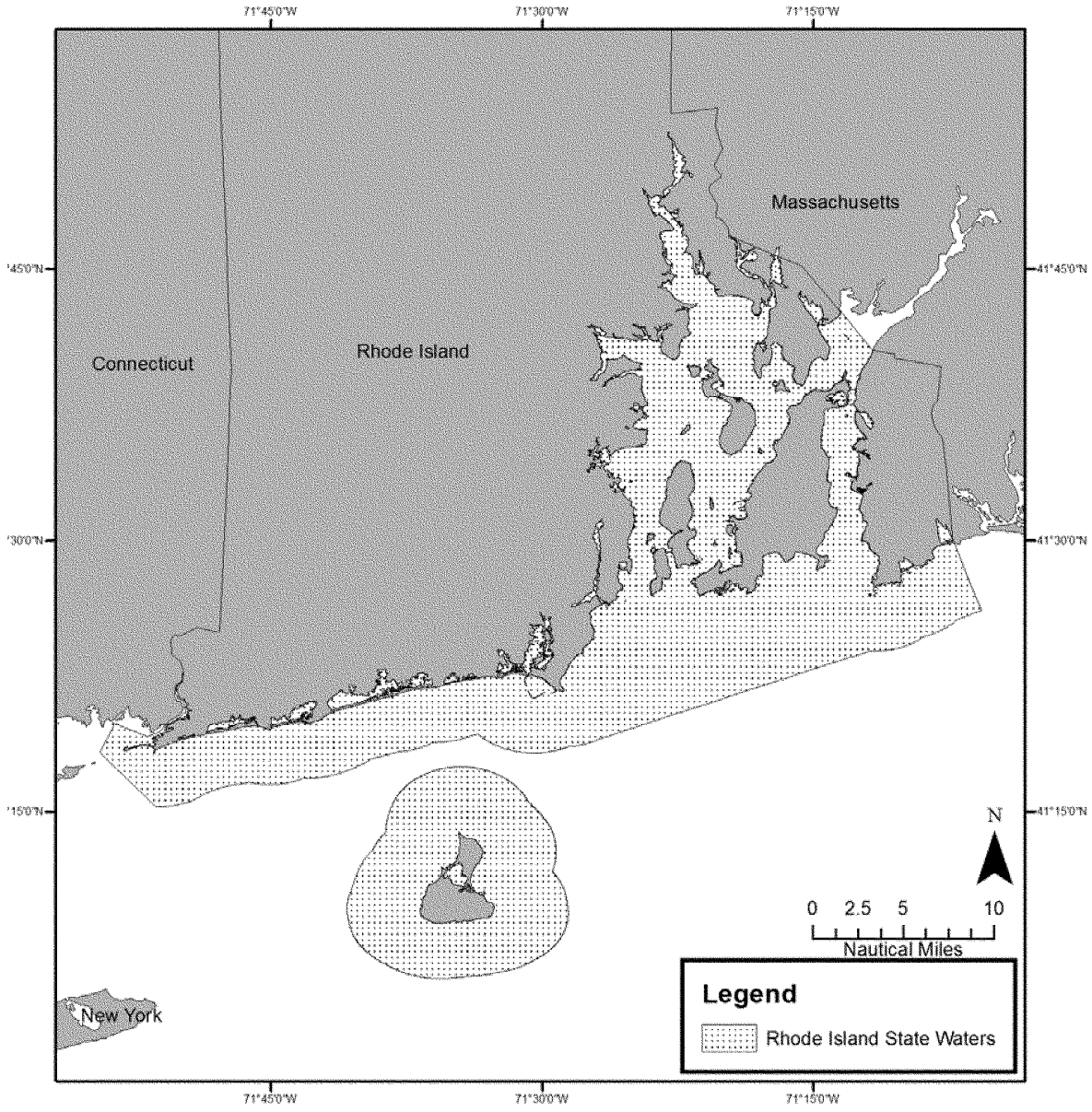


Figure 2. Proposed Massachusetts Exempted Waters

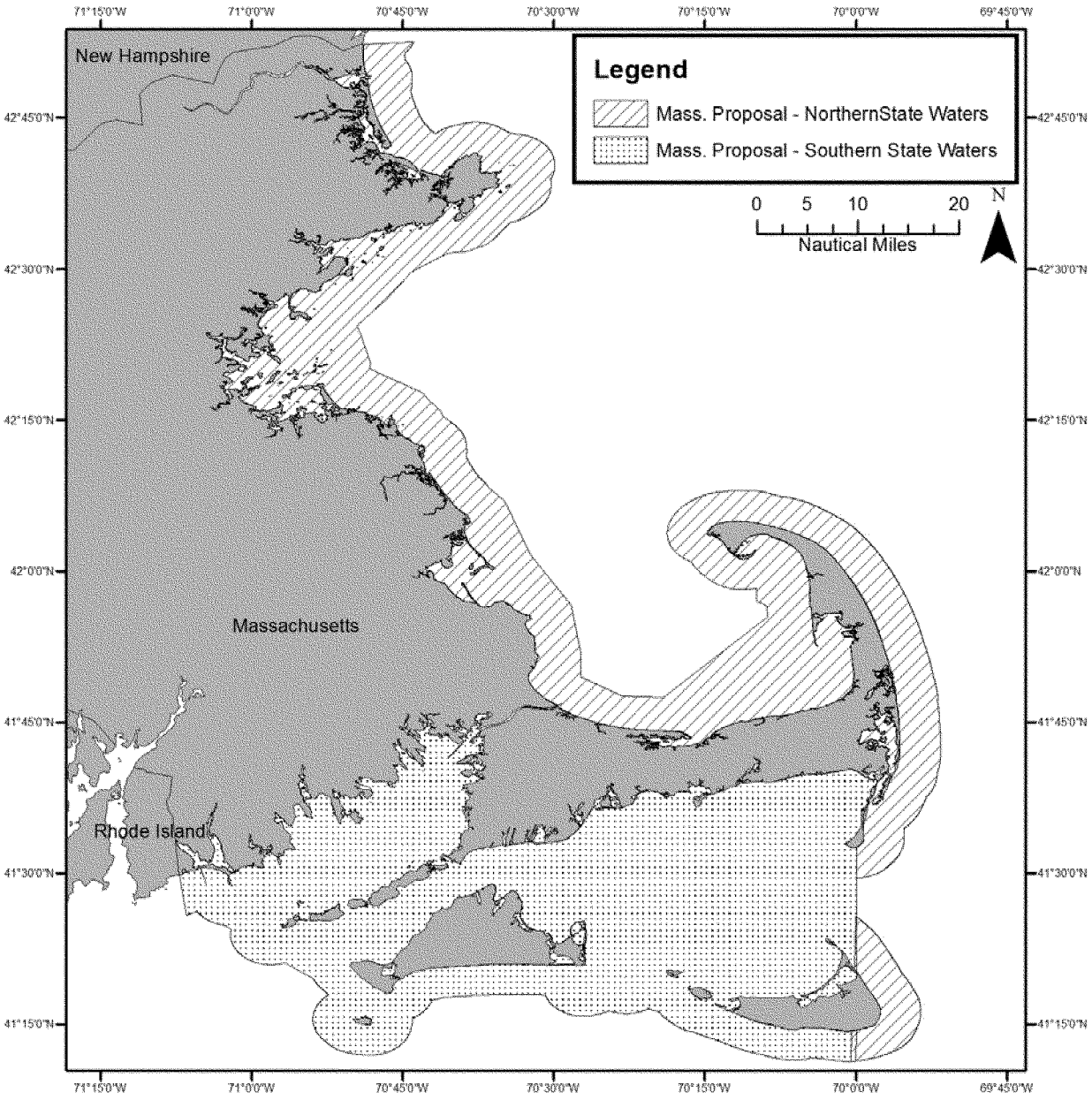


Figure 3. Proposed Jeffreys Ledge Area for Trap/Pot and Gillnet Gear Marking

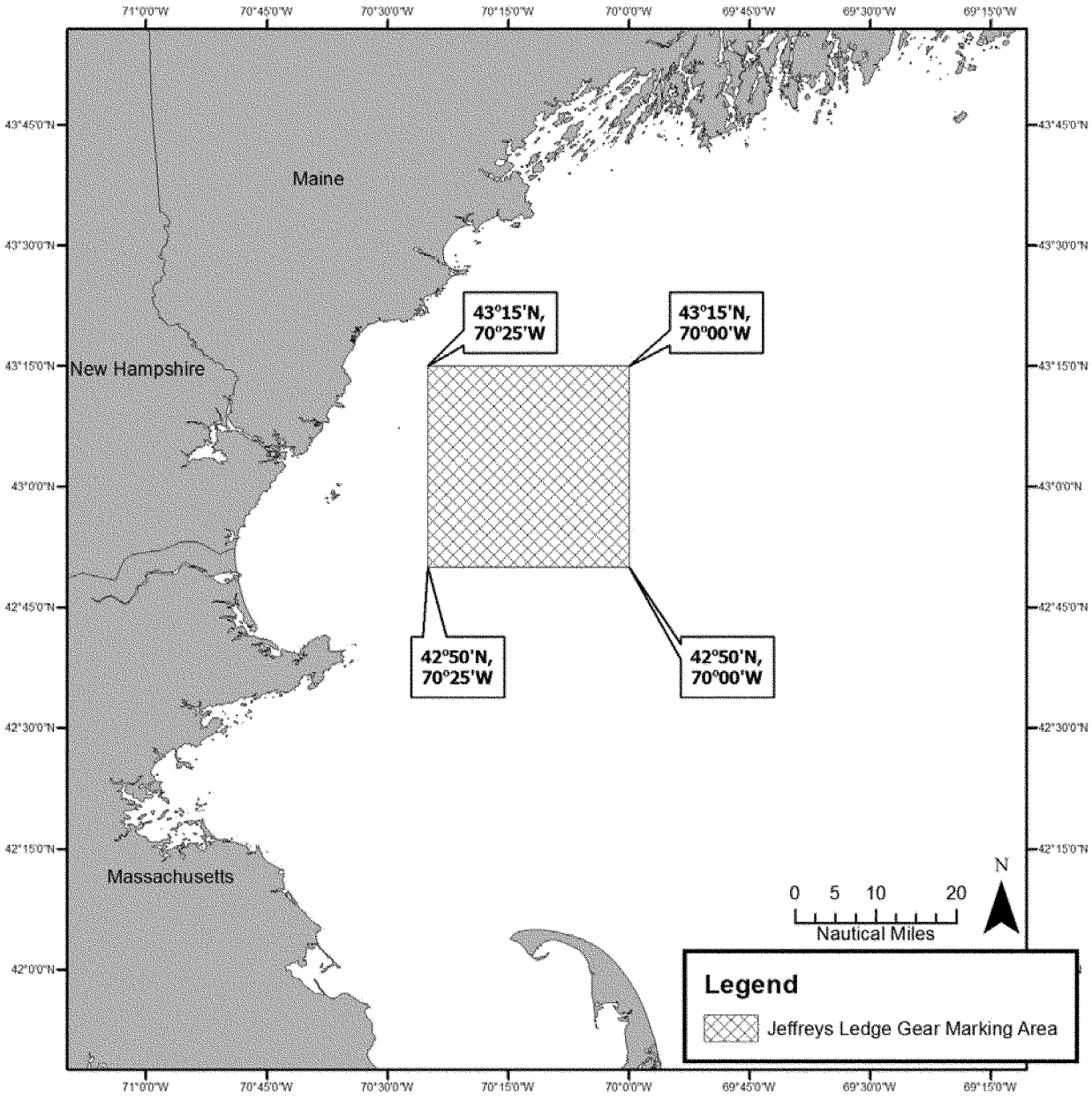
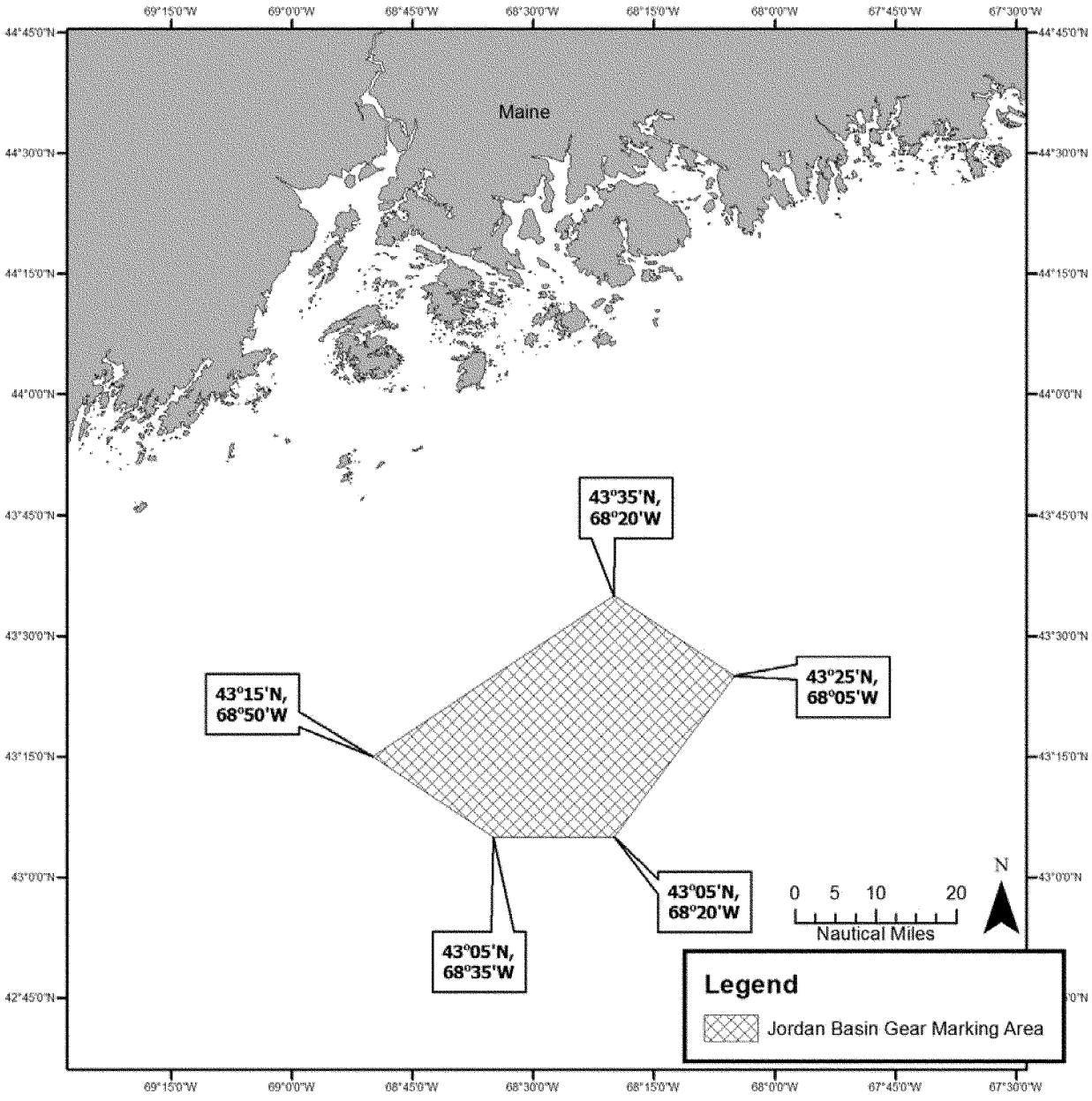


Figure 4. Proposed Jordan Basin Area for Trap/Pot and Gillnet Gear Marking



BILLING CODE 3510–22–C

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: March 12, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is proposed to be amended to read as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

■ 1. The authority citation for 50 CFR part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.;* § 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

■ 2. In § 229.32, paragraphs (a)(3)(iii), and (a)(6), and (b) are revised to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(a) * * *

(3) Exempted waters. (i) The regulations in this section do not apply to waters landward of the 72 COLREGS demarcation lines (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80 with the exception of the COLREGS lines for Casco Bay (Maine), Portsmouth Harbor (New Hampshire), Gardiners Bay and Long Island Sound (New York), and the state of Massachusetts.

(ii) *Other exempted waters.*

Maine

The regulations in this section do not apply to waters landward of a line connecting the following points (Quoddy Narrows/US-Canada border to Odiornes Pt., Portsmouth, New Hampshire):

44°49.67′ N. lat., 66°57.77′ W. long. (R N ''2'', Quoddy Narrows)
44°48.64′ N. lat., 66°56.43′ W. long. (G ''1'' Whistle, West Quoddy Head)
44°47.36′ N. lat., 66°59.25′ W. long. (R N ''2'', Morton Ledge)
44°45.51′ N. lat., 67°02.87′ W. long. (R ''28M'' Whistle, Baileys Mistake)
44°37.70′ N. lat., 67°09.75′ W. long. (Obstruction, Southeast of Cutler)
44°27.77′ N. lat., 67°32.86′ W. long. (Freeman Rock, East of Great Wass Island)
44°25.74′ N. lat., 67°38.39′ W. long. (R ''2SR'' Bell, Seahorse Rock, West of Great Wass Island)
44°21.66′ N. lat., 67°51.78′ W. long. (R N ''2'', Petit Manan Island)
44°19.08′ N. lat., 68°02.05′ W. long. (R ''2S'' Bell, Schoodic Island)
44°13.55′ N. lat., 68°10.71′ W. long. (R ''8BI'' Whistle, Baker Island)
44°08.36′ N. lat., 68°14.75′ W. long. (Southern Point, Great Duck Island)
43°59.36′ N. lat., 68°37.95′ W. long. (R ''2'' Bell, Roaring Bull Ledge, Isle Au Haut)
43°59.83′ N. lat., 68°50.06′ W. long. (R ''2A'' Bell, Old Horse Ledge)
43°56.72′ N. lat., 69°04.89′ W. long. (G ''5TB'' Bell, Two Bush Channel)
43°50.28′ N. lat., 69°18.86′ W. long. (R ''2 OM'' Whistle, Old Man Ledge)
43°48.96′ N. lat., 69°31.15′ W. long. (GR C ''PL'', Pemaquid Ledge)
43°43.64′ N. lat., 69°37.58′ W. long. (R ''2BR'' Bell, Bantam Rock)
43°41.44′ N. lat., 69°45.27′ W. long. (R ''20ML'' Bell, Mile Ledge)
43°36.04′ N. lat., 70°03.98′ W. long. (RG N ''BS'', Bulwark Shoal)
43°31.94′ N. lat., 70°08.68′ W. long. (G ''1'', East Hue and Cry)
43°27.63′ N. lat., 70°17.48′ W. long. (RW ''WI'' Whistle, Wood Island)
43°20.23′ N. lat., 70°23.64′ W. long. (RW ''CP'' Whistle, Cape Porpoise)
43°04.06′ N. lat., 70°36.70′ W. long. (R N ''2MR'', Murray Rock)
43°02.93′ N. lat., 70°41.47′ W. long. (R ''2KR'' Whistle, Kittery Point)
43°02.55′ N. lat., 70°43.33′ W. long. (Odiornes Pt., Portsmouth, New Hampshire)

New Hampshire

New Hampshire state waters are exempt from the minimum number of traps per trawl requirement in paragraph (c)(2)(iii) of this section. Harbor waters landward of the following lines are exempt from all the regulations in this section.

A line from 42°53.691′ N. lat., 70°48.516′ W. long. to 42°53.516′ N. lat., 70°48.748′ W. long. (Hampton Harbor)
A line from 42°59.986′ N. lat., 70°44.654′ W. long. to 42°59.956′ N., 70°44.737′ W. long. (Rye Harbor)

Rhode Island

Rhode Island state waters are exempt from the minimum number of traps per trawl requirement in paragraph (c)(2)(iii) of this section. Harbor waters landward of the following lines are exempt from all the regulations in this section.

A line from 41°22.441′ N. lat., 71°30.781′ W. long. to 41°22.447′ N. lat., 71°30.893′ W. long. (Pt. Judith Pond Inlet)
A line from 41°21.310′ N. lat., 71°38.300′ W. long. to 41°21.300′ N. lat., 71°38.330′ W. long. (Ninigret Pond Inlet)
A line from 41°19.875′ N. lat., 71°43.061′ W. long. to 41°19.879′ N. lat., 71°43.115′ W. long. (Quonochontaug Pond Inlet)
A line from 41°19.660′ N. lat., 71°45.750′ W. long. to 41°19.660′ N. lat., 71°45.780′ W. long. (Weekapaug Pond Inlet)

New York

The regulations in this section do not apply to waters landward of a line that follows the territorial sea baseline through Block Island Sound (Watch Hill Point, RI, to Montauk Point, NY).

Massachusetts

The regulations in this section do not apply to waters landward of the first bridge over any embayment, harbor, or inlet in Massachusetts. The following Massachusetts state waters are exempt from the minimum number of traps per trawl requirement in paragraph (c)(2)(iii) of this section:

Massachusetts state waters in LMA 1 and Outer Cape north and east of Cape Cod from 0–3 miles from shore and including a portion of waters east of the line connecting the following points: 41.925° N, 70.147° W and 41.792° N, 70.319° W

Massachusetts state waters in LMA 2 and Outer Cape south of 41.67°40′ N and west of 70.0°00′ W to the Rhode Island border

South Carolina

The regulations in this section do not apply to waters landward of a line connecting the following points from 32°34.717′ N. lat., 80°08.565′ W. long. to 32°34.686′ N. lat., 80°08.642′ W. long. (Captain Sams Inlet)

* * * * *

(6) *Island buffer.* Those fishing in waters within ¼ mile of the following Maine islands are exempt from the minimum number of traps per trawl requirement in paragraph (c)(2)(iii) of this section: Monhegan Island, Matinicus Island Group (Metinic Island, Small Green Island, Large Green Island, Seal Island, Wooden Ball Island, Matinicus Island, Ragged Island) and Isle of Shoals Island Group (Duck Island, Appledore Island, Cedar Island, Smuttynose Island).

(b) *Gear marking requirements*—(1) *Specified areas.* The following areas are specified for gear marking purposes:

Northern Inshore State Trap/Pot Waters, Cape Cod Bay Restricted Area, Massachusetts Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Northern Nearshore Trap/Pot Waters Area, Great South Channel Restricted Trap/Pot Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, Southern Nearshore Trap/Pot Waters Area, Offshore Trap/Pot Waters Area, Other Northeast Gillnet Waters Area, Mid/South Atlantic Gillnet Waters Area, Other Southeast Gillnet Waters Area, Southeast U.S. Restricted Areas, and Southeast U.S. Monitoring Area.

(i) *Jordan Basin.* The Jordan Basin Restricted Area is bounded by the following points:

Point	N. Lat.	W. Long.
JBRA1	43°15′	68°50′
JBRA2	43°35′	68°20′
JBRA3	43°25′	68°05′
JBRA4	43°05′	68°20′
JBRA5	43°05′	68°35′

(ii) *Jeffreys Ledge Restricted Area*—The Jeffreys Ledge Restricted Area is bounded by the following points:

Point	N. Lat.	W. Long.
JLRA1	43°15′	70°25′
JLRA2	43°15′	70°00′
JLRA3	42°50′	70°00′
JLRA4	42°50′	70°25′

(2) *Markings.* All specified gear in specified areas must be marked with the color code shown in paragraph (b)(3) of this section. The color of the color code must be permanently marked on or along the line or lines specified below under paragraphs (b)(2)(i) and (ii) of this section. Each color mark of the color codes must be clearly visible when the gear is hauled or removed from the water, including if the color of the rope is the same as or similar to the respective color code. The rope must be marked at least three times (top, middle, bottom) and each mark must total 12-inch (30.5 cm) in length. If the mark consists of two colors then each color mark may be 6-inch (15.25 cm) for a total mark of 12-inch (30.5 cm). In marking or affixing the color code, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, or other material; or a thin line may be woven into or through the line; or the line may be marked as approved in writing by the Assistant Administrator. A brochure illustrating the techniques for marking gear is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request.

(i) *Buoy line markings.* All buoy lines must be marked as stated above. Shark gillnet gear in the Southeast U.S. Restricted Area S, Southeast U.S. Monitoring Area and Other Southeast Gillnet Waters, greater than 4 feet (1.22 m) long must be marked within 2 feet (0.6 m) of the top of the buoy line (closest to the surface), midway along the length of the buoy line, and within 2 feet (0.6 m) of the bottom of the buoy line.

(ii) *Net panel markings.* Shark gillnet gear net panels in the Southeast U.S. Restricted Area S, Southeast U.S. Monitoring Area and Other Southeast Gillnet Waters is required to be marked. The net panel must be marked along both the floatline and the leadline at least once every 100 yards (91.4 m).

(iii) *Surface buoy markings.* Trap/pot and gillnet gear regulated under this section must mark all surface buoys to identify the vessel or fishery with one of the following: The owner's motorboat registration number, the owner's U.S. vessel documentation number, the federal commercial fishing permit number, or whatever positive identification marking is required by the vessel's home-port state. When marking of surface buoys is not already required by state or federal regulations, the letters and numbers used to mark the gear to identify the vessel or fishery must be at least 1 inch (2.5 cm) in height in block letters or arabic numbers in a color that contrasts with the background color of the buoy. A brochure illustrating the techniques for marking gear is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request.

(3) *Color code.* Gear must be marked with the appropriate colors to designate gear types and areas as follows:

COLOR CODE SCHEME

Plan management area	Color
Trap/Pot Gear	
Massachusetts Restricted Area	Red.
Northern Nearshore	Red.
Northern Inshore State	Red.
Stellwagen Bank/Jeffreys Ledge Restricted Area	Red.
Great South Channel Restricted Area overlapping with LMA 2 and/or Outer Cape	Red.
Exempt RI state waters (single traps)	Red and Blue.
Exempt MA state waters in LMA 1 (single traps)	Red and White.
Exempt MA state waters in LMA 2 (single traps)	Red and Black.
Exempt MA state waters in Outer Cape (singles)	Red and Yellow.
Isle of Shoals, ME (single traps)	Red and Orange.
Southern Nearshore	Orange.
Southeast Restricted Area North (State Waters)	Blue and Orange.
Southeast Restricted Area North (Federal Waters)	Green and Orange.
Offshore	Black.
Great South Channel Restricted Area overlapping with LMA 2/3 and/or LMA 3	Black.
Jordan Basin	Black and Purple (LMA 3); Red and and Purple (LMA 1).
Jeffreys Ledge	Red and Green.
Gillnet Excluding Shark Gillnet	
Cape Cod Bay Restricted Area	Green.
Stellwagen Bank/Jeffreys Ledge Restricted Area	Green.
Great South Channel Restricted Area	Green.
Great South Channel Restricted Sliver Area	Green.
Other Northeast Gillnet Waters	Green.

COLOR CODE SCHEME—Continued

Plan management area	Color
Jordan Basin	Green and Yellow.
Jeffreys Ledge	Green and Black.
Mid/South Atlantic Gillnet Waters	Blue.
Southeast US Restricted Area South	Yellow.
Other Southeast Gillnet Waters	Yellow.
Shark Gillnet (With Webbing of 5″ or Greater)	
Southeast US Restricted Area South	Green and Blue.
Southeast Monitoring Area	Green and Blue.
Other Southeast Waters	Green and Blue.

* * * * *

(c) * * *

(2) *Area specific gear requirements.* Trap/pot gear must be set according to the requirements outlined below and in the table in paragraph(c)(2)(iii) of this section.

(i) *Single traps and multiple-trap trawls.* All traps must be set according to the configuration outlined in the Table (c)(2)(iii) of this section. Trawls up to and including 5 or fewer traps must only have one buoy line unless specified otherwise in Table (c)(2)(iii) of this section.

(ii) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(A) The breaking strength of the weak links must not exceed the breaking strength listed in paragraph (c)(2)(iii) of this section for a specified management area.

(B) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request.

(C) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(iii)—TABLE OF AREA SPECIFIC GEAR REQUIREMENTS

Location	Management area	Minimum number traps/trawl	Weak link strength
ME State and Pocket Waters[1].	Northern Inshore State	2 (1 endline)	≤600 lbs.
ME Zones A–G (3–6 miles)[i].	Northern Nearshore	3 (1 endline)	≤600 lbs.
ME Zones A–C (6–12 miles)[1].	Northern Nearshore	5 (1 endline)	≤600 lbs.
ME Zones D–G (6–12 miles)[1].	Northern Nearshore	10	≤600 lbs.
ME Zones A–E (12+ miles).	Northern Nearshore and Offshore	15	≤600 lbs (≤1500 lbs in offshore, 2,000 lbs if red crab trap/pot).
ME Zones F–G (12+ miles).	Northern Nearshore and Offshore	15 (Mar 1–Oct 31) 20 (Nov 1–Feb 28/29).	≤600 lbs (≤1500 lbs in offshore, 2,000 lbs if red crab trap/pot).
MA State Waters[ii]	Northern Inshore State and Massachusetts Restricted Area.	No minimum number of traps per trawl. Trawls up to and including 3 or fewer traps must only have one buoy line.	≤600 lbs.
Other MA State Waters	Northern Inshore State and Massachusetts Restricted Area.	2 (1 endline) Trawls up to and including 3 or fewer traps must only have one buoy line.	≤600 lbs.
NH State Waters	Northern Inshore State	No minimum trap/trawl	≤600 lbs.
LMA 1 (3–12 miles)	Northern Nearshore and Massachusetts Restricted Area and Stellwagen Bank/Jeffreys Ledge Restricted Area.	10	≤600 lbs.
LMA 1 (12+ miles)	Northern Nearshore	20	≤600 lbs.
LMA1/OC Overlap (0–3 miles).	Northern Inshore State and Massachusetts Restricted Area.	No minimum number of traps per trawl.	≤600 lbs.
OC (0–3 miles)	Northern Inshore State and Massachusetts Restricted Area.	No minimum number of traps per trawl.	≤600 lbs.
OC (3–12 miles)	Northern Nearshore and Massachusetts Restricted Area.	10	≤600 lbs.

(iii)—TABLE OF AREA SPECIFIC GEAR REQUIREMENTS—Continued

Location	Management area	Minimum number traps/trawl	Weak link strength
OC (12+ miles)	Northern Nearshore and Great South Channel Restricted Area.	20	≤600 lbs.
RI State Waters	Northern Inshore State	No minimum number of traps per trawl..	≤600 lbs.
LMA 2 (3–12 miles)	Northern Nearshore	10	≤600 lbs.
LMA 2 (12 + miles)	Northern Nearshore and Great South Channel Restricted Area.	20	≤600 lbs.
LMA 2/3 Overlap (12+ miles).	Offshore and Great South Channel Restricted Area.	20	≤1500 lbs (2,000 lbs if red crab trap/pot).
LMA 3 (12+ miles)	Offshore waters North of 40° and Great South Channel Restricted Area.	20	≤1500 lbs (2,000 lbs if red crab trap/pot).
LMA 4,5,6	Southern Nearshore		≤600 lbs.
FL State Waters	Southeast US Restricted Area North [iii]	1	≤200 lbs.
GA State Waters	Southeast US Restricted Area North [3]	1	≤600 lbs.
SC State Waters	Southeast US Restricted Area North [3]	1	≤600 lbs.
Federal Waters off FL, GA, SC.	Southeast US Restricted Area North [3]	1	≤600 lbs.

[1] The pocket waters and 6-mile line as defined in paragraphs (a)(2)(ii)–(a)(2)(iii) of this section.
[2] MA State waters as defined in paragraphs (a)(3)(iii) of this section.
[3] See § 229.32 (f)(1) for description of area.

* * * * *

[FR Doc. 2015–06272 Filed 3–18–15; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 80, No. 53
Thursday, March 19, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 12, 2015.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 20, 2015 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725–17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Importation of Longan from Taiwan.

OMB Control Number: 0579–0351.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701), the Secretary of Agriculture is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. The fruits and vegetables regulations allow the importation of commercial shipments of fresh longan with stems from Taiwan into the United States. As a condition of entry, the longan will be subject to cold treatment and special port-of-arrival inspection procedures for certain quarantine pests.

Need and use of the Information: APHIS will use the following information collection activities to allow the import of commercial shipment of fresh longan with stems from Taiwan into the United States: Phytosanitary Certificate, Inspection by NPPOs in Taiwan and Stamping of Boxes. Failing to collect this information would cripple APHIS ability to ensure that longan from Taiwan are not carrying plant pests.

Description of Respondents: Business or other for-profits; Federal Government.

Number of Respondents: 2.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 22.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015–06208 Filed 3–18–15; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to RENEWABLE NUTRIENTS, LLC. of PINEHURST, NORTH CAROLINA, an exclusive license to U.S. Patent Application Serial No. 13/164,363, ''SYSTEMS AND METHODS FOR REDUCING AMMONIA EMISSIONS FROM LIQUID EFFLUENTS AND FOR RECOVERING THE AMMONIA,'' filed on JUNE 20, 2011.

DATES: Comments must be received on or before April 20, 2015.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: Mojdeh Bahar of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as RENEWABLE NUTRIENTS, LLC. of PINEHURST, NORTH CAROLINA has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator.

[FR Doc. 2015–06323 Filed 3–18–15; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to RENEWABLE NUTRIENTS, LLC. of PINEHURST, NORTH CAROLINA, an exclusive license to U.S. Patent No. 8,574,885, ''ANAMMOX BACTERIUM ISOLATE,'' issued on NOVEMBER 5, 2013.

DATES: Comments must be received on or before April 20, 2015.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: Mojdeh Bahar of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as RENEWABLE NUTRIENTS, LLC. of PINEHURST, NORTH CAROLINA has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator.

[FR Doc. 2015–06318 Filed 3–18–15; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Reinstate an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek reinstatement of an information collection, the Census of Agriculture Content Test. Response to this survey will be voluntary.

DATES: Comments on this notice must be received by May 18, 2015 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0243, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *eFax:* (855) 838–6382
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: R. Renee Picanso, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS–OMB Clearance Officer, at (202) 690–2388 or at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Census of Agriculture Content Test.

OMB Control Number: 0535–0243.

Type of Request: Intent to Seek Reinstatement of an Information Collection.

Abstract: The Census of Agriculture, conducted every five years, is the primary source of statistics concerning the Nation's agricultural industry and provides the basis for the Nation's comparable and robust agricultural data. Results of the 2012 Census of Agriculture are available on the Web at *http://www.agcensus.usda.gov/.* This Information Collection activity will reinstate the Census of Agriculture Content Test. The purpose of this Content Test is to evaluate proposed changes to the survey methodology and content to reduce respondent burden and maintain the relevance of quality of statistics produced using the Census of Agriculture: Questionnaire format and design, new questions, changes to question wording and location, overall respondent burden, ease of completion, and processing methodology (such as editing and data summary). Results of this test will be studied in preparation for the 2017 Census of Agriculture. Development of the test questionnaire version will come from evaluation of the 2012 Census of Agriculture, testing panels, and cognitive interviews. NASS will also meet with other USDA and Federal agencies and selected State Departments of Agriculture to gather information on data uses and, in some cases, justifications for county-level data. The test will be nation-wide, excluding Alaska and Hawaii, and will be conducted in three phases. For Phase One, a stratified random sample of approximately 50,000 farm and ranch operators will be mailed questionnaires; stratification will be used to ensure sufficient coverage of various sizes, locations and types of agricultural operations. The sample will be divided into control and treatment groups to test alternative versions of the questionnaires. Non-respondents will receive follow-up contact by first mail, then telephone.

Phase Two will consist of up to 400 randomly selected agricultural operations that will be asked to participate in cognitive interviews. The sample will consist of some agricultural operations that completed the questionnaire in Phase One, as well as some additional operations selected to ensure sufficient size of comparison groups. The cognitive interviews conducted with Phase One respondents will be used to improve the overall 2017 Census of Agriculture questionnaire by allowing NASS to follow-up with respondents to better understand unusual responses and to ascertain question comprehension. The remainder of the cognitive interview sample will be randomly selected from operations to meet size and type criteria to ensure sufficient cases for quantitative comparisons. The cognitive interviews of this group will test further 2017 Census of Agriculture questionnaire variations, including the Internet version.

For Phase Three a stratified random sample of approximately 15,000 will be mailed letters asking them to go to a supplied Internet address to complete the survey. Stratification will be used to ensure sufficient coverage of various sizes and types of agricultural operations. The sample will be divided into control and treatment groups to test alternative versions of the on-line questionnaires and methods to increase

on-line response. Non-respondents will receive follow-up contact by mail.

Response to all phases of the Census of Agriculture Content Test are voluntary.

Authority: Although the Census of Agriculture is required by law (''Census of Agriculture Act of 1997,'' Public Law 105–113, 7 U.S.C. 2204(g) as amended), this Content Test is voluntary. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: Reporting burden for Phase One, (mailout survey) of this collection of information is estimated to average 50 minutes per completed response and two (2) minutes per refusal. This was determined by our experience from past Censuses of Agriculture and by our survey methodologists, based on the length and difficulty of similar surveys. Burden is based on an estimated minimum response rate of 58%. This anticipated response rate is based on similar types of voluntary mail surveys and through the use of a mail questionnaire and (limited) telephone follow-up to non-respondents. After removing ineligible cases (those operations out of business or similar), we anticipate a 50% response rate.

Reporting burden for Phase Two, (cognitive interviews) of this collection of information is estimated to average 120 minutes per completed response and five (5) minutes per refusal. This was determined by our survey methodologists who compared the questionnaire length and difficulty with previous cognitive pretests NASS has conducted.

Reporting burden for Phase Three, (internet test) of this collection of information is estimated to average 40 minutes per completed response and two (2) minutes per refusal. This was determined by our experience from past Censuses of Agriculture and by our survey methodologists, who compared the questionnaire length and difficulty with similar surveys. Since Phase Three is Internet only, the average time to complete the questionnaire is less than for Phase One (paper questionnaire and phone follow-up responses only) since the Internet version is faster due to automated routing. Burden is based on an estimated minimum response rate of 53%, which is similar to response rates observed for voluntary Internet based surveys of a similar nature.

Respondents: Potential farm and ranch operators.

Estimated Number of Respondents: 65,400 farmers and/or ranchers.

Estimated Total Annual Burden on Respondents: 42,000 hours (This is based on the expected response rates explained above.)

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, February 18, 2015.

R. Renee Picanso,

Associate Administrator.

[FR Doc. 2015–06324 Filed 3–18–15; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to RENEWABLE NUTRIENTS, LLC. of PINEHURST, NORTH CAROLINA, an exclusive license to U.S. Patent No. 8,906,332, ''GASEOUS AMMONIA REMOVAL SYSTEM,'' issued on DECEMBER 9, 2014 and U.S. Patent Application Serial No. 14/528,614, ''GASEOUS AMMONIA REMOVAL SYSTEM,'' filed on OCTOBER 30, 2014.

DATES: Comments must be received on or before April 20, 2015.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: Mojdeh Bahar of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in these inventions are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license these inventions as RENEWABLE NUTRIENTS, LLC. of PINEHURST, NORTH CAROLINA has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator.

[FR Doc. 2015–06312 Filed 3–18–15; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD832

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Surfclam and Ocean Quahog Advisory Panel will hold a public meeting.

DATES: The meeting will be held on Monday, April 13, 2015, from 1:30 p.m. until 4 p.m.

ADDRESSES: The meeting will be held via Internet Webinar. Detailed connection details are available at *http://www.mafmc.org*. To join the Webinar, follow this link and enter the online meeting room: *http://mafmc.adobeconnect.com/april2015scoq/*.

Council address: Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to develop a fishery performance report by the Council's Surfclam and Ocean Quahog Advisory Panel. The intent of this report is to facilitate structured input from the Surfclam and Ocean Quahog Advisory Panel members to the Council and its Scientific and Statistical Committee (SSC).

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: March 16, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–06317 Filed 3–18–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 150312253–5253–01]

RIN 0660–XC018

Stakeholder Engagement on Cybersecurity in the Digital Ecosystem

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Request for Public Comment.

SUMMARY: The Department of Commerce Internet Policy Task Force (IPTF) is requesting comment to identify substantive cybersecurity issues that affect the digital ecosystem and digital economic growth where broad consensus, coordinated action, and the development of best practices could substantially improve security for organizations and consumers. The IPTF invites public comment on these issues from all stakeholders with an interest in cybersecurity, including the commercial, academic and civil society sectors, and from relevant federal, state, local, and tribal entities.

DATES: Comments are due on or before 5 p.m. Eastern Time on May 18, 2015.

ADDRESSES: Written comments may be submitted by email to *securityRFC2015@ntia.doc.gov*. Comments submitted by email should be machine-searchable and should not be copy-protected. Written comments also may be submitted by mail to the National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4725, Attn: Cybersecurity RFC 2015, Washington, DC 20230. Responders should include the name of the person or organization filing the comment, as well as a page number, on each page of their submissions. All comments received are a part of the public record and will generally be posted to *http://www.ntia.doc.gov/category/internet-policy-task-force* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NTIA will accept anonymous comments.

FOR FURTHER INFORMATION CONTACT: Allan Friedman, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4725, Washington, DC 20230; Telephone: (202) 482–4281; Email: *afriedman@ntia.doc.gov*. Please direct media inquiries to NTIA's Office of Public Affairs: (202) 482–7002.

SUPPLEMENTARY INFORMATION:

Background: The Department of Commerce IPTF published a Notice of Inquiry (NOI) in 2010, focusing on the relationship between cybersecurity and the pace of innovation in the information economy.[1] Based on the comments received, the Department of Commerce published a Green Paper, *Cybersecurity, Innovation, and the Internet Economy,* in 2011.[2] The Green Paper focused on the sector of the economy that creates or uses the Internet or networking services and falls outside the classification of critical infrastructure, as defined by existing law and Administration policy. In that document, the IPTF focused on two themes. First, there are real, evolving threats in cyberspace that not only put businesses and their online operations at risk, but threaten to undermine the trust on which much of the digital economy depends. Second, the pace of innovation in the highly dynamic digital ecosystem makes traditional regulation and compliance difficult and inefficient.

Stakeholder response to the Green Paper provided a roadmap for the IPTF to continue its cybersecurity policy work. In September 2011, the IPTF, in coordination with the Department of Homeland Security, issued a NOI on possible approaches to creating a voluntary industry code of conduct to address the detection, notification, and mitigation of botnets, which led to an industry-led working group.[3] In February 2013, the White House released Executive Order 13636 which called upon the Department of Commerce to work with industry to develop a framework for use by U.S. critical infrastructure to improve

[1] U.S. Department of Commerce, Internet Policy Task Force, Notice of Inquiry, *Cybersecurity, Innovation, and the Internet Economy,* Dkt. No. 100721305–0305–01, 75 FR 44216 (July 28, 2010), *available at: http://www.ntia.doc.gov/federal-register-notices/2010/cybersecurity-innovation-and-internet-economy.* Responses to the Notice of Inquiry are available at: *http://www.nist.gov/itl/cybercomments.cfm.*

[2] U.S. Department of Commerce, Internet Policy Task Force, *Cybersecurity, Innovation, and the Internet Economy* (June 2011) (''Green Paper''), *available at: http://www.nist.gov/itl/upload/Cybersecurity_Green-Paper_FinalVersion.pdf.*

[3] U.S. Department of Commerce and U.S. Department of Homeland Security, Notice of Inquiry, *Models To Advance Voluntary Corporate Notification to Consumers Regarding the Illicit Use of Computer Equipment by Botnets and Related Malware,* Dkt. No. 110829543–1541–01, 76 FR 58466 (September 21, 2011), *available at: http://www.ntia.doc.gov/files/ntia/publications/botnet_rfi.pdf.*

cybersecurity practices, and to undertake a study on incentives to encourage private sector adoption of cybersecurity protections.[4]

The Cybersecurity Framework was developed by the National Institute of Standards and Technology (NIST), an agency of the Department of Commerce, with the aid of broad stakeholder participation.[5] The Cybersecurity Framework offers organizations a guide for understanding and implementing appropriate cybersecurity protections, and has been applied by a range of organizations, including a number that fall ''outside the orbit of critical infrastructure or key resources,'' the focus of the Green Paper effort.[6] Following launch of the Cybersecurity Framework, NIST published a Request for Information (RFI) in August 2014 asking for stakeholder feedback on Cybersecurity Framework awareness, use, and next steps.[7] In response to questions regarding next steps that could complement the Cybersecurity Framework process, stakeholders again identified the IPTF as a vehicle to facilitate further collaborative cybersecurity work, building on the models of multistakeholder participation initially discussed in the Green Paper.[8]

Accordingly, the IPTF proposes to facilitate one or more multistakeholder processes around key cybersecurity issues facing the digital ecosystem and economy. Multistakeholder processes, built on the principles of openness, transparency, and consensus, can generate collective guidance and foundations for coordinated voluntary action. Potential outcomes would vary by the issue discussed, but could include voluntary policy guidelines, procedures, or best practices. In the digital ecosystem, the rapid pace of innovation often outstrips the ability of regulators to effectively administer key policy questions. Open, voluntary, and consensus-driven processes can work to safeguard the interests of all stakeholders while still allowing the digital economy to thrive.

The focus of these processes is to address discrete security challenges in the digital ecosystem where collaborative voluntary action between diverse actors can substantially improve security for everyone. Each process will engage a wide range of participants to ensure that the outcomes reflect the consensus of the relevant community, and are fair, voluntary, and stakeholder-driven.

These processes will be designed to complement, rather than duplicate existing initiatives, both inside and outside the government. They will be coordinated by the IPTF, under the leadership of the National Telecommunications and Information Administration (NTIA). Under its statutory authority, NTIA undertakes Internet policy initiatives that serve to protect, promote and reinforce an open, innovative Internet ecosystem and digital economy, and is the executive branch lead for promoting the multistakeholder approach to Internet policymaking.[9] In partnership with its IPTF partners, NTIA has addressed other key challenges in Internet policy through multistakeholder processes, including an ongoing set of initiatives around privacy and digital copyright.[10] These proposed cybersecurity processes will be coordinated with standards and technology work underway within the Department of Commerce focused on cybersecurity, including the Cybersecurity Framework, the National Cybersecurity Center of Excellence, and the National Strategy for Trusted Identities in Cyberspace.[11] Through the comprehensive scope of all these efforts, the Department of Commerce seeks to foster innovation and to better secure the ecosystem to ensure that businesses, organizations and individuals can expand their trust, investment and engagement in the digital economy, while also reinforcing the voluntary, multistakeholder approach to Internet policymaking.

Request for Comment: IPTF plans to facilitate a series of discussions around key cybersecurity challenges that may be addressed through a better shared understanding of the nature of the problem, and where multistakeholder discussion can be a catalyst for self-coordination of cybersecurity activities. Outcomes would depend on the issues discussed, but may involve combinations of principles, practices, and the voluntary application of policies and existing standards. Initially, IPTF seeks to conduct a cybersecurity multistakeholder process focused on a definable area where consumers and organizations will achieve the greatest benefit and consensus in a reasonable timeframe. While IPTF will avoid duplicating existing work, areas where stakeholders have identified the problem or begun to seek consensus around specific practices could provide a useful starting point.

To identify potential cybersecurity topics that would benefit from a multistakeholder process, IPTF seeks comment from stakeholders on the following questions:

1. What security challenges could be best addressed by bringing together the relevant participants in an open, neutral forum to explore coordinated, voluntary action through principles, practices, and guidelines? For each issue, also provide comment on:

i. Why this topic is a good fit for a multistakeholder process, and whether stakeholders might reasonably be expected to come to some consensus;

ii. Why such a process would benefit the digital ecosystem as a whole;

iii. How long a facilitated, participant-led process on this topic should take to come to consensus;

iv. What form an actionable outcome might take; and

v. What pre-existing organizations and work already exist on the topic.

2. Please comment on which of the following topics could result in actionable, collective progress by stakeholders in a multistakeholder setting. For each issue, also provide comment on:

i. Why or why not this topic is a good fit for a multistakeholder process, and whether stakeholders might reasonably be expected to come to some consensus;

[4] Exec. Order No. 14636, *Improving Critical Infrastructure Cybersecurity,* 78 FR 11739 (February 12, 2013), *available at https://www.federalregister.gov/articles/2013/02/19/2013-03915/improving-critical-infrastructure-cybersecurity.*

[5] National Institute of Standards and Technology, *Framework for Improving Critical Infrastructure Cybersecurity Version 1.0,* (February 12, 2014), *available at: http://www.nist.gov/cyberframework/upload/cybersecurity-framework-021214.pdf.*

[6] Green Paper at ii.

[7] U.S. Department of Commerce, National Institute of Standards and Technology, Notice of Inquiry, *Experience With the Framework for Improving Critical Infrastructure Cybersecurity,* Dkt. No. 140721609–4609–01, 79 FR 50891 (August 26, 2014), *available at: https://www.federalregister.gov/articles/2014/08/26/2014-20315/experience-with-the-framework-for-improving-critical-infrastructure-cybersecurity.*

[8] *See, e.g.,* comments from the Information Technology Industry Council (ITI), US Telecom Association, and Microsoft on the Cybersecurity Framework RFI (August 2014), *available at: http://csrc.nist.gov/cyberframework/rfi_comments_10_2014.html.*

[9] *See* 47 U.S.C. 901(c) (describing NTIA's policy roles, including ''[p]romoting the benefits of technological development in the United States for all users of telecommunications and information facilities;'' ''[f]ostering national safety and security, economic prosperity, and the delivery of critical social services through telecommunications;'' and ''[f]acilitating and contributing to the full development of competition, efficiency, and the free flow of commerce in domestic and international telecommunications.'')

[10] More information about the IPTF's work on privacy and copyright initiatives, including multiple Requests for Comment, are *available at: http://www.ntia.doc.gov/category/internet-policy-task-force.*

[11] More information about the Cybersecurity Framework is available at: *http://www.nist.gov/cyberframework;* the National Cybersecurity Center of Excellence at: *http://nccoe.nist.gov;* and the National Strategy for Trusted Identities in Cyberspace at: *http://www.nist.gov/nstic.*

ii. Why such a process would benefit the digital ecosystem as a whole;

iii. How long a facilitated, participant-led process on this topic should take to come to consensus;

iv. What form an actionable outcome might take; and

v. What pre-existing organizations and work already exist on the topic.

Network and Infrastructure Security

(a) Botnet Mitigation. Disrupting botnets requires coordinated action and transparency between ISPs, vendors, consumers, and the public sector, such as previous efforts of the voluntary public-private partnership between the U.S. Office of the Cybersecurity Coordinator and the U.S. Departments of Commerce and Homeland Security related to ISP codes of conduct.[12] What additional collective steps can be taken to support efforts to create awareness and manage the effects of botnets?

(b) Trust and Security in Core Internet Infrastructure: Naming, Routing, and Public Key Infrastructure. Key aspects of the Internet's core infrastructure were designed and deployed without explicit security mechanisms (*e.g.,* the Domain Name System (DNS) and Border Gateway Protocol (BGP)) and new threats have been discovered in the Internet's Public-Key Infrastructure (*i.e.,* PKIX). Technical solutions have been developed for many of these issues (*e.g.,* DNSSEC, BGPSec and RPKI, DANE and certificate transparency) but uptake has been slow. What collective action can be taken to promote the voluntary adoption and diffusion of existing technical solutions to make the infrastructure more trustworthy?

(c) Domain Name System (DNS), Border Gateway Protocol (BGP), and Transport Layer Security (TLS) Certificates. Key aspects of the Internet infrastructure have long been known to be vulnerable. While technical solutions exist for security vulnerabilities in routing, the domain name system and TLS certificates, uptake has been slow or is just beginning. What collective action can be taken to promote the voluntary adoption and diffusion of technical solutions, such as DNS Security (DNSSEC), to make the infrastructure more trustworthy?

(d) Open Source Assurance. Many organizations depend on open source projects for a wide range of purposes across the digital economy. How can stakeholders better support improving the security of open source projects, and the distribution of patches?

(e) Malware Mitigation. Disrupting and mitigating malware and malware networks can sometimes adversely impact consumers and stakeholders who may be inadvertently caught-up in the incident. How can existing models of mitigation and disruption better incorporate the needs and concerns of all relevant stakeholders?

Web Security and Consumer Trust

(f) Web Security. Many consumers assume that their connections with Web sites are secure, and that the Web sites themselves are secure, when there is little guarantee that safeguards are in place. What actions can improve web security and trust for consumers, including transport layer (Transport Layer Security, or TLS, often referred to as Secure Sockets Layer, or SSL) and web application security, potentially building on the success of existing stakeholder initiatives? [13]

(g) Malvertising. Several popular Web sites have inadvertently spread malware through ''malvertising,'' when malicious code is served from legitimate advertising networks. How can diverse stakeholders work together to limit this risk?

(h) Trusted Downloads. Internet users often download content and applications online without clear assurance of the security of the site. Are there best practices and existing standards that providers of online applications and downloadable tools can adopt to ensure consumer protection without impacting innovation or business models?

(i) Cybersecurity and the Internet of Things. As the Internet of Things matures and more systems integrate information technologies (IT) and operational technologies (OT), cybersecurity is enmeshed in a broader risk context that includes safety, reliability, and resilience.[14] How can we foster the emergence of voluntary policy frameworks, informed by market dynamics, that enable Internet of Things innovation while addressing the full spectrum of risks associated with cyber-physical systems?

(j) Privacy. As noted in the Cybersecurity Framework, privacy and civil liberties implications may arise when personal information is used, collected, processed, maintained, or disclosed in connection with an organization's cybersecurity activities. How can risks to privacy or civil liberties arising from the application of cybersecurity measures or best practices be addressed in this process(es)?

Business Processes and Enabling Markets

(k) Managed Security Services: Requirements and Adoption. Managed security services (MSS) allow many firms, particularly small- and medium-sized businesses, to secure themselves without acquiring expensive in-house expertise, yet there are obstacles preventing seamless market cooperation and accountability between clients and vendors. How can a common understanding of security needs by stakeholders enable faster and more efficient adoption to improve security without sacrificing accountability?

(l) Vulnerability Disclosure. The security of the digital economy depends on a productive relationship between security vendors and researchers of all types who discover vulnerabilities in existing technology and systems, and the providers, owners, and operators of those systems. How can stakeholders build on existing work in this space to responsibly manage the vulnerability disclosure process without putting consumers at risk in the short run? [15]

(m) Security Investment and Metrics. Market solutions for security require good information. What types of robust, practical, and actionable metrics can be used within organizations to understand security investment, and by consumers and clients to understand security practices and promote market demand for security?

This list is not exhaustive. The IPTF welcomes comments on any of these topics, as well as descriptions of other topics that the IPTF and stakeholders should consider for the cybersecurity multistakeholder process. Note that comments are directly sought on which topics to address through the process, rather than the best solution to any given question.

3. Please comment on what factors should be considered in selecting the issues for multistakeholder processes.

[12] U.S. Department of Commerce, Press Release, *White House Announces Public-Private Partnership Initiatives to Combat Botnets* (May 30, 2012), *available at: http://www.commerce.gov/news/press-releases/2012/05/30/white-house-announces-public-private-partnership-initiatives-combat-b.*

[13] *See, e.g.,* Open Web Application Security Project (OWASP), *Top 10 List* (''represent[ing] a broad consensus about the most critical web application security flaws''), *available at: https://www.owasp.org/index.php/Category:OWASP_Top_Ten_Project.*

[14] *See, e.g.,* NIST Cyber-Physical Systems Homepage, *available at: http://www.nist.gov/cps; see also,* FTC Staff, *Internet of Things: Privacy & Security in a Connected World* (January 2015), *available at: http://www.ftc.gov/system/files/documents/reports/federal-trade-commission-staff-report-november-2013-workshop-entitled-internet-things-privacy/150127iotrpt.pdf.*

[15] *See, e.g., Vulnerability Disclosure Overview,* ISO Standard 29147 (2014), *available at: http://www.iso.org/iso/catalogue_detail.htm?csnumber=45170.*

IPTF also plans to draw on the Green Paper and earlier responses to past Requests for Public Comment; past respondents are invited to provide additional and updated viewpoints on IPTF efforts since those comments were provided.

Implementing the Multistakeholder Process: Commenters also may wish to provide their views on how stakeholder discussions of the proposed issue(s) should be structured to ensure openness, transparency, and consensus-building. Analogies to other Internet-related multistakeholder processes, whether they are concerned with policy or technical issues, could be especially valuable.

4. Please comment on the best structure and mechanics for the process(es). If different security issues will require different process structures, please offer guidance on how to best design an appropriate process for the issue selected.

5. How can the IPTF promote participation from a broad range of stakeholders, *i.e.,* from industry, civil society, academia, and international partners? In particular, how can we promote engagement from small and medium-sized enterprises (SME) that play key roles in the digital ecosystem? How critical is location for meetings, and what factors should be considered in determining where to host meetings?

6. What procedures and technologies can promote transparency of process, including promoting discussion between stakeholders and ensuring those outside the process can understand the decisions made?

7. What types of consensus outcomes can promote real security benefits without further adding to a compliance-oriented model of security?

8. Would certain cybersecurity issues be better served by a single workshop or other event to raise awareness and promote independent action, rather than a longer multistakeholder, consensus-building process?

9. How should evaluation of the processes be conducted to assess results and to ensure that recommendations and outcomes of the process remain actionable and current?

Response to this Request for Public Comment is voluntary. Commenters are free to address any or all of the issues identified above, as well as provide information on other topics that they think are relevant to promoting voluntary coordinated action to address cybersecurity risks through an open, transparent, voluntary, consensus-based process. Please note that the Government will not pay for response preparation or for the use of any information contained in the response.

Authority: 47 U.S.C. 901(c).

Dated: March 16, 2015.

Angela Simpson,

Deputy Assistant Secretary for Communications and Information.

[FR Doc. 2015–06344 Filed 3–18–15; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0748–XD841

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Monkfish Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, April 7, 2015 at 9:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000; fax: (401) 732–9309.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Monkfish Committee will meet to discuss draft alternatives for Framework Adjustment 9 that could modify the current days-at-Sea/trip limit system and possession limits. The Committee will review Plan Development Team analyses requested at the August 25, 2014 meeting. The Committee will also discuss Monkfish Research Set-Aside (RSA) priorities for 2016. The Committee may also discuss other business as necessary, *e.g.* the RSA program.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 16, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–06307 Filed 3–18–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD840

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, April 7, 2015 at 9 a.m.

ADDRESSES: The meeting will be held at the Courtyard by Marriott/Boston Logan Airport, 225 McClellan Highway, Boston, MA 02128; telephone: (617) 569–5250.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda items:

The Committee will receive a report from Northeast Fisheries Science Center Regime Shifts Working Group and

possibly develop comments for consideration by the Council on implications. They will also receive a report and presentation on the NOAA Fisheries Draft Climate Science Strategy and develop comments for Council consideration. The SSC will also receive a presentation on changes to Magnuson-Stevens Act National Standard Guidelines proposed by NMFS/NOAA and develop comments for the Council's consideration.

Additionally, they will receive a brief update on the development of guidelines for 5-year reviews of catch-share programs as well as a report on the National SSC V Workshop outcomes. The committee will address other business as necessary.

Although non-emergency issues not contained in this agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 16, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–06306 Filed 3–18–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD842

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings.

DATES: The meetings will be held April 6–14, 2015. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Anchorage Hilton, 500 West 3rd Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Council will begin its plenary session at 8 a.m. on Wednesday, April 8, continuing through Tuesday, April 14, 2015. The Scientific Statistical Committee (SSC) will begin at 8 a.m. on Monday, April 6 and continue through Wednesday April 8, 2015. The Council's Advisory Panel (AP) will begin at 8 a.m. on Tuesday, April 7, and continue through Saturday April 11, 2015. The Enforcement Committee will meet from 1 p.m. to 4 p.m. on Tuesday, April 7, 2015. The Halibut Recreational Quota Entity (RQE) Committee will meet from 1 p.m. to 5 p.m. on Tuesday, April 7, 2015. All meetings are open to the public, except executive sessions.

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Executive Director's Report (including status report on joint Council/International Pacific Halibut Commission (IPHC) meeting issues; legislative update)

NMFS Management Report (including report on National Standard (NS) Guidelines proposed rule and Council recusal discussion)
ADF&G Report
NOAA Enforcement Report
U.S. Coast Guard Report
USFWS Report
Protected Species Report
National Institute for Operational Safety and Health (NIOSH) Report

2. Cooperative Reports (American Fisheries Act (AFA), Amendment 80, Central Gulf of Alaska (CGOA) Rockfish, and Bering Sea Aleutian Island (BSAI) Crab),

3. GOA Salmon Bycatch Genetics,

4. Salmon Inter-cooperative Agreements (ICA)/Incentive Program Agreements (IPA) and GOA Salmon Excluder Exempted Fishing Permit (EFP) Reports,

5. Final Action on Bering Sea Salmon Bycatch,

6. Adopt Overfish Levels/Acceptable Biological Catch (OFL/ABC) for Scallop Stock Assessment Fishery Evaluation (SAFE) and plan team report,

7. Final Action on Gulf of Alaska (GOA) sablefish longline pots,

8. Discussion paper on Area 4A halibut retention in sablefish pots,

9. Initial Review on Observer coverage on small Catcher Processors (CPs),

10. Review methodology for BSAI Crab 10-year Review (SSC only),

11. Review National Standard 1 (NS1) Guidelines (SSC only),

12. Research Priorities: Review Classification, management priorities,

13. Ecosystem Committee report, Bering Sea Fishery Ecosystem Plan (BS FEP),

14. Staff Tasking.

The Advisory Panel will address most of the same agenda issues as the Council except B reports.

The SSC agenda will include the following issues:

1. Salmon Genetics
2. BSAI Crab 10-year review
3. Research Priorities
4. Scallop SAFE
5. Observer Coverage
6. Ecosystem Committee Report
7. NS1 Guidelines

In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Councils primary peer review panel for scientific information as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066). The peer review process is also deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review guidelines.

The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org.* Background documents, reports, and analyses for review are posted on the Council Web site in advance of the meeting. The names and organizational affiliations of SSC members are also posted on the Web site.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: March 16, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–06308 Filed 3–18–15; 4:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2015–0007]

Request for Information Regarding Credit Card Market

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information.

SUMMARY: Section 502(a) of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act or Act) requires the Bureau of Consumer Financial Protection (Bureau or CFPB) to conduct a review (Review) of the consumer credit card market, within the limits of its existing resources available for reporting purposes. In connection with conducting that Review, and in accordance with Section 502(b) of the CARD Act, the Bureau is soliciting information from the public about a number of aspects of the consumer credit card market, described further below.

DATES: Comments must be submitted on or before May 18, 2015 to be assured of consideration.

ADDRESSES: You may submit responsive information and other comments, identified by the document title and Docket No. CFPB–2015–0007, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FederalRegisterComments@cfpb.gov.* Include the document title and Docket No. CFPB–2015–0007 in the subject line of the message.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number for this proposal. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For general inquiries, submission process questions, or any additional information, please contact Wei Zhang, Division of Research, Markets and Regulations, Consumer Financial Protection Bureau, at (202) 435–7700, or *wei.zhang@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Section 502(a) of the CARD Act [1] requires the Bureau to conduct a review, within the limits of its existing resources available for reporting purposes, of the consumer credit card market every two years. To inform that review, Section 502(b) [2] instructs the Bureau to seek public comment.

The Bureau's first such review was published in October, 2013.[3] To inform the Bureau's next review, the Bureau hereby invites members of the public, including consumers, credit card issuers, industry analysts, consumer advocates, and other interested persons to submit information and other comments relevant to the issued expressly identified in Section 2 below, as well as any information they believe is relevant to a review of the credit card market, including the impact of the CARD Act on that market.

1. Background: The CARD Act

The CARD Act was signed into law in May 2009.[4] Passage of the Act was expressly intended to ''establish fair and transparent practices related to the extension of credit'' in the credit card market.[5] To achieve these agreed-upon purposes, the Act changed the requirements applicable to credit card pricing in a number of significant respects including direct limits on a number of pricing practices that Congress deemed unfair or unclear to consumers. A high-level summary of CARD Act changes, along with further information about the CARD Act is available on the Bureau's Web site at *www.consumerfinance.gov/credit-cards.*

2. Issues on Which the Bureau Seeks Public Comment for Its Review

In connection with its pending Review, the Bureau seeks information from members of the public about how the credit card market is functioning. The Bureau seeks comments in three primary areas. Firstly, the Bureau seeks comments on the continuing impact of the CARD Act on the credit card market, including but not limited to those questions explicitly outlined in Section 502(a) and in (a) through (d) below. Secondly, the Bureau seeks comments on six areas of further interest as previously outlined in the previous Review, published October 2013, delineated in (e) through (j) below. Thirdly, the Bureau has since identified additional specific areas of interest on which it specifically seeks comment, outlined in (k) through (l).

The Bureau wants to be alerted to and understand the information that consumers, credit card issuers, consumer groups, and others believe is most relevant to the Bureau's review of the credit card market, so this list of subjects should not be viewed as exhaustive. Commenters are encouraged to address any other areas of interest or concern to them.

Please feel free to comment generally and/or respond to any or all of the questions below but please be sure to indicate in your comments on which topic areas or questions you are commenting:

(a) The Terms of Credit Card Agreements and the Practices of Credit Card Issuers

How have the substantive terms and conditions of credit card agreements or the length and complexity of such agreements changed over the past two years? How have issuers changed their pricing, marketing, underwriting, or other practices?

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[1] *See* 15 U.S.C. 1616(a).

[2] *See* 15 U.S.C. 1616(b).

[3] CARD Act Report, *available at, http://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf.*

[4] The CARD Act's provisions took effect in three stages: August 2009, February 2010, and October 2011.

[5] Public Law 111–24, 123 Stat. 1734 (2009).

(b) The Effectiveness of Disclosure of Terms, Fees, and Other Expenses of Credit Card Plans

How effective are current disclosures of rates, fees, and other cost terms of credit card accounts in conveying to consumers the costs of credit card plans? What further improvements in disclosure would benefit consumer cardholders at this point, and what costs would be incurred in providing such disclosures?

(c) The Adequacy of Protections Against Unfair or Deceptive Acts or Practices or Unlawful Discrimination Relating to Credit Card Plans

Do unfair, deceptive, or abusive acts and practices, or unlawful discrimination, still exist in the credit card market, and if so, in what form and with what frequency and effect? How might such conduct be prevented and at what cost?

(d) Whether implementation of the CARD Act has affected (i) the cost and availability of credit, particularly with respect to non-prime borrowers; (ii) the use of risk-based pricing; or (iii) credit card product innovation?

What additional evidence exists since the publication of the Bureau's prior report with respect to the impact of the CARD Act on the factors listed above? Has the impact of the CARD Act on these factors changed over the past two years?

(e) Online Disclosures

Certain disclosures, including disclosures mandated by the CARD Act, are provided to consumers through their periodic billing statements. However, the Bureau's prior study found that most consumers who make on-line payments do not access their monthly statement and instead use online portals which do not contain these disclosures. This reflects a more general challenge of translating regulations related to disclosures largely written for a paper-and-pencil world into the modern electronic world. How do card issuers ensure that consumers using different channels, including mobile, receive effective disclosures both at the point of application and in managing existing accounts?

(f) Rewards Products

The Bureau's prior study observed that rewards play an important part in consumers' decisions to apply for a card but that consumer awareness of rewards terms appears to be declining. Rewards offers can be highly complex, with detailed rules regarding the eligibility for sign-on bonuses, the value of earned points, the rate at which they are earned, and the rules governing their forfeiture. Are rewards disclosures being made in a clear and transparent manner? Do consumers understand these offers in applying for rewards cards? What further improvements in disclosure would benefit consumer cardholders at this point, and what costs would be incurred in providing such disclosures?

(g) Grace Periods

The Bureau's prior study observed that for consumers, who do not pay their balance in full each month, a key determinant of their cost of credit is the grace period and that disclosing the complex rules governing the availability of a grace period is quite challenging. Are grace period limitations being disclosed in a clear and transparent manner? Do consumers understand the limitations? What further improvements in disclosure would benefit consumer cardholders at this point, and what costs would be incurred in providing such disclosures?

(h) Add-On Products

Credit card issuers market or have marketed various ''add-on'' products to card users, including debt protection, identity theft protection, credit score monitoring, and other products that are supplementary to the actual extension of credit. The Bureau has found through its supervisory and enforcement work that these products are frequently sold in a manner that is unfair, abusive, or deceptive. To what extent are card issuers continuing to market or permit third parties to market add-on products? What actions have issuers taken to prevent unfair, abusive, or deceptive marketing practices? What harmful practices persist regarding add-on products?

(i) Fee Harvester Cards

Some card issuers charge upfront fees that exceed 25% of a card's initial credit limit, but those practices have been held not to be covered by the CARD Act because a portion of the fees are paid prior to account opening. What is the prevalence and magnitude of application fees or other fee harvesting practices in connection with account opening?

(j) Deferred Interest Products

The Bureau's prior report found that deferred interest products—purchases which retroactively assess and charge interest if the balance is not paid in full by a specific date—can end up costing a significant segment of vulnerable consumers sizable amount of money and that it is unclear whether those consumers understand the risks entailed or how they are affected when they are retroactively assessed interest. At the same time, the Bureau found that even among subprime consumers, a majority of consumers do obtain interest-free financing through deferred interest programs and that it is unclear what alternatives are available to these consumers. Do consumers who use deferred interest promotions understand the risk of being charged retroactive interest? What is the impact on consumers who are assessed such retroactive interest? What alternatives are available to these consumers?

(k) Debt Collection

The collection of past due amounts on credit accounts is an important part of any credit system but also an area fraught with risks to consumers. The Bureau seeks to better understand debt collection practices within the credit card industry. What practices are used to minimize losses from delinquent customers prior to chargeoff and with what results? What practices are used to secure recoveries post charge off and with what results? To what extent do card issuers use third-party contingency collection agencies for collections of accounts and how are such relationships managed? To what extend do card issuers sell charged off accounts to debt buyers and on what terms and with what restrictions?

(l) Ability To Pay

The CARD Act requires issuers to assess a consumer's ability to pay before opening a credit card account or increasing a credit line. The Bureau seeks to better understand how ''ability to pay'' standards are being implemented in determining whether to approve an application, the amount of credit to extend initially, and whether to increase a credit line. How are card issuers determining whether applicants for a credit card have sufficient income or assets to cover an extension of new credit? How are card issuers making that determination in connection with the consideration of credit line increases? How do these standards and practices affect consumer access to credit and consumer outcomes with credit card products?

Authority: 15 U.S.C. 1616(a), (b).

Dated: March 16, 2015.

Christopher D'Angelo,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2015–06351 Filed 3–18–15; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2011–0019]

Agency Information Collection Activities; Proposed Collection; Comment Request; Safety Standard for Portable Bed Rails

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed extension of approval of a collection of information under the safety standard for portable bed rails, approved previously under OMB Control No. 3041–0149. The Commission will consider all comments received in response to this notice before requesting an extension of this collection of information from the Office of Management and Budget (OMB).

DATES: Submit written or electronic comments on the collection of information by May 18, 2015.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2011–0019, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number CPSC–2011–0019, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC seeks to renew the following currently approved collection of information:

Title: Safety Standard for Portable Bed Rails.

OMB Number: 3041–0149.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Manufacturers and importers of portable bed rails.

Estimated Number of Respondents: 17 firms supplying portable bed rails to the United States Market have been identified with an estimated 2 models/firm annually.

Estimated Time per Response: 1 hour/model associated with marking, labeling, and instructional requirements.

Total Estimated Annual Burden: 34 hours (17 firms × 2 models × 1 hour).

General Description of Collection: The Commission issued a safety standard for portable bed rails (16 CFR part 1224) on February 29, 2012 (77 FR 12182). The standard is intended to address hazards to children from use of portable bed rails. Among other requirements, the standard requires manufacturers, including importers, to meet the collection of information requirements for marking, labeling, and instructional literature for portable bed rails.

Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Alberta E. Mills,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2015–06295 Filed 3–18–15; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0129]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Finance and Accounting Service announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 18, 2015.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Erulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Finance and Accounting Services—Indianapolis, DFAS–ZPR, 8899 E. 56th St., Indianapolis, IN 46249, ATTN: Ms. La Zaleus D. Leach, *LaZaleus.Leach@DFAS.mil,* 317–212–6032.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Waiver/Remission of Indebtedness Application, DD Form 2789; OMB Number 0730–0009.

Needs and Uses: The information collection requirement is used by current or former DoD Civilian employees or military members to request waiver or remission of an indebtedness owed to the Department of Defense. Under 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, certain debts arising out of erroneous payments may be waived. Under 10 U.S.C. 4837, 10 U.S.C. 6161, and 10 U.S.C. 9837, certain debts may be remitted. Information obtained through this form is used for adjudicating the request for waiver or remission.

Affected Public: Individuals.

Annual Burden Hours: 13,950.

Number of Respondents: 6,200.

Responses per Respondent: 1.

Annual Responses: 6,200

Average Burden per Response: 2.25 hours.

Frequency: On occasion.

The referenced United States Code sections on waivers provide for an avenue of relief for individuals who owe debts to the United States, which resulted from erroneous payments. Criteria for waiver of a debt includes a determination that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the individual owing the debt or any other person interested in obtaining a waiver. Information obtained through the proposed collection is needed in order to adjudicate the waiver request under the law.

Dated: March 16, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–06322 Filed 3–18–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2015–0011]

Proposed Collection; Comment Request

AGENCY: Army & Air Force Exchange Service (Exchange), DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Army & Air Force Exchange Service announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 18, 2015.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Army and Air Force Exchange Service, Office of the General Counsel, Compliance Division, Attn: Teresa Schreurs, 3911 South Walton Walker Blvd., Dallas, TX 75236–1598 or call the Exchange Compliance Division at 800–967–6067.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Employee Travel Files; Exchange Form 1500–013 ''Request and Authorization for TDY Travel'', Exchange Form 1500–042 ''Official Travel Request''; OMB Control Number 0702–XXXX.

Needs and Uses: The information collection requirement is necessary to process official travel requests for military and civilian employees of the Army and Air Force Exchange Service; to determine eligibility of the individual's dependents to travel; to obtain the necessary clearance where foreign travel is involved, including assisting individuals in applying for passports and visas and counseling where proposed travel involves visiting/transiting communist countries and danger zones.

Affected Public: Individuals and households.

Annual Burden Hours: 2,700.

Number of Respondents: 1,200.

Responses per Respondent: 3.

Total Annual Responses: 3,600.

Average Burden per Response: 45 minutes.

Frequency: On occasion.

Respondents are Exchange employees and their dependents that are authorized to make official Exchange government travel. The completed forms are necessary to obtain this authorization and to provide the employee and their dependents with assistance to obtain visas, passports, security clearances and other travel documents as required.

Dated: March 16, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–06303 Filed 3–18–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0030]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Predominantly Black Institutions Application

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before April 20, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2015–ICCD–0030 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Bernadette Miles, 202–502–7616.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Predominantly Black Institutions Application.

OMB Control Number: 1840–0797.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 130.

Total Estimated Number of Annual Burden Hours: 4,550.

Abstract: The Predominantly Black Institutions (PBI) Program is authorized under title III, part F of the Higher Education Act of 1965, as amended (HEA). The PBI Program makes grant awards to eligible colleges and universities to support the strengthening of PBIs to carry out programs in the following areas: science, technology, engineering, or mathematics; health education; internationalization or globalization; teacher preparation; or improving the educational outcomes of African American males. Grants support the establishment or strengthening of such programs that are designed to increase the institutions capacity to prepare students for instruction in the above noted fields. Grants are awarded competitively. This information collection is necessary to comply with title III, part F of the HEA.

Dated: March 16, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2015–06290 Filed 3–18–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status

	Docket Nos.
Duke Energy Beckjord Storage, LLC	EG15–11–000
Samchully Power & Utilities 1 LLC	EG15–12–000
Chief Conemaugh Power, LLC	EG15–15–000
Chief Keystone Power, LLC	EG15–16–000
Kay Wind, LLC	EG15–17–000
Spinning Spur Wind Three, LLC	EG15–18–000
Green Pastures Wind, II, Inc	EG15–19–000
Briscoe Wind Farm, LLC	EG15–20–000
Sierra Solar Greenworks LLC	EG15–21–000
Rising Tree Wind Farm III LLC	EG15–22–000
NiGen, LLC	EG15–23–000
Stephens Ranch Wind Energy II, LLC	EG15–24–000
Milo Wind Project, LLC	EG15–25–000
Roosevelt Wind Project, LLC	EG15–26–000
KMC Thermo, LLC	EG15–27–000
Verso Bucksport Power LLC	EG15–31–000
Verso Bucksport LLC	EG15–32–000
Alterna Springerville LLC	EG15–33–000
LDVF1 TEP LLC	EG15–34–000
Los Vientos Windpower III, LLC	EG15–35–000

	Docket Nos.
Enbridge Massif du Sud Wind Project GP Inc	FC15–2–000
Enbridge Saint Robert Bellarmin Wind Project GP I	FC15–3–000
FuelCell Energy, Ltd	FC15–4–000

Take notice that during the months of January and February 2015, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: March 12, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–06205 Filed 3–18–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9923–75–Region 5]

Sole Source Aquifer Designation of the Mahomet Aquifer System in East-Central Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination.

SUMMARY: Notice is hereby given that pursuant to the Safe Drinking Water Act (SDWA) Section 1424(e) and in response to a petition by a coalition of cities, a town, villages, and a public university in east-central Illinois, the Regional Administrator for Region 5 of the Environmental Protection Agency (EPA) has determined that a portion of the Mahomet Aquifer System in east-central Illinois is a sole or principal source of drinking water and if contaminated, would create a significant hazard to public health. As a result of this action, all projects receiving Federal financial assistance are subject to review by EPA regarding whether such projects may contaminate the designated aquifer system through a recharge zone so as to create a significant hazard to public health.

DATES: This determination is effective immediately.

FOR FURTHER INFORMATION CONTACT: William Spaulding, EPA Region 5, Water Division, Ground Water and Drinking Water Branch, by mail at 77 W. Jackson Boulevard, Chicago, IL 60604; by telephone at (312) 886–9262; or by email at *spaulding.william@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the SDWA provides as follows:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

42 U.S.C. 300h–3(e). The authority to designate an aquifer under this section has been delegated to the Regional Administrator.

EPA in general considers a ''sole or principal source'' or sole source aquifer (SSA) to be an aquifer or aquifer system that is needed to supply fifty percent or more of the drinking water ''for the aquifer service area,'' and for which there is no reasonably available alternative source or sources that could physically, legally, and economically supply those dependent upon the aquifer. *See* U.S. EPA, 1987, Sole Source Aquifer Designation Decision Process, Petition Review Guidance (''EPA Petition Review Guidance''). A portion of an aquifer can be designated if it is hydrogeologically separate from the rest of the aquifer. *Id.* at 6. Similarly, a system of hydrogeologically connected aquifers can be designated as an SSA. *Id.*

On December 12, 2012, EPA received a petition to designate a portion of the Mahomet Aquifer System in east-central Illinois as an SSA from the City of Champaign and several partners, including the Cities of Urbana, Delavan, and Gilman; the Town of Normal; the Villages of Savoy, Mansfield, and Mahomet; and the University of Illinois at Urbana-Champaign. Following receipt of the petition, additional entities expressed support for the petition, including Champaign and DeWitt Counties; the Cities of Clinton and Watseka; the Villages of Armington and Waynesville; and the Illinois-American Water Company.

In response to the petition, EPA published a notice of its intent to designate a portion of the Mahomet Aquifer System in east-central Illinois as an SSA and announced two Public Hearings in Champaign, Illinois on May 13, 2014, and in Morton, Illinois on May 14, 2014. This notice was published in two newspapers of general circulation in the area: The Champaign News Gazette and Peoria Journal Star, on March 12, 2014. This notice also announced the request for written comments during the public comment period from March 13, 2014 to June 12, 2014.

The public comments received by EPA generally support designation. EPA also received significant comments and additional scientific studies on the geology of the Mahomet Aquifer System during the comment period. These comments and additional studies required extensive evaluation and consideration. EPA has responded to the public comments in a document titled: ''Responsiveness Summary—Sole Source Aquifer Petition for the Mahomet Aquifer System in East-Central Illinois—March 2015.'' The Responsiveness Summary and other relevant documents are available for public inspection during normal business hours at the following locations: Champaign Public Library, 200 W. Green St., Champaign, Illinois; Bloomington Public Library, 205 E. Olive St., Bloomington, Illinois; Pekin Public Library, 301 S. Fourth St., Pekin, Illinois; Havana Public Library, 201 W. Adams St., Havana, Illinois; Watseka Public Library, 201 S. 4th St., Watseka, Illinois; U.S. EPA's Region 5 Office Library, 77 W. Jackson Blvd., Chicago, Illinois.

II. Description of Mahomet Aquifer System in East-Central Illinois

The Mahomet Aquifer is located in Illinois, Indiana, Ohio, and possibly West Virginia. This SSA designation is for a hydraulically and hydrogeologically distinct portion of the aquifer system in east-central Illinois bounded in the east by the Iroquois River and the North Fork of the Vermilion River and in the west by the Illinois River. Within the SSA area, deposits of saturated sand or sand and gravel found within the Quaternary

deposits are aquifers that provide most (approximately 94 percent) of the water used in this region. These Quaternary deposits directly overlie the bedrock and bury features on the bedrock surface. As a result of geological processes that have shaped the region, the hydrogeology is very complex.

To define the boundary of the designated Mahomet Aquifer System, EPA verified that the 500-foot contour line and saturated thicknesses of the Mahomet Aquifer best represent the buried valleys that contain enough sand and gravel to be significant sources of groundwater. The Mahomet Aquifer has been mapped by studies that used boreholes to penetrate into the top surface of the Mahomet sand, providing greater accuracy on the extent of the aquifer than the bedrock surface alone. Recharge of the Mahomet Aquifer occurs throughout the designated SSA area. While much of the eastern portion of the SSA area is confined by low-permeability glacial till, studies demonstrate that recharge of the principal aquifer is occurring in this area, even though it may be occurring at a low rate. Recharge of the Mahomet Aquifer occurs at a much greater rate in the western portion of the SSA area. In addition, there are studies documenting connections between the aquifer zones in the shallower formations, namely the Glasford Formation, and the Mahomet Aquifer within the SSA area. For these reasons and those explained in more detail in the Responsiveness Summary, EPA is designating the entire aquifer system within the SSA area.

III. Basis for Determination

In accordance with Section 1424(e) of the SDWA, 42 U.S.C. 300h–3(e), the Regional Administrator considered the following factors to determine whether the petition should be granted: (1) Whether the Mahomet Aquifer System in east-central Illinois is the area's sole or principal source of drinking water; and (2) whether contamination of the aquifer system would create a significant hazard to public health. Based on information available to EPA, the Regional Administrator makes the following findings [1] in favor of designating the Mahomet Aquifer System in east-central Illinois as an SSA:

(1) The Mahomet Aquifer System provides approximately 94 percent of the drinking water to the service area today. This exceeds the 50 percent usage criteria for SSA designation in EPA's guidance. EPA Petition Review Guidance at 8. Moreover, demand on this aquifer system is expected to increase in the future. The Mahomet Aquifer System currently provides an estimated 53 million gallons per day (mgd) of drinking water to approximately 120 public water supplies and thousands of rural wells, together serving over 500,000 people. There currently are no intakes from surface waters for public water supplies within the aquifer service area.

(2) Over 50 percent of the population in the Mahomet Aquifer System service area would be unable to find either a physically available or economically feasible alternative source of drinking water should the aquifer system become contaminated. Potential alternative sources of drinking water near the proposed aquifer service area include: (1) Sand and gravel aquifers outside the SSA area; (2) bedrock aquifers; (3) reservoirs; and (4) free-flowing streams and rivers. Due to low potential yields and poor water quality, bedrock aquifers are not a viable alternative source of drinking water. Similarly, nearby water supply reservoirs lack enough additional capacity to serve as viable alternative drinking water sources. Finally, for over 70 percent of the communities that are near enough to use sand and gravel aquifers outside the SSA area or free-flowing streams and rivers to deliver drinking water of the same or better quality, it would be economically infeasible to do so.

(3) Contamination of the Mahomet Aquifer System would create a significant hazard to public health for east-central Illinois. The Mahomet Aquifer System is a significant water resource that is critically important to the safety and economic development of the area. It is the primary source of drinking water for over 100 communities and tens of thousands of rural homeowners located within 14 Illinois counties. In addition, the Mahomet Aquifer System furnishes water to many self-supplied agricultural, industrial, institutional, and commercial users that rely upon it for cooling, process water, and row-crop irrigation, providing an estimated 170 mgd to these users.

IV. Information Relevant to the Designation

The information referenced to make this designation is available to the public and may be inspected during normal business hours at EPA Region 5 Library, 77 West Jackson Boulevard, Chicago, Illinois 60604. In addition, documents related to this designation are available at area public libraries listed above.

V. Project Review

Following publication of this determination, ''no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.'' 42 U.S.C. 300h–3(e). EPA may review any such proposed projects and, where possible, make suggestions or recommendations to plan or design the project to ensure it will not contaminate the aquifer system so as to create a significant hazard to public health. Proposed projects that are funded entirely by state, local, or private concerns are not subject to SSA review by EPA.

The project review area for this SSA consists of the designated SSA area plus three watersheds adjacent to the designated SSA area that provide recharge to the Mahomet Aquifer System. These watersheds are the Sugar Creek, the Sangamon River near Fisher, and the Tributary to the Middle Fork Vermilion River. A map of both the SSA area and the project review area can be found at the locations listed above.

VI. Conclusion

Today's action designates the Mahomet Aquifer System in east-central Illinois as an SSA. The designated SSA area and project review area are located in the following counties in Illinois: Cass, Champaign, DeWitt, Ford, Iroquois, Livingston, Logan, Macon, Mason, McLean, Menard, Piatt, Tazewell, Vermilion, and Woodford. Maps depicting the designated SSA and project review areas are available to the public at the locations listed above.

Dated: March 11, 2015.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2015–06365 Filed 3–18–15; 8:45 am]

BILLING CODE 6560–50–P

[1] The findings that support designation are set out more fully in an EPA publication titled: ''Support Document for Proposed Designation of the Mahomet Aquifer System as a Sole Source.'' This document is available to the public at the locations identified above.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2014–0838; FRL–9923–58]

Agency Information Collection Activities; Proposed Collection and Comment Request; Assessment of Environmental Performance Standards and Ecolabels for Federal Procurement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICR, entitled: *Assessment of Environmental Performance Standards and Ecolabels for Federal Procurement,* and identified by EPA ICR No. 2516.01 and OMB Control No. 2070-new, represents a new request. Before submitting the ICR to OMB for review and approval under the PRA, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment. EPA is also announcing the testing of draft guidelines and a pilot project on an assessment approach for recognizing product environmental performance standards and ecolabels for Federal procurement in the following three categories: Furniture, building flooring, and building paints/coatings/removers. An additional purchase category may be piloted, depending on available resources and other considerations. EPA is seeking comment on the criteria/qualifications that will be used for the selection of the multi-stakeholder panel members, who will refine the draft guidelines for specific sectors. In addition, EPA is seeking volunteer standards development organizations and ecolabel programs to be assessed per the draft guidelines.

DATES: Comments on multi-stakeholder panel member criteria/qualifications must be received on or before April 20, 2015. Expressions of interest to participate in the pilot and comments on the ICR must be received on or before May 18, 2015.

ADDRESSES: Submit your expressions of interest to participate in the pilot and comments on the ICR and multi-stakeholder panel member criteria/qualifications, identified by docket identification (ID) number EPA–HQ–OPPT–2014–0838, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Julie Shannon, Chemistry, Economics, and Sustainable Strategies Division (7409M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8834; email address: *shannon.julie@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Testing of Updated Draft Guidelines

In the **Federal Register** of November 27, 2013 (78 FR 70938) (FRL–9394–6), EPA issued for public comment draft guidelines for product environmental performance standards and ecolabels for voluntary use in Federal procurement. EPA's goal in developing these draft guidelines is to create a ''transparent, fair, and consistent approach to selecting product environmental performance standards and ecolabels to support the Agency's mission and federal sustainable acquisition mandates.'' The fundamental aim of the draft guidelines is to establish a cross-sector framework to be used in recognizing non-governmental environmental standards (and consequently, environmentally preferable products meeting these standards) for use in Federal procurement.

The draft guidelines include four sections:

1. Guidelines for the process for developing standards refers to the procedures used to develop, maintain, and update an environmental standard.

2. Guidelines for the environmental effectiveness of the standards refers to the criteria in the environmental standard or ecolabel that support the claim of environmental preferability.

3. Guidelines for conformity assessment refers to the procedures and practices by which products are assessed for conformity to the requirements specified by standards and ecolabeling programs.

4. Guidelines for Management of Ecolabeling Programs refers to the organizational and management practices of an ecolabeling program.

EPA has responded to public comments and released a new version of the ''Guidelines for the Environmental Effectiveness of the Standards'' at *http://www.epa.gov/draftGuidelines/responses.html.* The majority of public comments supported EPA undertaking—with key external entity and stakeholder participation—additional work to further refine the draft guidelines and test a potential approach to assessing standards and ecolabels. Therefore, in this next phase of work, EPA is contracting with an entity to convene a coordinating Governance Committee, product category-specific multi-stakeholder panels, and independent assessment entity(ies) to develop and pilot test an approach in three product categories: Furniture, building flooring, and building paints/coatings/removers. These sectors were chosen because they meet some or all of the following criteria:

- Potentially significant environmental and/or human health impact (based on lifecycle assessments and hazard and risk assessments).
- Opportunity for environmental and/or human health improvement through private sector standards/ecolabels.
- Significant volume of Federal purchases.
- Current Federal sustainable acquisition mandates in the category are limited, out-of-date, and/or could be augmented with private sector standards.

An additional to-be-determined purchase category may be piloted, depending upon available resources and other considerations. In addition, due to significant interest, EPA will explore the potential for the draft guidelines to apply to service sector standards and ecolabels (*e.g.,* services related to building maintenance, cafeterias, and professional consultants, among others). The potential pilot for this sector would not assess service sector standards; rather the analysis and

recommendations could potentially position the draft guidelines to accommodate such assessments in 2016 and beyond.

II. Opportunity To Participate in a Pilot

Standards development organizations, ecolabel programs, and certification entities that have product environmental performance standards and/or ecolabels that cover one or more of the three product categories, and could be considered for use in Federal procurement per E.O. 13514, entitled: *Federal Leadership in Environmental, Energy, and Economic Performance* (74 FR 52117, October 8, 2009), the Federal Acquisition Regulation (FAR) (48 CFR 23.103), and Federal government standards policy, should consider submitting those standards and ecolabels for assessment as a part of the pilot project.

Those standards and ecolabels assessed will provide information per product-category specific checklists (based on the draft guidelines), to be developed by multi-stakeholder panels, as described at *http://www.epa.gov/epp/draftGuidelines/pilot.html.* Each purchase category panel shall include a balanced group of relevant stakeholders in the environmental and human health performance standards and ecolabels space and ensure an objective, open, and consensus-driven process and credible results. The stakeholder types that may be represented on the multi-stakeholder panels include, but are not limited to:

- Standards development organizations.
- Ecolabel program managers/system owners.
- Conformity assessment bodies.
- Federal purchasers.
- Other large institutional purchasers such as state governments or universities.
- Manufacturers and/or vendors in the product categories targeted for assessment.
- Professional societies, users groups, and industry consortia.
- Research and development organizations and academia.
- Non-governmental organizations widely respected for their work on public health, environmental protection, and sustainability issues.
- Federal government agencies knowledgeable in conformity assessment.

EPA is seeking input from the public regarding the multi-stakeholder panel member criteria/qualifications. EPA proposed the following:

- Knowledge of the environmental and/or human health impacts of the particular product category.
- Experience working with diverse stakeholders towards consensus.
- Familiarity with the draft Guidelines and Federal sustainable acquisition mandates.
- Familiarity with standards development and conformity assessment approaches.
- Ability to devote the necessary time to the panel (including one meeting and regular conference calls).
- Willingness to sign a conflict of interest disclosure form.

III. Information Collection Request (ICR)

A. What comments are sought on the ICR?

Pursuant to the PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

In particular, EPA is requesting comments from very small businesses and non-profit organizations (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses and non-profit organizations affected by this collection.

B. What information collection activity or ICR does this apply to?

Title: Assessment of Environmental Performance Standards and Ecolabels for Federal Procurement.

ICR number: EPA ICR No. 2516.01.

OMB control number: OMB Control No. 2070—New.

ICR status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA is engaging in this collection pursuant to the authority in the Pollution Prevention Act (42 U.S.C. 13103(b)(11)), which requires EPA to ''Identify opportunities to use Federal procurement to encourage source reduction'' and section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note), which requires Federal agencies to ''use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities.'' Federal agencies need this assessment per the draft guidelines to determine which, among sometimes dozens of private sector standards within a single purchase category, are appropriate and effective in meeting Federal procurement goals and mandates.

Federal agencies must comply with the following sustainability-related purchasing mandates: Section 2(h) of E.O. 13514; section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6002); section 9002 of the Farm Security and Rural Investment Act (7 U.S.C. 8102); the Energy Policy Act (42 U.S.C. 13201 *et seq.*); section 2(d) of E.O. 13423, entitled: *Strengthening Federal Environmental, Energy, and Transportation Management* (72 FR 3919, January 26, 2007); and the FAR, including 48 CFR part 23, entitled: *Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace* (see *http://www.whitehouse.gov/omb/procurement_index_green*).

Via NTTAA, Federal agencies are required to ''use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities,'' except when an agency determines that such use ''is inconsistent with applicable law or otherwise impractical.'' OMB Circular A–119, entitled: *Federal Participation in*

the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, reaffirms Federal agency use of non-governmental standards in procurement.

While Federal purchasing policy is clear for the several standards and ecolabels that are listed in statute, regulation, or Executive Order, the lack of independently assessed information about and Federal guidance on using other product environmental performance standards and ecolabels often results in an inconsistent approach by Federal purchasers and confusion and uncertainty for vendors and manufacturers.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 8.5 hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/Affected Entities: Entities potentially affected by this ICR are standards development organizations, ecolabeling programs, and environmental certification entities.

Estimated total number of potential respondents: 20.

Frequency of response: Once during 2015 pilot; and, a to-be-determined frequency depending upon learnings from the pilot.

Estimated total average number of responses for each respondent: 2.

Estimated total annual burden hours: 340 hours.

Estimated total annual costs: $24,711.20 for burden hours, and $0 estimated costs for capital investment or maintenance and operational costs.

C. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: March 11, 2015.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2015–06275 Filed 3–18–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2015–0176; FRL–9924–61]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA) to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN); an application for a test marketing exemption (TME), both pending and/or expired; and a periodic status report on any new chemicals under EPA review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document covers the period from January 2, 2015 to January 30, 2015.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before April 20, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2015–0176 and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Jim Rahai, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *Rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. What action is the agency taking?

This document provides receipt and status reports, which cover the period from January 2, 2015 to January 30, 2015, and consists of the PMNs and TMEs both pending and/or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. What is the agency's authority for taking this action?

Section 5 of TSCA requires that EPA periodical publish in the **Federal**

Register receipt and status reports, which cover the following EPA activities required by provisions of TSCA section 5.

EPA classifies a chemical substance as either an ''existing'' chemical or a ''new'' chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a ''new chemical,'' while those that are on the TSCA Inventory are classified as an ''existing chemical.'' For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.* Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for ''test marketing'' purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals.

IV. Receipt and Status Reports

In Table I. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—83 PMNS RECEIVED FROM 01/02/2015 TO 01/30/2015

Case No.	Received date	Projected notice end date	Manufacturer importer	Use	Chemical
P–15–0171 ...	1/2/2015	4/2/2015	CBI	(G) Potable water-treatment media.	(G) Nitrogen-functional activated carbon.
P–15–0174 ...	1/6/2015	4/6/2015	CBI	(G) Destructive use ...	(G) Carbamic acid, hydroxyalkyl ester.
P–15–0175 ...	1/6/2015	4/6/2015	CBI	(G) Open, non-dispersive.	(G) Blocked polyisocyanate.
P–15–0176 ...	1/9/2015	4/9/2015	Henkel Corporation ...	(S) Chemical intermediate to cureable monomer.	(S) 6-Mercapto-1-Hexanol.
P–15–0177 ...	1/8/2015	4/8/2015	CBI	(G) Catalyst used in the process to manufacture a crop protection chemical.	(G) Phenol, 2,2′-[1,2-disubstituted-1,2-ethanediyl]bis(iminomethylene) bis[substituted-.
P–15–0178 ...	1/8/2015	4/8/2015	H.B.Fuller Company ..	(G) Industrial Adhesive.	(G) Long chain aliphatic acid polymers, with adipic acid, di-meterephthalate, alkane acid, aromatic isocyanate and neopentyl glycol.
P–15–0179 ...	1/8/2015	4/8/2015	H.B.Fuller Company ..	Industrial Adhesive	(G) Long chain aliphatic acid polymers, with adipic acid, di-meterephthalate, alkane acid, aromatic isocyanate and neopentyl glycol.
P–15–0180 ...	1/7/2015	4/7/2015	Munzing	(G) Dispersant/wetting agent.	(G) Substituted epoxide, polymer with epoxide, substituted alkyl methyl ether, polymer with cyclic anhydride polymer with ethenylbenzene, imidazole alkylamine and hydroxide.
P–15–0181 ...	1/7/2015	4/7/2015	Munzing	(G) Dispersant/wetting agent.	(G) Cyclic anhydride polymer with ethenylbenzene, ester with -methyl—Hydroxypoly(oxy-1,2-ethanediyl), imide with substituted epoxide, polymer with epoxide, substituted alkyl methyl ether, compound with imidazole alkylamine.
P–15–0182 ...	1/7/2015	4/7/2015	Munzing	(G) Dispersant/wetting agent.	(G) Cyclic anhydride polymer with ethenylbenzene, imide, imide with substituted epoxide, polymer with epoxide, substituted alkyl methyl ether, reaction products with imidazole alkylamine and substituted alkyldiamine.
P–15–0183 ...	1/7/2015	4/7/2015	Munzing	(G) Dispersant/wetting agent.	(G) 2,5-Furandione, polymer with ethylbenzene, ester with polyethoxylated alkanol, compound with substituted aminoalkohol.
P–15–0184 ...	1/8/2015	4/8/2015	CBI	(G) Oil production	(G) Alkylaminopropanamide, *N*-[dialkyl amino-propyl], salt.
P–15–0185 ...	1/8/2015	4/8/2015	CBI	(G) Oil production	(G) Alkylaminopropanamide, *N*-[dialkyl amino-propyl], salt.
P–15–0186 ...	1/8/2015	4/8/2015	CBI	(G) Oil production	(G) Alkylaminopropanamide, *N*-[dialkyl amino-propyl], salt.

TABLE I—83 PMNS RECEIVED FROM 01/02/2015 TO 01/30/2015—Continued

Case No.	Received date	Projected notice end date	Manufacturer importer	Use	Chemical
P–15–0187 ...	1/8/2015	4/8/2015	CBI	(G) Oil production	(G) Alkylaminopropanamide, *N*-[dialkyl amino-propyl], salt.
P–15–0188 ...	1/16/2015	4/16/2015	Allnex USA Inc.	(S) Pigment wetting; flexible ultra violet (uv)-curable resin.	(G) Carbomoncycles, polymer with substituted heteromonocycle, 2-(2-alkyl-1-oxo-2-alkenyl) oxy] alkyl hydrogen alkanedioate.
P–15–0189 ...	1/19/2015	4/19/2015	CBI	(G) Antistatic agent ...	(G) Alkane carboxylic acid ester with alkanepolyol.
P–15–0190 ...	1/19/2015	4/19/2015	Industrial Speciality Chemicals.	(G) Cationization of starch.	(G) Halogenated alkylaminium.
P–15–0192 ...	1/20/2015	4/20/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0193 ...	1/20/2015	4/20/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0194 ...	1/20/2015	4/20/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0195 ...	1/20/2015	4/20/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0196 ...	1/20/2015	4/20/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0197 ...	1/20/2015	4/20/2015	CBI	(S) Pigment for automotive coatings to be used in automotive oem and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0198 ...	1/20/2015	4/20/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0199 ...	1/21/2015	4/21/2015	CBI	(G) Component for gas absorbtion media.	(G) Metallic salt of dicarboxylic acid.
P–15–0200 ...	1/21/2015	4/21/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0201 ...	1/21/2015	4/21/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0203 ...	1/21/2015	4/21/2015	Firmenich Incorporated.	(G) As part of a fragrance formula.	(S) Phenol, 3-propyl-.
P–15–0204 ...	1/21/2015	4/21/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilane, reaction products with a mixture of metal oxides.
P–15–0205 ...	1/21/2015	4/21/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.

TABLE I—83 PMNS RECEIVED FROM 01/02/2015 TO 01/30/2015—Continued

Case No.	Received date	Projected notice end date	Manufacturer importer	Use	Chemical
P–15–0206 ...	1/21/2015	4/21/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0207 ...	1/21/2015	4/21/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0209 ...	1/21/2015	4/21/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilane, reaction products with a mixture of metal oxides.
P–15–0210 ...	1/21/2015	4/21/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0211 ...	1/21/2015	4/21/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0212 ...	1/21/2015	4/21/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0213 ...	1/21/2015	4/21/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0214 ...	1/21/2015	4/21/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0215 ...	1/21/2015	4/21/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0216 ...	1/21/2015	4/21/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0217 ...	1/21/2015	4/21/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0218 ...	1/21/2015	4/21/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilane, reaction products with a mixture of metal oxides.
P–15–0219 ...	1/22/2015	4/22/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0220 ...	1/22/2015	4/22/2015	TSE Industries, Inc	(S) Formulation ingredient for coating industry.	(S) *N*-[3-[[[3-ethoxy-1-(ethoxycarbonyl)-3-oxopropyl]amino]methyl]-3,5,5-trimethylcyclohexyl]-,1,4-diethyl ester.
P–15–0221 ...	1/22/2015	4/22/2015	CBI	(G) Ingredient in industrial adhesive.	(G) Isocyanate prepolymer.

TABLE I—83 PMNS RECEIVED FROM 01/02/2015 TO 01/30/2015—Continued

Case No.	Received date	Projected notice end date	Manufacturer importer	Use	Chemical
P–15–0222 ...	1/22/2015	4/22/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0223 ...	1/22/2015	4/22/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with mica, metal oxide, zirconium oxide.
P–15–0224 ...	1/22/2015	4/22/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0225 ...	1/22/2015	4/22/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0226 ...	1/22/2015	4/22/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0227 ...	1/22/2015	4/22/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0228 ...	1/22/2015	4/22/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0229 ...	1/21/2015	4/21/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilane, reaction products with a mixture of metal oxides.
P–15–0230 ...	1/22/2015	4/22/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0231 ...	1/22/2015	4/22/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0232 ...	1/22/2015	4/22/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0233 ...	1/22/2015	4/22/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0234 ...	1/22/2015	4/22/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0235 ...	1/22/2015	4/22/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilane, reaction products with a mixture of metal oxides.

TABLE I—83 PMNS RECEIVED FROM 01/02/2015 TO 01/30/2015—Continued

Case No.	Received date	Projected notice end date	Manufacturer importer	Use	Chemical
P–15–0236 ...	1/22/2015	4/22/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0237 ...	1/23/2015	4/23/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0238 ...	1/23/2015	4/23/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilanes, reaction products with a mixture of metal oxides.
P–15–0239 ...	1/23/2015	4/23/2015	CBI	(S) Pigment for automotive coatings to be used in automotive OEM and refinish.	(G) Substituted alkylsilane, reaction products with a mixture of metal oxides.
P–15–0241 ...	1/26/2015	4/26/2015	Sika Corporation	(G) Adhesive component.	(G) Polyurethane.
P–15–0242 ...	1/27/2015	4/27/2015	CBI	(G) Coating Resin	(G) Heteropolycyclic, polymer with alkanedioic acid, di-alkenoate.
P–15–0246 ...	1/29/2015	4/29/2015	DIC International (USA) LLC.	(G) Surfactant for uv curable materials.	(G) Fluorinated acrylate polymer.
L–15–0184 ...	1/29/2015	4/29/2015	CBI	(G) Photolithography	(G) Methacrylic resin.
P–15–0247 ...	1/29/2015	4/29/2015	H.B. Fuller Company	(G) Industrial Adhesive.	(S) Pending Letter of Support.
P–15–0250 ...	1/30/2015	4/30/2015	CBI	(G) Surfactant	(G) Oxirane, alkyl-, polymer with oxirane, alkyl carboxyalkyll ethers, alkali metal salts.
P–15–0251 ...	1/30/2015	4/30/2015	BIMAX Inc.	(S) Photoinitiator for an adhesive.	(S) Methanone, phenyl [4-2-propen-1-yloxy)phenyl]-.
P–15–0252 ...	1/30/2015	4/30/2015	CBI	(G) Destructive use ...	(G) Titanium salt, reaction products with silica.
P–15–0253 ...	1/30/2015	4/30/2015	CBI	(G) Destructive use ...	(G) Organometallic, reaction product with titanium salt, zirconium metallocene, and silica.
P–15–0254 ...	1/30/2015	4/30/2015	CBI	(G) Coating material for electronics.	(G) Amic acid.
P–15–0255 ...	1/30/2015	4/30/2015	CBI	(G) Coating material for electronics.	(G) Polyamic acid.
P–15–0256 ...	1/30/2015	4/30/2015	CBI	(G) Coating material for electronics.	(G) Polyamic acid.
P–15–0257 ...	1/30/2015	4/30/2015	CBI	(G) Coating material for electronics.	(G) Polyamic acid.
P–15–0258 ...	1/30/2015	4/30/2015	CBI	(G) Coating material for electronics.	(G) Polyamic acid.
P–15–0259 ...	1/30/2015	4/30/2015	CBI	(G) PyroOil used in blending & diluent applications.	(G) Tire-derived PyroOil used in blending and diluent applications
P–15–0260 ...	1/30/2015	4/30/2015	CBI	(G) Coating material for electronics.	(G) Polyamic acid.
P–15–0261 ...	1/30/2015	4/30/2015	CBI	(G) Coating material for electronics.	(G) polyamic acid.
P–15–0262 ...	1/30/2015	4/30/2015	CBI	(G) Coating material for electronics.	(G) Polyamic acid.
P–15–0263 ...	1/31/2015	5/1/2015	CBI	(G) Diesel fuel additive.	(G) Ethylene vinyl acetate polymer.

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received by EPA during this period: The EPA case number assigned to the TME, the date the TME was received by EPA, the projected end date for EPA's review of the TME, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the TME, and the chemical identity.

TABLE II–4—TMEs RECEIVED FROM 1/02/2015 TO 1/30/2015

Case No.	Received date	Projected notice end date	Manufacter importer	Use	Chemical
T–15–0004 ...	1/8/2015	2/22/2015	CBI	(G) Oil production	(G) Alkylaminopropanamide, *N*-[dialkyl amino-propyl], salt.
T–15–0005 ...	1/8/2015	2/22/2015	CBI	(G) Oil production	(G) Alkylaminopropanamide, *N*-[dialkyl amino-propyl], salt.
T–15–0006 ...	1/8/2015	2/22/2015	CBI	(G) Oil production	(G) Alkylaminopropanamide, *N*-[dialkyl amino-propyl], salt.
T–15–0007 ...	1/8/2015	2/22/2015	CBI	(G) Oil production	(G) Alkylaminopropanamide, *N*-[dialkyl amino-propyl], salt.

In Table III. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE III–9—NOCs RECEIVED FROM 01/02/2015 TO 01/30/2015

Case No.	Received date	Commencement notice end date	Chemical
P–14–0468 ...	1/5/2015	12/24/2014	(S) Ethanesulfonic acid, 2-[(2-aminoethyl)amino]-, sodium salt (1:1), polymer with 1,6-diisocyanatohexane, 1,6-hexanediol, 1,3-isobenzofurandione and 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane*.
P–14–0004 ...	1/7/2015	12/10/2014	(S) Phenol, 4,4′-(1-methylethylidene)bis-, polymer with 2,2′-[(1-methylethylidene)bis(4,1-phenyleneoxymethylene)], reaction products with *N*1,*N*1-diethyl-1,3-propanediamine*.
P–14–0003 ...	1/7/2015	12/20/2014	(G) Cashew nutshell liquid, epoxidized, polymer with formaldehyde-phenol polymer glycidyl ether.
P–14–0733 ...	1/13/2015	12/18/2014	(G) Acrylic modified polyurethane resin.
P–13–0874 ...	1/16/2015	12/20/2014	(G) Substituted phenol.
P–13–0875 ...	1/16/2015	12/20/2014	(G) Substituted phenol.
P–13–0876 ...	1/16/2015	12/20/2014	(G) Substituted phenol.
P–13–0877 ...	1/16/2015	12/20/2014	(G) Substituted phenol.
P–14–0861 ...	1/21/2015	12/29/2014	(G) Alkyl alkenoic acid, alkyl ester, telomer with alkyl alkenoate, trialkoxysilyl substituted alkane and trilalkoxysilyl alkyl alkyl alkenoate, bis substituted diazenyl-initiated.

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit III. to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: March 12, 2015.

Darryl S. Ballard,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2015–06223 Filed 3–18–15; 4:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Notice of Submission for OMB Review; Comment Request

AGENCIES: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—Uniform Guidelines on Employee Selection Procedures—Extension Without Change.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC or Commission) gives notice that it is submitting to the Office of Management and Budget (OMB) a request for a three-year renewal of the information collection described below.

DATES: Written comments on this notice must be submitted on or before April 20, 2015.

ADDRESSES: A copy of this ICR and applicable supporting documentation submitted to OMB for review may be obtained from Kathleen Oram, Senior Attorney, (202) 663–4681, Office of Legal Counsel, Equal Employment Opportunity Commission, 131 M Street NE., Washington, DC 20507. Comments on this final notice must be submitted to Chad A. Lallemand in the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Room 10235, New Executive Office Building, Washington, DC 20503 or electronically mailed to *Chad_A._Lallemand@omb.eop.gov.* Comments should also be sent to Bernadette Wilson, Acting Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street NE., Washington, DC 20507. Written comments of six or fewer pages may be faxed to the Executive Secretariat at (202) 663–4114. (There is no toll free FAX number.) Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTD). (These are not toll free numbers). Instead of sending written comments to EEOC, you may submit comments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments. All comments received through this portal will be posted without change, including any personal information you provide.

Copies of comments submitted by the public to EEOC directly or through the Federal eRulemaking Portal will be available for review, by advance appointment only, at the Commission's library between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time or can be

reviewed at *http://www.regulations.gov.* Persons who schedule an appointment in the EEOC Library, FOIA Reading Room, and need assistance to view the comments will be provided with appropriate aids upon request, such as readers or print magnifiers. To schedule an appointment to inspect the comments at EEOC's library, contact the library staff at (202) 663–4630 (voice) or (202) 663–4641 (TTY). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Kathleen Oram, Senior Attorney, at (202) 663–4681 (voice), or Thomas J. Schlageter, Assistant Legal Counsel, (202) 663–4668 (voice) or (202) 663–7026 (TDD). Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663–4191 (voice) or (202) 663–4494 (TTY).

SUPPLEMENTARY INFORMATION:

Introduction

A notice that EEOC would be submitting this request to the Office of Management and Budget for a three-year approval under the Paperwork Reduction Act (PRA) was published in the **Federal Register** on December 17, 2014, allowing for a 60 day comment period. 79 FR 75151 (Dec. 17, 2014). EEOC did not receive any comments in response to its December 17, 2014 notice.

Overview of Collection

Collection Title: Recordkeeping Requirements of the Uniform Guidelines on Employee Selection Procedures, 29 CFR part 1607, 41 CFR part 60–3, 28 CFR part 50, 5 CFR part 300.

OMB Number: 3046–0017.

Type of Respondent: Businesses or other institutions; Federal Government; State or local governments and farms.

North American Industry Classification System (NAICS) Code: Multiple.

Standard Industrial Classification Code (SIC): Multiple.

Description of Affected Public: Any employer, Government contractor, labor organization, or employment agency covered by the Federal equal employment opportunity laws.

Respondents: 914,843.

Responses [1]: 914,843.

Recordkeeping Hours: 6,372,498 per year.

Number of Forms: None.

Form Number: None.

Frequency of Report: None.

Abstract: The Uniform Guidelines provide fundamental guidance for all Title VII-covered employers about the use of employment selection procedures. The records addressed by UGESP are used by respondents to ensure that they are complying with Title VII and Executive Order 11246; by the Federal agencies that enforce Title VII and Executive Order 11246 to investigate, conciliate, and litigate charges of employment discrimination; and by complainants to establish violations of Federal equal employment opportunity laws. While there is no data available to quantify these benefits, the collection of accurate applicant flow data enhances each employer's ability to address any deficiencies in recruitment and selection processes, including detecting barriers to equal employment opportunity.

Burden Statement: There are no reporting requirements associated with UGESP. The burden being estimated is the cost of collecting and storing a job applicant's gender, race, and ethnicity data. The only paperwork burden derives from this recordkeeping.

Only employers covered under Title VII and Executive Order 11246 are subject to UGESP. For the purpose of burden calculation, employers with 15 or more employees are counted. The number of such employers is estimated at 914,843, which combines estimates from private employment,[2] the public sector,[3] colleges and universities,[4] and referral unions.[5]

This burden assessment is based on an estimate of the number of job applications submitted to all Title VII-covered employers in one year, including paper-based and electronic applications. The total number of job applications submitted every year to covered employers is estimated to be 1,529,399,487, based on a National Organizations Survey [6] average of approximately 35 applications [7] for every hire and a Bureau of Labor Statistics data estimate of 43,414,608 annual hires.[8] This figure also includes 119,920 applicants for union membership reported on the EEO–3 form for 2012.

The employer burden associated with collecting and storing applicant demographic data is based on the following assumptions: applicants would need to be asked to provide three pieces of information—sex, race/ethnicity, and an identification number (a total of approximately 13 keystrokes); the employer would need to transfer information received to a database either manually or electronically; and the employer would need to store the 13 characters of information for each applicant. Recordkeeping costs and burden are assumed to be the time cost associated with entering 13 keystrokes.

Assuming that the required recordkeeping takes 30 seconds per record, and assuming a total of 1,529,399,487 paper and electronic applications per year (as calculated above), the resulting UGESP burden hours would be 6,372,498. Based on a wage rate of $15.48 per hour for the individuals entering the data, the collection and storage of applicant demographic data would come to approximately $98,646,267 per year for Title VII-covered employers. We expect that the foregoing assumptions are over-inclusive, because many employers have electronic job application processes that should be able to capture applicant flow data automatically.

While the burden hours and costs for the UGESP recordkeeping requirement seem very large, the average burden per employer is relatively small. We estimate that UGESP applies to 914,843 employers. Therefore the cost per covered employer is less than $108 ($98,646,267 divided by 914,843 is equal to $107.87). Additionally UGESP allows for simplified recordkeeping for employers with more than 15 but less than 100 employees.[9]

[1] The number of respondents is equal to the number of responses (*i.e.* one response per person).

[2] Source: Census Bureau 2011 County Business Patterns: Number of Firms, Number of Establishments, Employment, and Annual Payroll by Enterprise Employment Size for the United States and States, Totals: 2011, Release Date 12.13. (*https://www.census.gov/econ/susb/.*) Select U.S. & states, Totals. Downloaded on October 2, 2014.

[3] Source of original data: 2012 Census of Governments: Employment. Individual Government Data File (*http://www.census.gov/govs/apes/*), Local Downloadable Data zip file 12ind_all_tabs.xls. The original number of government entities was adjusted to only include those with 15 or more employees.

[4] Source: U.S. Department of Education, National Center for Education Statistics, IPEDS, Fall 2013. Number and percentage distribution of Title IV institutions, by control of institution, level of institution, and region: United States and other U.S. jurisdictions, academic year 2013–1(*http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2014066rev*).

[5] EEO–3 Reports filed by referral unions in 2012 with EEOC.

[6] The National Organizations Survey is a survey of business organizations across the United States in which the unit of analysis is the actual workplace (*http://www.icpsr.umich.edu/icpsrweb/ICPSR/studies/04074*).

[7] The number of applications provided by NOS is 35.225 and therefore calculations will not result in the same total amount due to rounding.

[8] Bureau of Labor Statistics Job Openings and Labor Turnover Survey, 2013 annual level data (Not seasonally adjusted), (*http://www.bls.gov/jlt/data.htm*) is the source of the original data. The BLS figure (50,718,000) has been adjusted to only include hires by firms with 15 or more employees.

[9] See 29 CFR 1607.15A(1): Simplified recordkeeping for users with less than 100 employees. In order to minimize recordkeeping burdens on employers who employ one hundred (100) or fewer employees, and other users not

Continued

Dated: March 16, 2015.

Jenny R. Yang,

Chair, Equal Employment Opportunity Commission.

[FR Doc. 2015–06345 Filed 3–18–15; 8:45 am]

BILLING CODE 6570–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, April 15, 2015, 9:00 a.m. Eastern Time.

PLACE: Miami Dade College, 500 NE 2nd Avenue, Wolfson Conference Meeting Room #7128, Miami, Florida 33132.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session:

1. Announcement of Notation Votes, and

2. EEOC at 50: Confronting Racial and Ethnic Discrimination in the 21st Century Workplace.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides information about Commission meetings on its Web site, *www.eeoc.gov.,* and provides a recorded announcement a week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation and Communication Access Realtime Translation (CART) services at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above. **CONTACT PERSON FOR MORE INFORMATION:** Bernadette B. Wilson, Acting Executive Officer on (202) 663–4077.

Dated: March 17, 2015.

Bernadette B. Wilson,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 2015–06440 Filed 3–17–15; 4:15 pm]

BILLING CODE 6570–01–P

required to file EEO–1, *et seq.,* reports, such users may satisfy the requirements of this section 15 if they maintain and have available records showing, for each year: (a) The number of persons hired, promoted, and terminated for each job, by sex, and where appropriate by race and national origin; (b)The number of applicants for hire and promotion by sex and where appropriate by race and national origin; and (c) The selection procedures utilized (either standardized or not standardized).

FEDERAL COMMUNICATIONS COMMISSION

[3060–0910]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before May 18, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Benish Shah, FCC, via email *PRA@fcc.gov* and to *Benish.Shah@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact *Benish.Shah@fcc.gov,* (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0910.

Title: Third Report and Order in CC Docket No. 94–102 To Ensure Compatibility With Enhanced 911 Emergency Calling Systems.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities and not-for profit institutions.

Number of Respondents: 794 respondents; 794 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Mandatory. Statutory authority for this collection of information is contained in 47 U.S.C. 1, 4(i), 201, 303, 309 and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 794 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information submitted to the Commission will provide public service answering points (PSAPs), providers of location technology, investors, manufacturers, local exchange carriers, and the Commission with valuable information necessary for full Phase II E911 service implementation. These reports will provide helpful, if not essential information for coordinating carrier plans with those of manufacturers and PSAPs. The reports will also assist the Commission's efforts to monitor Phase II developments and to take action, if necessary, to maintain the Phase II implementation schedule.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2015–06282 Filed 3–18–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Downloadable Security Technology Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice; correction.

SUMMARY: This document corrects a previous document published at in the **Federal Register** on February 23, 2015, to provide an explanation for why the Commission rescheduled a meeting.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Brendan Murray, *Brendan.Murray@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–1573 or Nancy Murphy, *Nancy.Murphy@fcc.gov,* of the Media Bureau, (202) 418–1043.

Correction

In the **Federal Register** of February 23, 2015, in FR Doc. 2015–03611, on page 9459 in the second and third columns, and page 9460, in the first column correct the **SUPPLEMENTARY INFORMATION** section to read:

SUPPLEMENTARY INFORMATION: The meeting will be held on February 23, 2015, from 10:00 a.m. to 4:00 p.m. in the Commission Meeting Room of the Federal Communications Commission, Room TW–C305, 445 12th Street SW., Washington, DC 20554. The DSTAC is a Federal Advisory Committee that will ''identify, report, and recommend performance objectives, technical capabilities, and technical standards of a not unduly burdensome, uniform, and technology- and platform-neutral software-based downloadable security system.'' On December 8, 2014, the FCC, pursuant to the Federal Advisory Committee Act, established the charter for the DSTAC. The meeting on February 23, 2015, will be the first meeting of the DSTAC. The Commission is required to publish notice of the rescheduled meeting at least 15 calendar days before the rescheduled meeting date absent exceptional circumstances; in this case, the Commission faced exceptional circumstances when it provided notice of the rescheduled meeting. As noted, the original meeting was cancelled due to the closure of the Government on February 17, 2015, the original meeting date. Section 106(d)(4) of the STELA Reauthorization Act of 2014, Public Law. 113–200, requires the Commission to hold the initial meeting by March 4, 2015. February 23, 2015 was the only date before that deadline when (i) the DSTAC Chair was available and (ii) the Commission had a room of appropriate size available. Moreover, section 106(d)(2) of the STELA Reauthorization Act of 2014 requires the DSTAC to submit a report to the Commission by September 4, 2015. The committee's ability to meet that deadline would be significantly compromised if this initial meeting were further delayed. The Commission took steps to mitigate the harm of shortened notice of the meeting. As soon as possible on February 18, 2015, the Commission provided notice that the meeting was rescheduled on (i) the Commission's main Web site, (ii) the Web site for the DSTAC, and (iii) in the **Federal Register**. In addition, on February 18, 2015, Commission staff contacted the advisory committee members and other interested parties via email to inform them of the rescheduled meeting. For the reasons stated above, we conclude that the Commission had good cause for providing less than 15 calendar days of notice of the rescheduled meeting.

At the meeting, the Committee will discuss (i) the scope of the report that it will deliver to the Commission, (ii) the ultimate goals of interested parties with respect to navigation device conditional access and content security, (iii) recommended working groups and the tasks for which they will be responsible, and (iv) any other topics related to the DSTAC's work that may arise. The Commission will provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at *http://www.fcc.gov/live.* The public may submit written comments before the meeting to Brendan Murray, DSTAC Designated Federal Officer, by email to *DSTAC@fcc.gov* or by U.S. Postal Service Mail to 445 12th Street SW., Room 4–A726, Washington, DC 20554. Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2015–06283 Filed 3–18–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–XXXX]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before May 18, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Benish Shah, FCC, via email *PRA@fcc.gov* and to *Benish.Shah@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact *Benish.Shah@fcc.gov,* (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Wireless E911 Location Accuracy Requirements.

Form Number: N/A.

Type of Review: New Collection.

Respondents: Business or other for-profit entities; and/or State, local or tribal governments.

Number of Respondents: 4,294 respondents; 28,134 responses.

Estimated Time per Response: 2–10 hours.

Frequency of Response: Recordkeeping, reporting, and third-party disclosure requirements.

Obligation to Respond: Voluntary and mandatory. Statutory authority for this information collection is contained in 47. U.S.C. Sections 1, 2, 4(i), 7, 10, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 140,656 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: None.

Needs and Uses: Section 20.18(i)(2)(ii)(A) rule requires that, within three years of the effective date of rules, CMRS providers shall deliver to uncompensated barometric pressure data from any device capable of delivering such data to PSAPs. This requirement is necessary to ensure that PSAPs are receiving all location information possible to be used for dispatch. This requirement is also necessary to ensure that CMRS providers implement a vertical location solution in the event that the proposed ''dispatchable location'' solution does not function as intended by the three-year mark and beyond.

Section 20.18(i)(2)(ii)(B) requires that the four nationwide providers submit to the Commission for review and approval a reasonable metric for z-axis (vertical) location accuracy no later than 3 years from the effective date of rules. The requirement is critical to ensure that the vertical location framework adopted in the Fourth Report and Order is effectively implemented.

Section 20.18(i)(2)(iii) requires CMRS providers to certify compliance with the Commission's rules at various benchmarks throughout implementation of improved location accuracy. This requirement is necessary to ensure that CMRS providers remain ''on track'' to reach the goals that they themselves agreed to.

Section 20.18(i)(3)(i) requires that within 12 months of the effective date, the four nationwide CMRS providers must establish the test bed described in the Fourth Report and Order, which will validate technologies intended for indoor location, The test bed is necessary for the compliance certification framework adopted in the Fourth Report and Order.

Section 20.18(i)(3)(ii) requires that beginning 18 months from effective date of rules, nationwide CMRS providers providing service in any of the six Test Cities identified by ATIS (Atlanta, Denver/Front Range, San Francisco, Philadelphia, Chicago, and Manhattan Borough of New York City) must collect and report aggregate data on the location technologies used for live 911 calls. This reporting requirement is necessary to validate and verify the compliance certifications made by CMRS providers.

Section 20.18(i)(4)(ii) requires that no later than 18 months from the effective date, each CMRS provider shall submit to the Commission a report on its progress toward implementing improved indoor location accuracy. Non-nationwide CMRS providers will have an additional 6 months to submit their progress reports. All CMRS providers shall provide an additional progress report no later than 36 months from the effective date of the adoption of this rule. The 36-month reports shall indicate what progress the provider has made consistent with its implementation plan.

Section 20.18(i)(4)(iii) requires that prior to activation of the NEAD but no later than 18 months from the effective date of the adoption of this rule, the nationwide CMRS providers shall file with the Commission and request approval for a security and privacy plan for the administration and operation of the NEAD. This requirement is necessary to ensure that the four nationwide CMRS providers are building in privacy and security measures to the NEAD from its inception.

Section 20.18(i)(4)(iv) requires that before use of the NEAD or any information contained therein, CMRS providers must certify that they will not use the NEAD or associated data for any non-911 purpose, except as otherwise required by law. This requirement is necessary to ensure the privacy and security of any personally identifiable information that may be collected by the NEAD.

Section 20.18(j) requires CMRS providers to provide standardized confidence and uncertainty (C/U) data for all wireless 911 calls, whether from outdoor or indoor locations, on a per-call basis upon the request of a PSAP. This requirement will serve to make the use of C/U data easier for PSAPs

Section 20.18(k) requires that CMRS providers must record information on all live 911 calls, including, but not limited to, the positioning source method used to provide a location fix associated with the call, as well as confidence and uncertainty data. This information must be made available to PSAPs upon request, as a measure to promote transparency and accountability for this set of rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2015–06284 Filed 3–18–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 3, 2015.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Oliver Pierce Smith,* Neenah, Wisconsin; to retain voting shares of First Menasha Bancshares, Inc., Neenah, Wisconsin, and thereby indirectly retain voting shares of First National Bank-Fox Valley, Neenah, Wisconsin.

Board of Governors of the Federal Reserve System, March 16, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–06320 Filed 3–18–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 13, 2015.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Washington Savings, M.H.C.,* Effingham, Illinois, to become a mutual holding company through the re-organization of ownership of Washington Savings Bank, Effingham, Illinois, from mutual to stock form. Washington Savings will have its depositors convert their ownership into ownership in Washington Savings, M.H.C.

In connection with this proposal, Washington Savings, M.H.C., will also acquire through merger, First Federal M.H.C., Mattoon, Illinois, and simultaneously merge the subsidiary savings association, First Federal Savings and Loan Association, with and into Washington Savings.

Board of Governors of the Federal Reserve System, March 16, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–06321 Filed 3–18–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 13, 2015.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Equitable Financial Corp.,* Grand Island, Nebraska; proposes to become a savings and loan holding company by acquiring 100 percent of Equitable Bank, Grand Island, Nebraska. Upon the conversion of Equitable Financial MHC to stock form, Equitable Financial MHC and Equitable Financial Corp, the existing mid-tier holding company of Equitable Bank, will cease to exist, and Equitable Bank will become a wholly-owned subsidiary of Equitable Financial Corp, a *de novo* company.

Board of Governors of the Federal Reserve System, March 16, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–06319 Filed 3–18–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED
FEBRUARY 1, 2015 THRU FEBRUARY 27, 2015

02/02/2015

20150311	G	Desmarais Family Residuary Trust; Blue Crest Holding S.A.; Desmarais Family Residuary Trust.
20150312	G	Baron Albert Frere; Blue Crest Holding S.A.; Baron Albert Frere.
20150502	G	Chai Trust Company, LLC; Par Petroleum Corporation; Chai Trust Company, LLC.
20150503	G	Roche Holding Ltd., Trophos SA; Roche Holding Ltd.
20150507	G	Lindsay Goldberg III, LP; Golden Tree Offshore Intermediate Fund, LP; Lindsay Goldberg III, LP.
20150509	G	New Mountain Partners IV, LP.; DFS Holding Company, Inc.; New Mountain Partners IV, L.P.
20150512	G	Callaway Golf Company, TopGolf International, Inc.; Callaway Golf Company.
20150514	G	Manulife Financial Corporation; New York Life Insurance Company; Manulife Financial Corporation.

EARLY TERMINATIONS GRANTED—Continued
FEBRUARY 1, 2015 THRU FEBRUARY 27, 2015

20150518	G	Wendel SA; IPMorgan Chase & Co.; Wendel SA.
		02/03/2015
20150425	G	Riverbed Parent, LLC; Riverbed Technology, Inc.; Riverbed Parent, LLC.
20150447	G	Blue Harbour Active Ownership Partners, L.P.; Akamai Technologies, Inc.; Blue Harbour Active Ownership Partners, L.P.
20150475	G	Trian Partners, L.P.; E.I. du Pont de Nemours and Company; Trian Partners, L.P.
20150486	G	Trian Partners Strategic Investment Fund-A, L.P.; E.I. du Pont De Nemours and Company; Trian Partners Strategic Investment Fund-A, L.P.
20150513	G	Impac Mortgage Holdings, Inc.; J. Paul Reddam; Impac Mortgage Holdings, Inc.
20150516	G	ALLETE. Inc.; Excellere Capital Fund, L.P.; ALLETE, Inc.
20150524	G	Roper Industries, Inc.; TA XI L.P.; Roper Industries, Inc.
		02/04/2015
20150348	G	Zoetis, Inc.; Abbott Laboratories; Zoetis, Inc.
20150522	G	Tekrnira Pharmaceuticals Corporation; QVT Offshore Ltd.; Tekmira Pharmaceuticals Corporation.
20150523	G	Tekmira Pharmaceuticals Corporation; Vivek Ramaswamy; Tekrnira Pharmaceuticals Corporation.
		02/05/2015
20150326	G	Oceaneering International, Inc.; Thomas S. Chance; Oceaneering International, Inc.
20150455	G	Trident VI, L.P.; Sims Group LLC; Trident VI, L.P.
20150484	G	Adventist Health System/West; Lodi Memorial Hospital Association, Inc.; Adventist Health System/West.
20150493	G	ABRY Senior Equity IV, L.P.; Sandy Chau; ABRY Senior Equity IV, L.P.
20150495	G	Littlejohn Fund V. L.P.; Michael Drusmsky; Littlejohn Fund V. L.P.
		02/06/2015
20150527	G	George M. Yates; Matador Resources Company; George M. Yates.
20150528	G	Huron Consulting Group Inc.; JMI Equity Fund VII. L.P.; Huron Consulting Group Inc.
20150529	G	Clearlake Capital Partners III, LP; Francisco Partners, L.P.; Clearlake Capital Partners III, LP.
20150534	G	Kinder Morgan. Inc.; Mr. Harold Hamm; Kinder Morgan, Inc.
20150538	G	Mr. Peter Flint; Zebra Holdco, Inc.; Mr Peter Flint.
20150553	G	Mr. Richard Barton; Zebra Holdco, Inc.; Mr. Richard Barton.
20150554	G	Mr. Lloyd Frink; Zebra Holdco, Inc.; Mr. Lloyd Frink.
		02/09/2015
20150545	G	Thoma Bravo Fund XI, L.P.; PowerPlan Holdings, Inc.; Thoma Bravo Fund XI, L.P.
20150548	G	Insight Holdings (DE), Inc.; Research Now Group, Inc.; Insight Holdings (DE), Inc.
		02/10/2015
20150547	G	ATOS SE.; Xerox Corporation; ATOS SE.
		02/11/2015
20150511	G	AstraZeneca PLC; Bristol-Myers Squibb Company; AstraZeneca PLC.
20150532	G	Mohawk Industries, Inc.; Stichting Adininistratiekantoor Patek; Mohawk Industries, Inc.
20150533	G	Stichting Administratiekantoor Patek; Mohawk Industries, Inc.; Stichting Administratiekantoor Patek.
		02/12/2015
20150536	G	Cigna Corporation; QualCare Alliance Networks, Inc.; Cigna Corporation.
		02/13/2015
20150549	G	Madison Dearborn Capital Pamters VI–A, L.P.; Walgreens Boots Alliance, Inc.; Madison Dearborn Capital Pamters VI–A, L.P.
		02/18/2015
20150551	G	ICON plc; Vestar Capital Partners V. L.P.; ICON plc.
20150555	G	Pacific Ethanol, Inc.; Aventine Renewable Enemy Holdings, Inc.; Pacific Ethanol, Inc.
20150559	G	Ares Corporate Opportunities Fund IV, L.P.; ATD Corporation; Ares Corporate Opportunities Fund IV, L.P.
20150562	G	Mitsubishi Gas Chemical Company, Inc.; JSP Corporation; Mitsubishi Gas Chemical Company, Inc.
20150567	G	Berkshire Hathaway Inc.; Southwest Opportunity Partners, L.P.; Berkshire Hathaway Inc.
20150568	G	Gildan Activewear Inc.; Barry T. Chouinard; Gildan Activewear Inc.
20150569	G	Aquiline Financial Services Fund II L.P.; Senator Sidecar Master Fund LP; Aquiline Financial Services Fund II L.P.
20150571	G	BATS Global Markets, Inc.; KCG Holdings, Inc.; BATS Global Markets, Inc.
20150572	G	Daniel J. McKenna, III; Frederick E. Hitchcock, Jr.; Daniel J. McKenna, III.

EARLY TERMINATIONS GRANTED—Continued
FEBRUARY 1, 2015 THRU FEBRUARY 27, 2015

20150573	G	Harman International Industries, Incorporated; Symphony Teleca Corporation; Hannan International Industries, Incorporated.
20150574	G	Snow Phipps II AIV, L.P.; Paul Milstein 1998 Continuation Trust C; Snow Phipps II AIV, L.P.
20150575	G	Centene Corporation; Agate Resources, Inc.; Centene Corporation.
20150576	G	Hahn & Co. Auto Holdings Co., Ltd.; Visteon Corporation; Hahn & Co. Auto Holdings Co., Ltd..
20150584	G	Bain Capital Fund XI, L.P.; TI Fluid Systems Limited; Bain Capital Fund XI, L.P.
20150589	G	King Digital Entertainment plc; Madrona Venture Fund III, L.P.; King Digital Entertainment plc.
20150592	G	Canon Inc.; Axis AB; Canon Inc.
02/19/2015		
20150487	G	Zayo Group Holdings, Inc.; Great Hill Equity Partners III, L.P.; Zayo Group Holdings, Inc.
20150497	Y	Navient Corporation; ORG Gila Investment, LP; Navient Corporation.
20150546	G	Dakota Holdings, LLC; Mutual of Omaha Insurance Company; Dakota Holdings, LLC.
02/24/2015		
20150537	G	GUO GUANGCHANG; Meadowbrook Insurance Group, Inc.; GUO GUANGCHANG.
20150564	G	William H. Gates, III; Sika AG; William H. Gates, III.
20150583	G	The Chefs' Warehouse, Inc.; T.J. Foodservice Co., Inc.; The Chefs' Warehouse, Inc.
20150593	G	Enbridge Energy Partners, L.P.; New Gulf Resources, LLC; Enbridge Energy Partners, L P.
20150595	G	XL Group PLC; Catlin Group Limited; XL Group PLC.
20150596	G	Audax Private Equity Fund IV, LP; Marwit Capital Partners II, LP; Audax Private Equity, Fund IV, LP.
20150598	G	Macy's Inc.; Stichting Administratiekantoor Westend; Macy's Inc.
20150599	G	Crestview Partners III, L.P.; Huizenga Automation Group, LLC; Crestview Partners III, L.P.
20150600	G	Energy Transfer Equity LP; Regency Energy Partners LP; Energy Transfer Equity LP.
20150602	G	Tronox Limited; FMC Corporation; Tronox Limited.
20150603	G	Blue Holdings I, L.P.; The J.M. Smucker Company; Blue Holdings I, L.P.
20150604	G	The J.M. Smucker Company; Blue Holdings I, L.P.; The J.M. Smucker Company.
20150606	G	Macquarie Infrastructure Company LLC; ArcLight Energy Partners Fund III, L.P.; Macquarie Infrastructure Company LLC.
20150610	G	Devon Energy Corporation; Coronado Midstream Holdings LLC; Devon Energy Corporation.
02/26/2015		
20150611	G	Insight Venture Partners IX, L.P.; E2open, Inc.; Insight Venture Partners IX, L.P.
20150615	G	Cardinal Health, Inc.; Saji T. Daniel; Cardinal Health, Inc.
20150616	G	AstraZeneca plc; Actavis plc; AstraZeneca plc.
20150619	G	Infosys Limited; Panaya, Inc.; Infosys Limited.
20150620	G	MaxLinear, Inc.; Entropic Communications, Inc.; MaxLinear, Inc.
02/27/2015		
20150543	G	Roper Industries, Inc.; Data Innovations LLC; Roper Industries, Inc.
20150544	G	Duke Energy Corporation; Calpine Corporation; Duke Energy Corporation.
20150563	G	Emesto Silvio Maurizio Bertarelli; SimpliVity Corporation; Ernesto Silvio Maurizio Bertarelli.
20150617	G	TE Connectivity Ltd.; TechDevice Holdings LLC; TE Connectivity Ltd..
20150621	G	Morgan Stanley Infrastnicture Partners II, LP; Eureka Hunter Holdings, LLC; Morgan Stanley Infrastructure Partners II, LP.
20150622	G	Carl C. Icahn; Uni-Select Inc.; Carl C. Icahn.
20150623	G	Delta Electronics, Inc.; Eltek ASA; Delta Electronics, Inc.
20150630	G	Bertram Growth Capital II, L.P.; Clams Glassboards LLC; Bertram Growth Capital II, L.P.
20150631	G	Cortec Group Fund V, L.P.; Kent P. Dauten; Cortec Group Fund V, L.P.
20150646	G	Catalyst Fund Limited Partnership IV; Mehrdad Memarpouri; Catalyst Fund Limited Partnership IV.

FOR FURTHER INFORMATION CONTACT: Renee Chapman, Contact Representative, or Theresa Kingsberry, Legal Assistant, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room CC–5301, Washington, DC 20024, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2015–05919 Filed 3–18–15; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice and request for comment.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, the FTC is seeking public comments on its request to OMB to extend for three years the current PRA clearances for information collection requirements contained in three product labeling rules enforced by the Commission. Those clearances expire on March 31, 2015.

DATES: Comments must be received by April 20, 2015.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Apparel Rules: FTC File No. P074201'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/apparelrulespra2* by following the instructions on the web-based form. If

you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the collection of information and supporting documentation should be addressed to Robert M. Frisby, 202–326–2098, or Lemuel Dowdy, 202–326–2981, Attorneys, Division of Enforcement, Bureau of Consumer Protection, 600 Pennsylvania Ave. NW., Room CC–9528, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Title: Rules and regulations under the Wool Products Labeling Act of 1939 (''Wool Rules''), 16 CFR part 300.

OMB Control Number: 3084–0100.

Type of Review: Extension of a currently approved collection.

Abstract: The Wool Products Labeling Act of 1939 (''Wool Act'') [1] prohibits the misbranding of wool products. The Wool Rules establish disclosure requirements that assist consumers in making informed purchasing decisions and recordkeeping requirements that assist the Commission in enforcing the Rules.

On January 9, 2015, the Commission sought comment on the information collection requirements in the Wool Rules. 80 FR 1411. No comments were received. As required by OMB regulations, 5 CFR part 1320, the FTC is providing this second opportunity for public comment.

Likely Respondents: Manufacturers, importers, processors and marketers of wool products.

Frequency of Response: Third party disclosure; recordkeeping requirement.

Estimated annual hours burden: 1,888,000 hours (160,000 recordkeeping hours + 1,720,000 disclosure hours).

Recordkeeping: 160,000 hours [4,000 wool firms incur an average 40 hours per firm].

Disclosure: 1,720,000 hours [240,000 hours for determining label content + 480,000 hours to draft and order labels + 1,000,000 hours to attach labels].

Estimated annual cost burden: $22,620,000 (solely relating to labor costs).

Title: Rules and regulations under the Textile Fiber Products Identification Act (''Textile Rules''), 16 CFR part 303.

OMB Control Number: 3084–0101.

Type of Review: Extension of a currently approved collection.

Abstract: The Textile Fiber Products Identification Act (''Textile Act'') [2] prohibits the misbranding and false advertising of textile fiber products. The Textile Rules establish disclosure requirements that assist consumers in making informed purchasing decisions, and recordkeeping requirements that assist the Commission in enforcing the Rules. The Rules also contain a petition procedure for requesting the establishment of generic names for textile fibers.

On January 9, 2015, the Commission sought comment on the information collection requirements in the Textile Rules. 80 FR 1411. No comments were received. As required by OMB regulations, 5 CFR part 1320, the FTC is providing this second opportunity for public comment.

Likely Respondents: Manufacturers, importers, processors and marketers of textile fiber products.

Frequency of Response: Third party disclosure; recordkeeping requirement.

Estimated annual hours burden: 39,186,772 hours (1,237,015 recordkeeping hours + 37,949,757 disclosure hours).

Recordkeeping: 1,237,015 hours (approximately 19,031 textile firms incur average burden of 65 hours per firm)

Disclosure: 37,949,757 hours (1,471,730 hours to determine label content + 1,811,360 hours to draft and order labels + 34,666,667 hours to attach labels)

Estimated annual cost burden: $280,754,000, rounded to the nearest thousand (solely relating to labor costs).

Title: The Care Labeling of Textile Wearing Apparel and Certain Piece Goods As Amended (''Care Labeling Rule''), 16 CFR 423.

OMB Control Number: 3084–0103.

Type of Review: Extension of a currently approved collection.

Abstract: The Care Labeling Rule requires manufacturers and importers to attach a permanent care label to all covered textile clothing in order to assist consumers in making purchase decisions and in determining what method to use to clean their apparel. Also, manufacturers and importers of piece goods used to make textile clothing must provide the same care information on the end of each bolt or roll of fabric.

On January 9, 2015, the Commission sought comment on the information collection requirements in the Care Labeling Rule. 80 FR 1411. No comments were received. As required by OMB regulations, 5 CFR part 1320, the FTC is providing this second opportunity for public comment.

Estimated annual hours burden: 34,742,227 hours (solely relating to disclosure [3]) (derived from 2,264,200 hours to determine care instructions + 1,811,360 hours to draft and order labels + 30,666,667 hours to attach labels).

Likely Respondents: Manufacturers or importers of textile apparel.

Frequency of Response: Third party disclosure.

Estimated Annual Cost Burden: $258,329,000, rounded to the nearest thousand (solely relating to labor costs).

Request for Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 20, 2015. Write ''Apparel Rules: FTC File No. P074201'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices,

[1] 15 U.S.C. 68 *et seq.*

[2] 15 U.S.C. 70 *et seq.*

[3] The Care Labeling Rule imposes no specific recordkeeping requirements. Although the Rule requires manufacturers and importers to have reliable evidence to support the recommended care instructions, companies in some circumstances can rely on current technical literature or past experience.

manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you are required to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comment online, or to send it to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/apparelrulespra2,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Apparel Rules: FTC File No. P074201'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 20, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm.*

Comments on the information collection requirements subject to review under the PRA should also be submitted to OMB. If sent by U.S. mail, address comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2015–06352 Filed 3–18–15; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration For Children And Families

[CFDA Number 93.576]

Announcement of the Award of an Emergency Single-Source Grant to the U.S. Committee for Refugees and Immigrants in Arlington, VA

AGENCY: Office of Refugee Resettlement, ACF, HHS.

ACTION: Announcement of the award of an emergency single-source grant to the U.S. Committee for Refugees and Immigrants in Arlington, VA.

SUMMARY: The Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR) announces the award of an emergency single-source grant in the amount of $804,075 to the U.S. Committee for Refugees and Immigrants (USCRI) in Arlington, VA, to support resettlement services to Iranian refugee parolees.

DATES: Funds will support activities from December 15, 2014 through December 14, 2015.

FOR FURTHER INFORMATION CONTACT: Kenneth Tota, Acting Director, Office of Refugee Resettlement, 901 D Street SW., Washington, DC 20047. Telephone: 202–401–4858. Email: *kenneth.tota@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: Award funds will provide resettlement services to approximately 100 Iranian individuals currently residing in a refugee camp in Iraq. USCRI will provide services to this refugee parolee population including, but not limited to: Initial reception, housing, employment, enhanced case management, staffing, interpreter services, and counseling. This emergency grant will support the provision of these much needed services to ensure these parolees are afforded a successful path to self-sufficiency.

Statutory Authority: Section 412(c)(1)(A) of the Immigration and Nationality Act, as amended (8 U.S.C. 1522(c)(1)(A)).

Christopher Beach,

Senior Grants Policy Specialist, Office of Administration.

[FR Doc. 2015–06311 Filed 3–18–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0239]

Assessing the Center of Drug Evaluation and Research's Safety-Related Regulatory Science Needs and Identifying Priorities; Report; Availability; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report entitled ''Assessing CDER's Drug Safety-Related Regulatory Science Needs and Identifying Priorities.'' This report identifies drug safety-related regulatory science needs and priorities related to the mission of FDA's Center for Drug Evaluation and Research (CDER) that would benefit from external collaborations and resources. FDA hopes to foster collaborations with external partners and stakeholders to help address these needs and priorities. This notice asks stakeholders conducting research related to these needs to describe that research and indicate their interest in collaborating with FDA to address safety-related research priorities.

DATES: Although you can comment on the report at any time, to ensure that FDA considers your comments on this report, submit either electronic or written comments on the report by May 18, 2015.

ADDRESSES: Submit written requests for single copies of this report to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the report.

Submit electronic comments on the report to *http://www.regulations.gov.*

Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ruth Barratt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, Rm. 4540, Silver Spring, MD 20993–0002, 301–796–2600.

SUPPLEMENTARY INFORMATION:

I. Background

Since publication of the 2011 ''Identifying CDER's Science and Research Needs'' report, FDA has been engaged in efforts to further assess and prioritize the needs articulated therein. As part of these efforts, CDER's Safety Research Interest Group (SRIG), a subcommittee of the Science Prioritization and Review Committee, assessed CDER's overall drug safety-related regulatory science needs in view of FDA's ongoing research efforts and highlighted areas that would benefit from additional resources and collaboration.

The SRIG identified the following seven overall needs for drug safety-related regulatory science:

1. Improve access to postmarket data sources and explore the feasibility of their use in safety signal analyses
2. Improve risk assessment and management strategies to reinforce the safe use of drugs
3. Evaluate the effectiveness of risk communications of drug safety information to health care providers and the public
4. Improve product quality and design, manufacturing processes, and product performance relating to safety
5. Develop and improve predictive models of safety in humans, including nonclinical biomarkers
6. Improve clinical trial statistical analyses for safety, including benefit-risk assessment
7. Investigate clinical biomarkers of safety, including standards for qualification.

Particular priorities within the seven overall needs requiring further resources and outside participation were also identified. FDA seeks to stimulate collaborations with external partners and stakeholders to address these needs by asking them to: (1) Submit descriptions of their ongoing research and initiatives related to the seven overall needs, especially the identified priorities, and (2) indicate their interest in working with FDA to address these needs. Outside parties are being asked to submit comments to the docket and email address *CDER_Science_Needs@fda.hhs.gov.*

II. Comments

Interested persons may submit either electronic comments regarding the report to *http://www.regulations.gov* and email address *CDER_Science_Needs@fda.hhs.gov,* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. Electronic Access

Persons with access to the Internet may obtain the report at *http://www.regulations.gov.*

Dated: March 13, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–06288 Filed 3–18–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Ancillary R01 Telephone Review SEP.

Date: April 3, 2015

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Collaborative Interdisciplinary Team Science in Diabetes and Obesity (R24).

Date: April 6, 2015.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 13, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–06266 Filed 3–18–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, March 31, 2015, 04:00 p.m. to April 01, 2015, 05:00 p.m., Churchill Hotel, 1914 Connecticut Avenue NW., Washington, DC, 20009 which was published in the **Federal Register** on March 09, 2015, 80 FR 12494.

The meeting is being amended to reflect location change. The new meeting location is the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814. The meeting is closed to the public.

Dated: March 13, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–06270 Filed 3–18–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Advisory Committee on Research on Women's Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee on Research on Women's Health.

Date: April 10, 2014.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: The Committee serves to advise and make recommendations to the Director, Office of Research on Women's Health (ORWH) on a broad range of topics including, the current scope of research on women's health and the influence of sex and gender on human health, efforts to understand the issues related to women in biomedical careers and their needs, and the current status of inclusion of women in clinical trials research.

Place: National Institutes of Health, Building 35, Room 620/630, 35 Convent Drive, Bethesda, MD 20892.

Contact Person: Susan E Maier, Ph.D., NIH/OD, 6707 Democracy Blvd., Room 400, Bethesda, MD 20852, 301–435–1573, *maiers@mail.nih.gov*.

Any interested person may file written comments for the public record by submitting their comments to the following email address *ACRWHComments@sp10mail.nih.gov.* Written comments for the public record must not exceed two single-spaced, typed pages, using a 12-point typeface and 1 inch margins; it is preferred that the document be prepared in the MS Word® format. Only testimony submitted to this Web site and received in advance of the meeting are part of the official meeting record.

Supplementary Information: A draft agenda for this meeting is posted at *http://orwh.od.nih.gov/about/acrwh/index.asp.* The meeting will be live-video streamed at *http://videocast.nih.gov/.*

Individuals who plan to attend the meeting in person should contact Faith Zeff at *faith.zeff@nih.gov.* Members of the media will also need to register. In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: March 13, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–06267 Filed 3–18–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at Section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on February 1, 2015, through February 28, 2015. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the

evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: March 13, 2015.

Mary K. Wakefield,

Administrator.

List of Petitions Filed

1. Melissa Kirdzik on behalf of John Henry Watts, IV, Newport, Rhode Island, Court of Federal Claims No: 15–0098V
2. Maria Echevarria on behalf of D.E., Deceased, Piermont, New York, Court of Federal Claims No: 15–0100V
3. Susan Marshall on behalf of Antron Jarvar Thompson, Decatur, Georgia, Court of Federal Claims No: 15–0102V
4. James Riley and Brandy Riley on behalf of E.R., Huntington, West Virginia, Court of Federal Claims No: 15–0104V
5. Shannon Apodaca, Alamosa, Colorado, Court of Federal Claims No: 15–0106V
6. Aaron Prior, Lincoln, Nebraska, Court of Federal Claims No: 15–0107V
7. David Thomas, Brookfield, Wisconsin, Court of Federal Claims No: 15–0108V
8. James Kois, Latham, New York, Court of Federal Claims No: 15–0109V
9. Michael Perkins, Elgin, Illinois, Court of Federal Claims No: 15–0112V
10. Shanelle Mattus-Lang on behalf of D.J.W., Santa Clara, California, Court of Federal Claims No: 15–0113V
11. Michael D. Hudson, Huntsville, Texas, Court of Federal Claims No: 15–0114V
12. Adele Phillips, Syracuse, New York, Court of Federal Claims No: 15–0115V
13. Amanda Seiders and Adam Seiders on behalf of H.S., Cypress, Texas, Court of Federal Claims No: 15–0117V
14. Carrie M. Broschart on behalf of Amelia F. Beaver, Danville, Pennsylvania, Court of Federal Claims No: 15–0118V
15. Terra Schaller, Portland, Oregon, Court of Federal Claims No: 15–0120V
16. Christine Torres on behalf of L.T., Rochester, New York, Court of Federal Claims No: 15–0124V
17. Kristie Roby, Sumter, Florida, Court of Federal Claims No: 15–0125V
18. Joanne Jennings, Covington, Louisiana, Court of Federal Claims No: 15–0131V
19. Madeline Moorman, Overland Park, Kansas, Court of Federal Claims No: 15–0132V
20. Amy Lyn Vakalis, Baraboo, Wisconsin, Court of Federal Claims No: 15–0134V
21. Judith Jetson, Weaverville, North Carolina, Court of Federal Claims No: 15–0138V
22. Julie Reiling on behalf of G.R., Phoenix, Arizona, Court of Federal Claims No: 15–0139V
23. Virginia Ives, Portland, Oregon, Court of Federal Claims No: 15–0140V

24 Bridgette Wiley, Conyers, Georgia, Court of Federal Claims No: 15–0141V

25. Paulette Cummins, Beverly Hills, California, Court of Federal Claims No: 15–0142V
26. Katelyn Garner, Baraboo, Wisconsin, Court of Federal Claims No: 15–0143V
27. Timothy F. Grieb, Seattle, Washington, Court of Federal Claims No: 15–0144V
28. Kimberly Norwood and Clifford Norwood on behalf of Cassidi Norwood, Atlanta, Georgia, Court of Federal Claims No: 15–0145V
29. Dorothy Gray, Phoenix, Arizona, Court of Federal Claims No: 15–0146V
30. Francine Mack, Cheyenne, Wyoming, Court of Federal Claims No: 15–0149V
31. Ronald Watkins, Philadelphia, Pennsylvania, Court of Federal Claims No: 15–0150V
32. Danielle Groom, Fairview Heights, Illinois, Court of Federal Claims No: 15–0157V
33. Hailey Davis and Chad Davis on behalf of R.D., Cordele, Georgia, Court of Federal Claims No: 15–0159V
34. Adan Gomez and Raquel Ayon on behalf of Joel Gomez, Deceased, Rosemead, California, Court of Federal Claims No: 15–0160V
35. Demarco Johnson and Lateasha Johnson on behalf of D.J., Hendersonville, Tennessee, Court of Federal Claims No: 15–0164V
36. Jessica Crefasi, Mandeville, Louisiana, Court of Federal Claims No: 15–0166V
37. Ova Franklin Kelly, Orlando, Florida, Court of Federal Claims No: 15–0167V
38. Mamotabo Matshela, Chicago, Illinois, Court of Federal Claims No: 15–0168V
39. Jennifer L. Check, Memphis, Tennessee, Court of Federal Claims No: 15–0169V
40. Thaddee Michaud, Rochester, New York, Court of Federal Claims No: 15–0170V
41. Tyler Steen, Cedar Falls, Iowa, Court of Federal Claims No: 15–0176V
42. Britany Greek on behalf of C.T.G., Lake City, Florida, Court of Federal Claims No: 15–0178V
43. Francisco Tamez and Luz Tamez on behalf of E.T., Las Cruces, New Mexico, Court of Federal Claims No: 15–0181V
44. Victor Fullerton, Cadillac, Michigan, Court of Federal Claims No: 15–0182V
45. Lynette Brayboy on behalf of L.B., Baraboo, Wisconsin, Court of Federal Claims No: 15–0183V
46. Mary E. Forde, Columbus, Ohio, Court of Federal Claims No: 15–0185V
47. Jered R. Anderson, Faribault, Minnesota, Court of Federal Claims No: 15–0187V

[FR Doc. 2015–06279 Filed 3–18–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Office of Direct Service and Contracting Tribes; Tribal Management Grant Program

Announcement Type: New and Competing Continuation.

Funding Announcement Number: HHS–2015–IHS–TMD–0001.

Catalog of Federal Domestic Assistance Number: 93.228.

Key Dates

Application Deadline Date: June 3, 2015.

Review Date: June 22–26, 2015.

Earliest Anticipated Start Date: September 1, 2015.

Signed Tribal Resolutions Due Date: June 19, 2015.

Proof of Non-Profit Status Due Date: June 3, 2015.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting competitive grant applications for the Tribal Management Grant (TMG) program. This program is authorized under 25 U.S.C. 450h(b)(2) and 25 U.S.C. 450h(e) of the Indian Health Self-Determination and Education Assistance Act (ISDEAA), Public Law (Pub. L.) 93–638, as amended. This program is described in the Catalog of Federal Domestic Assistance (CFDA) under 93.228.

Background

The TMG Program is a competitive grant program that is capacity building and developmental in nature and has been available for Federally-recognized Indian Tribes and Tribal organizations (T/TO) since shortly after the passage of the ISDEAA in 1975. It was established to assist T/TO to assume all or part of existing IHS programs, functions, services, and activities (PFSA) and further develop and improve their health management capability. The TMG Program provides competitive grants to T/TO to establish goals and performance measures for current health programs; assess current management capacity to determine if new components are appropriate; analyze programs to determine if T/TO management is practicable; and develop infrastructure systems to manage or organize PFSA.

Purpose

The purpose of this IHS grant announcement is to announce the availability of the TMG Program to enhance and develop health management infrastructure and assist T/TO in assuming all or part of existing IHS PSFA through a Title I contract and assist established Title I contractors and Title V compactors to further develop and improve their management capability. In addition, TMGs are available to T/TO under the authority of 25 U.S.C. 450h(e) for: (1) Obtaining technical assistance from providers designated by the T/TO (including T/TO that operate mature contracts) for the purposes of program planning and evaluation, including the development of any management systems necessary for contract management and the development of cost allocation plans for indirect cost rates; and (2) planning, designing, monitoring, and evaluation of Federal programs serving the T/TO, including Federal administrative functions.

II. Award Information

Type of Award

Grant.

Estimated Funds Available

The total amount of funding identified for the current fiscal year (FY) 2015 is approximately $2,412,000. Individual award amounts are anticipated to be between $50,000 and $100,000. The amount of funding available for competing and continuation awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

Approximately 16–18 awards will be issued under this program announcement.

Project Period

The project periods vary based on the project type selected. Project periods could run from one, two, or three years and will run consecutively from the earliest anticipated start date of September 1, 2015 through August 31, 2016 for one year projects; September 1, 2015 through August 31, 2017 for two year projects; and September 1, 2015 through August 31, 2018 for three year projects. Please refer to ''Eligible TMG Project Types, Maximum Funding Levels and Project Periods'' below for additional details. State the number of years for the project period and include the exact dates.

III. Eligibility Information

1. Eligibility

Eligible Applicants: ''Indian Tribes'' and ''Tribal organizations'' (T/TO) as defined by the ISDEAA are eligible to apply for the TMG Program. The definitions for each entity type are outlined below. Only one application per T/TO is allowed.

Definitions: ''Indian Tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. § 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. 25 U.S.C. § 450b(e).

''Tribal organization'' means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities. 25 U.S.C. § 450b(l).

Tribal organizations must provide proof of non-profit status.

Eligible TMG Project Types, Maximum Funding Levels and Project Periods: The TMG Program consists of four project types: (1) Feasibility study; (2) planning; (3) evaluation study; and (4) health management structure. Applicants may submit applications for one project type only. Applicants must state the project type selected. Applications that address more than one project type will be considered ineligible. The maximum funding levels noted include both direct and indirect costs. Applicant budgets may not exceed the maximum funding level or project period identified for a project type. Applicants whose budget or project period exceed the maximum funding level or project period will be deemed ineligible and will not be reviewed. Please refer to Section IV.5, ''Funding Restrictions'' for further information regarding ineligible project activities.

1. FEASIBILITY STUDY (Maximum funding/project period: $70,000/12 months)

The Feasibility Study must include a study of a specific IHS program or segment of a program to determine if Tribal management of the program is possible. The study shall present the planned approach, training, and resources required to assume Tribal management of the program. The study must include the following four components:

- Health needs and health care services assessments that identify existing health care services and delivery systems, program divisibility issues, health status indicators, unmet needs, volume projections, and demand analysis.
- Management analysis of existing management structures, proposed management structures, implementation plans and requirements, and personnel staffing requirements and recruitment barriers.
- Financial analysis of historical trends data, financial projections and new resource requirements for program management costs and analysis of potential revenues from Federal/non-Federal sources.
- Decision statement/report that incorporates findings, conclusions and recommendations; the presentation of the study and recommendations to the Tribal governing body for determination regarding whether Tribal assumption of program(s) is desirable or warranted.

2. PLANNING (Maximum funding/project period: $50,000/12 months)

Planning projects entail a collection of data to establish goals and performance measures for the operation of current health programs or anticipated PFSA under a Title I contract. Planning projects will specify the design of health programs and the management systems (including appropriate policies and procedures) to accomplish the health

priorities of the T/TO. For example, planning projects could include the development of a Tribal Specific Health Plan or a Strategic Health Plan, etc. Please note that updated Healthy People information and Healthy People 2020 objectives are available in electronic format at the following Web site: *http://www.health.gov/healthypeople/publications.* The Public Health Service (PHS) encourages applicants submitting strategic health plans to address specific objectives of Healthy People 2020.

3. EVALUATION STUDY (Maximum funding/project period: $50,000/12 months)

The Evaluation Study must include a systematic collection, analysis, and interpretation of data for the purpose of determining the value of a program. The extent of the evaluation study could relate to the goals and objectives, policies and procedures, or programs regarding targeted groups. The evaluation study could also be used to determine the effectiveness and efficiency of a Tribal program operation (*i.e.,* direct services, financial management, personnel, data collection and analysis, third-party billing, etc.), as well as to determine the appropriateness of new components of a Tribal program operation that will assist Tribal efforts to improve their health care delivery systems.

4. HEALTH MANAGEMENT STRUCTURE (Average funding/project period: $100,000/12 months; maximum funding/project period: $300,000/36 months)

The first year maximum funding level is limited to $150,000 for multi-year projects. The Health Management Structure component allows for implementation of systems to manage or organize PFSA. Management structures include health department organizations, health boards, and financial management systems, including systems for accounting, personnel, third-party billing, medical records, management information systems, etc. This includes the design, improvement, and correction of management systems that address weaknesses identified through quality control measures, internal control reviews, and audit report findings under required financial audits and ISDEAA requirements.

For the minimum standards for the management systems used by Indian T/TO when carrying out self-determination contracts, please see 25 CFR part 900, Contracts Under the Indian Self-Determination and Education Assistance Act, Subpart F—''Standards for Tribal or Tribal Organization Management Systems,'' §§ 900.35–900.60. For operational provisions applicable to carrying out Self-Governance compacts, please see 42 CFR part 137, Tribal Self-Governance, Subpart I,—''Operational Provisions'' §§ 137.160–137.220.

Please see Section IV ''Application and Submission Information'' for information on how to obtain a copy of the TMG application package.

To be eligible for this ''New/Competing Continuation Announcement,'' an applicant must be one of the following as defined by 25 U.S.C. 450b:

i. An Indian Tribe, as defined by 25 U.S.C. 450b(e); or

ii. A Tribal organization, as defined by 25 U.S.C. 450b(l).

Note: Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required such as Tribal resolutions, proof of non-profit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

If application budgets exceed the highest dollar amount outlined under the ''Estimated Funds Available'' section within this funding announcement, the application will be considered ineligible and will not be reviewed for further consideration. If deemed ineligible, IHS will not return the application. The applicant will be notified by email by the Division of Grants Management (DGM) of this decision.

The following documentation is required:

Tribal Resolution

A. *Signed Tribal Resolution*—A signed Tribal resolution of the Indian Tribes served by the project *must accompany the electronic application submission.* An Indian Tribe or Tribal organization that is proposing a project affecting another Indian Tribe must include *resolutions from all affected Tribes to be served.* Applications by Tribal organizations will not require a specific Tribal resolution if the current Tribal resolution(s) under which they operate would encompass the proposed grant activities.

Draft Tribal resolutions are acceptable in lieu of an official signed resolution and *must* be submitted along with the electronic application submission prior to the official application deadline date or prior to the start of the Objective Review Committee (ORC) date. *However, an official signed Tribal resolution must be received by the DGM prior to the beginning of the Objective Review. If an official signed resolution is not received by the Review Date listed under the Key Dates section on page one of this announcement, the application will be considered incomplete and ineligible.*

B. The official signed resolution can be mailed to the DGM, Attn: Mr. Pallop Chareonvootitam, Grants Management Specialist (GMS), 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852. Applicants submitting Tribal resolutions after or aside from the required online electronic application submission must ensure that the information is received by the IHS/DGM. It is highly recommended that the documentation be sent by a delivery method that includes delivery confirmation and tracking. Please contact Mr. Pallop Chareonvootitam, GMS, by telephone at (301) 443–5204 prior to the review date regarding submission questions.

C. Tribal organizations applying for technical assistance and/or training grants must submit documentation that the Tribal organization is applying upon the request of the Indian Tribe/Tribes it intends to serve.

D. Documentation for Priority I participation requires a copy of the **Federal Register** notice or letter from the Bureau of Indian Affairs verifying establishment of Federally-recognized Tribal status within the last five years. The date on the documentation must reflect that Federal recognition was received during or after March 2010.

E. Documentation for Priority II participation requires a copy of the most current transmittal letter and Attachment A from the Department of Health and Human Services (HHS), Office of Inspector General (OIG), National External Audit Review Center (NEAR). See ''FUNDING PRIORITIES'' below for more information. If an applicant is unable to locate a copy of the most recent transmittal letter or needs assistance with audit issues, information or technical assistance may be obtained by contacting the IHS, Office of Finance and Accounting, Division of Audit at (301) 443–1270, or the NEAR help line at (800) 732–0679 or (816) 426–7720. Federally-recognized Indian Tribes or Tribal organizations not subject to Single Audit Act requirements must provide a financial statement identifying the Federal dollars in the footnotes. The financial statement must also identify specific weaknesses/recommendations that will be addressed in the TMG proposal and that are

related to 25 CFR part 900, subpart F—''Standards for Tribal and Tribal Organization Management Systems.''

F. Documentation of Consortium participation—If an Indian Tribe submitting an application is a member of an eligible intertribal consortium, the Tribe must:

—Identify the consortium.
—Indicate if the consortium intends to submit a TMG application.
—Demonstrate that the Tribe's application does not duplicate or overlap any objectives of the consortium's application.
—Identify all consortium member Tribes.
—Identify if any of the member Tribes intend to submit a TMG application of their own.
—Demonstrate that the consortium's application does not duplicate or overlap any objectives of the other consortium members who may be submitting their own TMG application.

FUNDING PRIORITIES: The IHS has established the following funding priorities for TMG awards:

• PRIORITY I—Any Indian Tribe that has received Federal recognition (including restored, funded, or unfunded) within the past five years, specifically received during or after March 2009, will be considered Priority I.

• PRIORITY II—Federally-recognized Indian Tribes or Tribal organizations submitting a competing continuation application or a new application for the sole purpose of addressing audit material weaknesses will be considered Priority II.

Priority II participation is only applicable to the Health Management Structure project type. For more information, see ''Eligible TMG Project Types, Maximum Funding Levels and Project Periods'' in Section II.

• PRIORITY III—Eligible Direct Service and Title I Federally-recognized Indian Tribes or Tribal organizations submitting a competing continuation application or a new application will be considered Priority III.

• PRIORITY IV—Eligible Title V Self Governance Federally-recognized Indian Tribes or Tribal organizations submitting a competing continuation or a new application will be considered Priority IV.

The funding of approved Priority I applicants will occur before the funding of approved Priority II applicants. Priority II applicants will be funded before approved Priority III applicants. Priority III applicants will be funded before Priority IV applicants. Funds will be distributed until depleted.

The following definitions are applicable to the PRIORITY II category:

Audit finding means deficiencies which the auditor is required by 45 CFR 75.516, to report in the schedule of findings and questioned costs.

Material weakness—''Statements on Auditing Standards 115'' defines material weakness as a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

Significant deficiency—Statements on Auditing Standards 115 defines significant deficiency as a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

The audit findings are identified in Attachment A of the transmittal letter received from the HHS/OIG/NEAR. Please identify the material weaknesses to be addressed by underlining the item(s) listed on the Attachment A.

Federally-recognized Indian Tribes or Tribal organizations not subject to Single Audit Act requirements must provide a financial statement identifying the Federal dollars received in the footnotes. The financial statement should also identify specific weaknesses/recommendations that will be addressed in the TMG proposal and that are related to 25 CFR part 900, subpart F—''Standards for Tribal and Tribal Organization Management Systems.''

Proof of Non-Profit Status

Organizations claiming non-profit status must submit proof. A copy of the 501(c)(3) Certificate must be received with the application submission by the Application Deadline Date listed under the Key Dates section on page one of this announcement.

An applicant submitting any of the above additional documentation after the initial application submission due date is required to ensure the information was received by the IHS by obtaining documentation confirming delivery (*i.e.* FedEx tracking, postal return receipt, etc.).

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement can be found at *http://www.Grants.gov* or *https://www.ihs.gov/dgm/index.cfm?module=dsp_dgm_funding*

Questions regarding the electronic application process may be directed to Mr. Paul Gettys at (301) 443–2114.

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

• Table of contents.
• Abstract (one page) summarizing the project.
• Application forms:
○ SF–424, Application for Federal Assistance.
○ SF–424A, Budget Information—Non-Construction Programs.
○ SF–424B, Assurances—Non-Construction Programs.
• Budget Justification and Narrative (must be single spaced and not exceed five pages).
• Project Narrative (must be single spaced and not exceed 15 pages).
○ Background information on the organization.
○ Proposed scope of work, objectives, and activities that provide a description of what will be accomplished, including a one-page Timeframe Chart.
• Tribal Resolution. (Submission of either a final signed resolution or a draft resolution with the initial application is mandatory. If submitting a draft resolution, it is the applicant's responsibility to ensure that the final signed resolution is submitted prior to the objective review of applications date.)
• 501(c)(3) Certificate (if applicable).
• Position Descriptions for Key Personnel.
• Contractor/Consultant resumes or qualifications and scope of work.
• Disclosure of Lobbying Activities (SF–LLL).
• Certification Regarding Lobbying (GG-Lobbying Form).
• Copy of current Negotiated Indirect Cost rate (IDC) agreement (required) in order to receive IDC.
• Organizational Chart (optional).
• Documentation of current required Financial Audit (if applicable).

Acceptable forms of documentation include:

○ Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
○ Face sheets from audit reports. These can be found on the FAC Web site: *http://harvester.census.gov/sac/dissem/accessoptions.html?submit=Go+To+Database.*

Public Policy Requirements

All Federal-wide public policies apply to IHS grants and cooperative

agreements with exception of the Discrimination policy.

Requirements for Project and Budget Narratives

A. Project Narrative: This narrative should be a separate Word document that is no longer than 15 pages and must: be single-spaced, be type written, have consecutively numbered pages, use black type not smaller than 12 characters per one inch, and be printed on one side only of standard size 8½″ x 11″ paper.

Be sure to succinctly address and answer all questions listed under the narrative and place them under the evaluation criteria (refer to Section V.1, Evaluation criteria in this announcement) and place all responses and required information in the correct section (noted below), or they shall not be considered or scored. These narratives will assist the ORC in becoming familiar with the applicant's activities and accomplishments prior to this grant award. If the narrative exceeds the page limit, only the first 15 pages will be reviewed. The 15-page limit for the narrative does not include the work plan, standard forms, Tribal resolutions, table of contents, budget, budget justifications, narratives, and/or other appendix items.

There are three parts to the narrative: Part A—Program Information; Part B—Program Planning and Evaluation; and Part C—Program Report. See below for additional details about what must be included in the narrative.

Part A: Program Information (2 page limitation)

Section 1: Needs

Describe how the T/TO has determined the need to either enhance or develop its management capability to either assume PFSAs or not in the interest of self-determination. Note the progression of previous TMG projects/awards if applicable.

Part B: Program Planning and Evaluation (11 page limitation)

Section 1: Program Plans

Describe fully and clearly the direction the T/TO plans to take with the selected TMG project type in addressing their health management infrastructure including how the T/TO plans to demonstrate improved health and services to the community or communities it serves. Include proposed timelines.

Section 2: Program Evaluation

Describe fully and clearly the improvements that will be made by the T/TO that will impact their management capability or prepare them for future improvements to their organization that will allow them to manage their health care system and identify the anticipated or expected benefits for the Tribe.

Part C: Program Report (2 page limitation)

Section 1: Describe major accomplishments over the last 24 months.

Please identify and describe significant program achievements associated with the delivery of quality health services. Provide a comparison of the actual accomplishments to the goals established for the project period, or if applicable, provide justification for the lack of progress.

Section 2: Describe major activities over the last 24 months.

Please identify and summarize recent major health related project activities of the work done during the project period.

B. Budget Narrative: This narrative must include a line item budget with a narrative justification for all expenditures identifying reasonable and allowable costs necessary to accomplish the goals and objectives as outlined in the project narrative. Budget should match the scope of work described in the project narrative. The page limitation should not exceed five pages.

3. Submission Dates and Times

Applications must be submitted electronically through Grants.gov by 11:59 p.m. Eastern Standard Time (EST) on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Any application received after the application deadline will not be accepted for processing, nor will it be given further consideration for funding. Grants.gov will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the electronic application process, contact Grants.gov Customer Support via email to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Mr. Paul Gettys, DGM (*Paul.Gettys@ihs.gov*) at (301) 443–2114. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a Grants.gov tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

If the applicant needs to submit a paper application instead of submitting electronically through Grants.gov, a waiver must be requested. Prior approval must be requested and obtained from Ms. Tammy Bagley, Acting Director of DGM, (see Section IV.6 below for additional information). The waiver must: (1) Be documented in writing (emails are acceptable), before submitting a paper application, and (2) include clear justification for the need to deviate from the required electronic grants submission process. A written waiver request must be sent to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov.* Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions and the mailing address to submit the application. A copy of the written approval *must* be submitted along with the hardcopy of the application that is mailed to DGM. Paper applications that are submitted without a copy of the signed waiver from the Acting Director of the DGM will not be reviewed or considered for funding. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. Paper applications must be received by the DGM no later than 5:00 p.m., EST, on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Late applications will not be accepted for processing or considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and appropriate indirect costs.
- Only one grant will be awarded per applicant.
- IHS will not acknowledge receipt of applications.
- The TMG may not be used to support recurring operational programs or to replace existing public and private resources. Funding received under a recurring Public Law 93–638 contract cannot be totally supplanted or totally replaced. Exception is allowed to charge a portion or percentage of salaries of existing staff positions involved in implementing the TMG grant, if applicable. However, this percentage of TMG funding must reflect supplementation of funding for the project and not supplantation of existing ISDEAA contract funds. Supplementation is ''adding to a program'' whereas supplantation is ''taking the place of'' funds. An entity cannot use the TMG funds to supplant

the ISDEAA contract or recurring funding.

• Ineligible Project Activities—The inclusion of the following projects or activities in an application will render the application ineligible.

○ Planning and negotiating activities associated with the intent of a Tribe to enter the IHS Self-Governance Project. A separate grant program is administered by the IHS for this purpose. Prospective applicants interested in this program should contact Mr. Jeremy Marshall, Policy Analyst, Office of Tribal Self-Governance, Indian Health Service, Reyes Building, 801 Thompson Avenue, Suite 240, Rockville, Maryland 20852, (301) 443–7821, and request information concerning the ''Tribal Self-Governance Program Planning Cooperative Agreement Announcement'' or the ''Negotiation Cooperative Agreement Announcement.''

○ Projects related to water, sanitation, and waste management.

○ Projects that include direct patient care and/or equipment to provide those medical services to be used to establish or augment or continue direct patient clinical care. Medical equipment that is allowable under the Special Diabetes Grant Program is not allowable under the TMG Program.

○ Projects that include recruitment efforts for direct patient care services.

○ Projects that include long-term care or provision of any direct services.

○ Projects that include tuition, fees, or stipends for certification or training of staff to provide direct services.

○ Projects that include pre-planning, design, and planning of construction for facilities, including activities relating to program justification documents.

○ Projects that propose more than one project type. Refer to Section II, ''Award Information,'' specifically ''Eligible TMG Project Types, Maximum Funding Levels and Project Periods'' for more information. An example of a proposal with more than one project type that would be considered ineligible may include the creation of a strategic health plan (defined by TMG as a planning project type) and improving third-party billing structures (defined by TMG as a health management structure project type). Multi-year applications that include in the first year planning, evaluation, or feasibility activities with the remainder of the project years addressing management structure are also deemed ineligible.

○ Any Alaska Native Village that is neither a Title I nor a Title V organization and does not have the legal authority to contract services under 450(b) of the ISDEAA as it is affiliated with one of the Alaska Health Corporations as a consortium member and has all of its IHS funding for the Village administered through an Alaska Health Corporation, a Title V compactor, is not eligible for consideration under the TMG program.

Moreover, Congress has reenacted its moratorium in Alaska on new contracting under the ISDEAA with Alaska Native Tribes that do not already have contracts or compacts with the IHS under this Act. See the Consolidated Appropriations Act, 2014 (Jan. 17, 2014), Public Law 113–76, 128 Stat. 5, 343–44:

SEC. 424. (a) Notwithstanding any other provision of law and until October 1, 2018, the Indian Health Service may not disburse funds for the provision of health care services pursuant to Public Law 93–638 (25 U.S.C. 450 *et seq.*) to any Alaska Native village or Alaska Native village corporation that is located within the area served by an Alaska Native regional health entity.

Consequently, Alaska Native Villages will not have any opportunity to enter into an ISDEAA contract with the IHS until this law lapses on October 1, 2018.

• Other Limitations—A current TMG recipient cannot be awarded a new, renewal, or competing continuation grant for any of the following reasons:

○ The grantee will be administering two TMGs at the same time or have overlapping project/budget periods;

○ The current project is not progressing in a satisfactory manner;

○ The current project is not in compliance with program and financial reporting requirements; or

○ The applicant has an outstanding delinquent Federal debt. No award shall be made until either:

■ The delinquent account is paid in full; or

■ A negotiated repayment schedule is established and at least one payment is received.

6. Electronic Submission Requirements

All applications must be submitted electronically. Please use the *http://www.Grants.gov* Web site to submit an application electronically and select the ''Find Grant Opportunities'' link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the completed application via the *http://www.Grants.gov* Web site. Electronic copies of the application may not be submitted as attachments to email messages addressed to IHS employees or offices.

If the applicant receives a waiver to submit paper application documents, they must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the Application Deadline Date listed in the Key Dates section on page one of this announcement.

Applicants that do not adhere to the timelines for System for Award Management (SAM) and/or *http://www.Grants.gov* registration or that fail to request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

• Please search for the application package in *http://www.Grants.gov* by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.

• If you experience technical challenges while submitting your application electronically, please contact Grants.gov Support directly at: *support@grants.gov* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).

• Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.

• If it is determined that a waiver is needed, the applicant must submit a request in writing (emails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov.* Please include a clear justification for the need to deviate from the standard electronic submission process.

• If the waiver is approved, the application should be sent directly to the DGM by the Application Deadline Date listed in the Key Dates section on page one of this announcement.

• Applicants are strongly encouraged not to wait until the deadline date to begin the application process through Grants.gov as the registration process for SAM and Grants.gov could take up to fifteen working days.

• Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by the DGM.

• All applicants must comply with any page limitation requirements described in this Funding Announcement.

• After electronically submitting the application, the applicant will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGM will download the application from Grants.gov and provide necessary copies to the appropriate agency officials. Neither the DGM nor the Office of Direct

Service and Contracting Tribes will notify the applicant that the application has been received.

- Email applications will not be accepted under this announcement.

Universal Entity Identifier (UEI) Numbering System

All IHS applicants and grantee organizations are required to obtain a UEI number and maintain an active registration in the SAM database. The UEI number is a unique 9-digit identification number which uniquely identifies each entity. The UEI number is site specific; therefore, each distinct performance site may be assigned a UEI number. Obtaining a UEI number is easy, and there is no charge. To obtain a UEI number, please contact Mr. Paul Gettys on (301) 443–2114.

All HHS recipients are required by the Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), to report information on subawards. Accordingly, all IHS grantees must notify potential first-tier subrecipients that no entity may receive a first-tier subaward unless the entity has provided its UEI number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that were not registered with Central Contractor Registration and have not registered with SAM will need to obtain a UEI number first and then access the SAM online registration through the SAM home page at *https://www.sam.gov* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Completing and submitting the registration takes approximately one hour to complete and SAM registration will take 3–5 business days to process. Registration with the SAM is free of charge. Applicants may register online at *https://www.sam.gov.*

Additional information on implementing the Transparency Act, including the specific requirements for UEI and SAM, can be found on the IHS Grants Management, Grants Policy Web site: *https://www.ihs.gov/dgm/index.cfm?module=dsp_dgm_policy_topics.*

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The 15-page narrative should include only the first year of activities; information for multi-year projects should be included as an appendix. See ''Multi-year Project Requirements'' at the end of this section for more information. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 60 points is required for funding. Points are assigned as follows:

1. Criteria

A. Introduction and Need for Assistance (20 points)

(1) Describe the T/TO's current health operation. Include what programs and services are currently provided (*i.e.,* Federally-funded, State-funded, etc.), information regarding technologies currently used (*i.e.,* hardware, software, services, etc.), and identify the source(s) of technical support for those technologies (*i.e.,* Tribal staff, Area Office, vendor, etc.). Include information regarding whether the T/TO has a health department and/or health board and how long it has been operating.

(2) Describe the population to be served by the proposed project. Include the number of eligible IHS beneficiaries who currently use the services.

(3) Describe the geographic location of the proposed project including any geographic barriers to the health care users in the area to be served.

(4) Identify all TMGs received since FY 2010, dates of funding and a summary of project accomplishments. State how previous TMG funds facilitated the progression of health development relative to the current proposed project. (Copies of reports will not be accepted.)

(5) Identify the eligible project type and priority group of the applicant.

(6) Explain the need/reason for the proposed project by identifying specific gaps or weaknesses in services or infrastructure that will be addressed by the proposed project. Explain how these gaps/weaknesses have been assessed.

(7) If the proposed project includes information technology (*i.e.,* hardware, software, etc.), provide further information regarding measures taken or to be taken that ensure the proposed project will not create other gaps in services or infrastructure (*i.e.,* negatively affect or impact IHS interface capability, Government Performance and Results Act reporting requirements, contract reporting requirements, Information Technology (IT) compatibility, etc.) if applicable.

(8) Describe the effect of the proposed project on current programs (*i.e.,* Federally-funded, State-funded, etc.) and, if applicable, on current equipment (*i.e.,* hardware, software, services, etc.). Include the effect of the proposed project on planned/anticipated programs and/or equipment.

(9) Address how the proposed project relates to the purpose of the TMG Program by addressing the appropriate description that follows:

- Identify if the T/TO is an IHS Title I contractor. Address if the self-determination contract is a master contract of several programs or if individual contracts are used for each program. Include information regarding whether or not the Tribe participates in a consortium contract (*i.e.,* more than one Tribe participating in a contract). Address what programs are currently provided through those contracts and how the proposed project will enhance the organization's capacity to manage the contracts currently in place.
- Identify if the T/TO is not a Title I organization. Address how the proposed project will enhance the organization's management capabilities, what programs and services the organization is currently seeking to contract and an anticipated date for contract.
- Identify if the T/TO is an IHS Title V compactor. Address when the T/TO entered into the compact and how the proposed project will further enhance the organization's management capabilities.

B. Project Objective(s), Work Plan and Approach (40 points)

(1) Identify the proposed project objective(s) addressing the following:

- Objectives must be measureable and (if applicable) quantifiable.
- Objectives must be results oriented.
- Objectives must be time-limited.

Example: By installing new third-party billing software, the Tribe will increase the number of bills processed by 15 percent at the end of 12 months.

(2) Address how the proposed project will result in change or improvement in program operations or processes for each proposed project objective. Also address what tangible products are expected from the project (*i.e.,* policies and procedures manual, health plan, etc.).

(3) Address the extent to which the proposed project will build local capacity to provide, improve, or expand services that address the need(s) of the target population.

(4) Submit a work plan in the Appendix which includes the following information:

- Provide the action steps on a timeline for accomplishing the proposed project objective(s).
- Identify who will perform the action steps.
- Identify who will supervise the action steps taken.
- Identify what tangible products will be produced during and at the end of the proposed project.
- Identify who will accept and/or approve work products during the duration of the proposed project and at the end of the proposed project.
- Include any training that will take place during the proposed project and who will be providing and attending the training.
- Include evaluation activities planned in the work plans.

(5) If consultants or contractors will be used during the proposed project, please include the following information in their scope of work (or note if consultants/contractors will not be used):

- Educational requirements.
- Desired qualifications and work experience.
- Expected work products to be delivered on a timeline. If a potential consultant/contractor has already been identified, please include a resume in the Appendix.

(6) Describe what updates (*i.e.,* revision of policies/procedures, upgrades, technical support, etc.) will be required for the continued success of the proposed project. Include when these updates are anticipated and where funds will come from to conduct the update and/or maintenance.

C. Program Evaluation (20 points)

Each proposed objective requires an evaluation component to assess its progression and ensure its completion. Also, include the evaluation activities in the work plan.

Describe the proposed plan to evaluate both outcomes and processes. Outcome evaluation relates to the results identified in the objectives, and process evaluation relates to the work plan and activities of the project.

(1) For outcome evaluation, describe:

- What will the criteria be for determining success of each objective?
- What data will be collected to determine whether the objective was met?
- At what intervals will data be collected?
- Who will collect the data and their qualifications?
- How will the data be analyzed?
- How will the results be used?

(2) For process evaluation, describe:

- How will the project be monitored and assessed for potential problems and needed quality improvements?
- Who will be responsible for monitoring and managing project improvements based on results of ongoing process improvements and their qualifications?
- How will ongoing monitoring be used to improve the project?
- Describe any products, such as manuals or policies, that might be developed and how they might lend themselves to replication by others.
- How will the organization document what is learned throughout the project period?

(3) Describe any evaluation efforts planned after the grant period has ended.

(4) Describe the ultimate benefit to the Tribe that is expected to result from this project. An example of this might be the ability of the Tribe to expand preventive health services because of increased billing and third party payments.

D. Organizational Capabilities, Key Personnel and Qualifications (15 points)

This section outlines the broader capacity of the organization to complete the project outlined in the work plan. It includes the identification of personnel responsible for completing tasks and the chain of responsibility for successful completion of the projects outlined in the work plan.

(1) Describe the organizational structure of the T/TO beyond health care activities, if applicable.

(2) Provide information regarding plans to obtain management systems if the T/TO does not have an established management system currently in place that complies with 25 CFR part 900, subpart F, ''Standards for Tribal or Tribal Organization Management Systems.'' State if management systems are already in place and how long the systems have been in place.

(3) Describe the ability of the organization to manage the proposed project. Include information regarding similarly sized projects in scope and financial assistance as well as other grants and projects successfully completed.

(4) Describe what equipment (*i.e.,* fax machine, phone, computer, etc.) and facility space (*i.e.,* office space) will be available for use during the proposed project. Include information about any equipment not currently available that will be purchased through the grant.

(5) List key personnel who will work on the project. Include all titles of key personnel in the work plan. In the Appendix, include position descriptions and resumes for all key personnel. Position descriptions should clearly describe each position and duties, indicating desired qualifications and experience requirements related to the proposed project. Resumes must indicate that the proposed staff member is qualified to carry out the proposed project activities. If a position is to be filled, indicate that information on the proposed position description.

(6) Address how the T/TO will sustain the position(s) after the grant expires if the project requires additional personnel (*i.e.,* IT support, etc.). State if there is no need for additional personnel.

(7) If the personnel are to be only partially funded by this grant, indicate the percentage of time to be allocated to the project and identify the resources used to fund the remainder of the individual's salary.

E. Categorical Budget and Budget Justification (5 points)

(1) Provide a categorical budget for each of the 12-month budget periods requested.

(2) If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the rate agreement in the Appendix.

(3) Provide a narrative justification explaining why each categorical budget line item is necessary and relevant to the proposed project. Include sufficient cost and other details to facilitate the determination of cost allowability (*i.e.,* equipment specifications, etc.).

Multi-Year Project Requirements (if applicable)

For projects requiring a second and/or third year, include only Year 2 and/or Year 3 narrative sections (objectives, evaluation components and work plan) that differ from those in Year 1. For every project year, include a full budget justification and a detailed, itemized categorical budget showing calculation methodologies for each item. The same weights and criteria which are used to evaluate a one-year project or the first year of a multi-year project will be applied when evaluating the second and third years of a multi-year application. A weak second and/or third year submission could negatively impact the overall score of an application and result in elimination of the proposed second and/or third years with a

recommendation for only a one-year award.

Appendix Items

- Work plan, logic model and/or time line for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Agreement.
- Organizational chart.
- Additional documents to support narrative (*i.e.,* data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened by the DGM staff for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the ORC based on evaluation criteria in this funding announcement. The ORC could be composed of both Tribal and Federal reviewers appointed by the IHS program to review and make recommendations on these applications. The technical review process ensures selection of quality projects in a national competition for limited funding. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the ORC. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. Applicants will be notified by DGM, via email, to outline minor missing components (*i.e.,* budget narratives, audit documentation, key contact form) needed for an otherwise complete application. All missing documents must be sent to DGM on or before the due date listed in the email of notification of missing documents required.

To obtain a minimum score for funding by the ORC, applicants must address all program requirements and provide all required documentation.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) is a legally binding document signed by the Grants Management Officer and serves as the official notification of the grant award. The NoA will be initiated by the DGM in our grant system, GrantSolutions (*https://www.grantsolutions.gov*). Each entity that is approved for funding under this announcement will need to request or have a user account in GrantSolutions in order to retrieve their NoA. The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

Disapproved Applicants

Applicants who received a score less than the recommended funding level for approval (60 points required) and were deemed to be disapproved by the ORC, will receive an Executive Summary Statement from the Office of Direct Service and Contracting Tribes (ODSCT) within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application submitted. The ODSCT will also provide additional contact information as needed to address questions and concerns as well as provide technical assistance if desired.

Approved but Unfunded Applicants

Approved but unfunded applicants that met the minimum scoring range and were deemed by the ORC to be ''Approved,'' but were not funded due to lack of funding, will have their applications held by DGM for a period of one year. If additional funding becomes available during the course of FY 2015 the approved but unfunded application may be re-considered by the awarding program office for possible funding. The applicant will also receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC.

Note: Any correspondence other than the official NoA signed by an IHS Grants Management Official announcing to the Project Director that an award has been made to their organization is not an authorization to implement their program on behalf of IHS.

2. Administrative Requirements

Grants are administered in accordance with the following regulations, policies, and OMB cost principles:

A. The criteria as outlined in this Program Announcement.

B. Administrative Regulations for Grants:

- Uniform Administrative Requirements for Federal Awards located at 45 CFR part 75.

C. Grants Policy:

- HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

- Uniform Administrative Requirements for Federal Awards, ''Cost Principles,'' located at 45 CFR part 75, subpart E.

E. Audit Requirements:

- Uniform Administrative Requirements for Federal Awards, ''Audit Requirements,'' located at 45 CFR part 75, subpart F.

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs (IDC) in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *https://rates.psc.gov/* and the Department of Interior (Interior Business Center) *http://www.doi.gov/ibc/services/Indirect_Cost_Services/index.cfm.* For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under ''Agency Contacts'' or the main DGM office at (301) 443–5204.

4. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports. Reports must be submitted electronically via GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi-annually within 30 days after the budget period ends. These reports must include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Reports

Federal Financial Report FFR (SF–425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services, HHS at: *http://www.dpm.psc.gov*. It is recommended that the applicant also send a copy of the FFR (SF–425) report to the Grants Management Specialist. Failure to submit timely reports may cause a disruption in timely payments to the organization.

Grantees are responsible and accountable for accurate information being reported on all required reports: The Progress Reports and Federal Financial Report.

C. Federal Subaward Reporting System (FSRS)

This award may be subject to the Transparency Act subaward and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier subawards and executive compensation under Federal assistance awards.

IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 subaward obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the project period is made up of more than one budget period) and where: 1) the project period start date was October 1, 2010 or after and 2) the primary awardee will have a $25,000 subaward obligation dollar threshold during any specific reporting period will be required to address the FSRS reporting. For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Policy Web site at: *https://www.ihs.gov/dgm/index.cfm?module=dsp_dgm_policy_topics*.

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Ms. Patricia Spotted Horse, Program Analyst, Office of Direct Service and Contracting Tribes, Indian Health Service, 801 Thompson Avenue, Suite 220, Rockville, MD 20852–1609, Telephone: (301) 443–1104, Email: *Patricia.SpottedHorse@ihs.gov*.

2. Questions on grants management and fiscal matters may be directed to: Mr. Pallop Chareonvootitam, Grants Management Specialist, Office of Management Services, Division of Grants Management, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852–1609, Telephone: (301) 443–5204, Fax: (301) 443–9602, Email: *Pallop.Chareonvootitam@ihs.gov*.

3. Questions on systems matters may be directed to: Mr. Paul Gettys, Grant Systems Coordinator, Office of Management Services, Division of Grants Management, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852, Phone: (301) 443–2114; or the DGM main line (301) 443–5204, Fax: (301) 443–9602, Email: *Paul.Gettys@ihs.gov*.

VIII. Other Information

The PHS strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: March 12, 2015.

Robert G. McSwain,

Acting Director, Indian Health Service.

[FR Doc. 2015–06353 Filed 3–18–15; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Eye Disease Mechanisms and Models.

Date: April 14, 2015.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Alessandra C Rovescalli, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm. 5205 MSC7846, Bethesda, MD 20892, (301) 435–1021, *rovescaa@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Myalgic Encephalomyelitis/Chronic Fatigue Syndrome.

Date: April 14, 2015.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Lynn E Luethke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806–3323, *luethkel@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; SEP: 4D Nucleome Network Organizational Hub.

Date: April 15, 2015.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184,

MSC 7892, Bethesda, MD 20892, 301–379–9351, *allen.richon@nih.hhs.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR14–247: Pharmacogenetics, Pharmacoepigenetics and Personalized Medicine in Children.

Date: April 16, 2015.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Ocular Diseases Pathophysiology and Therapeutic Approaches.

Date: April 16, 2015.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Alessandra C Rovescalli, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm. 5205 MSC7846, Bethesda, MD 20892, (301) 435–1021, *rovescaa@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–13–190: Detection of Pathogen Induced Cancer.

Date: April 17, 2015.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Gagan Pandya, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm. 3200, MSC 7808, Bethesda, MD 20892, 301–435–1167, *pandyaga@mai.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 13, 2015.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–06268 Filed 3–18–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications, contract proposal, and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications or contract proposal, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Clinical Research in HIV/HLB Diseases.

Date: April 13, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Circle Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

Contact Person: Stephanie L Constant, Ph.D. Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, 301–443–8784 *constantsl@nhlbi.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Improving Red Blood Cells for Transfusion.

Date: April 13, 2015.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Kristin Goltry, Ph.D. Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892, 301–435–0297, *goltrykl@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 13, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–06269 Filed 3–18–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0620]

An Interactive Discussion on the Clinical Considerations of Risk in the Postmarket Environment; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Clinical Considerations of Risk in the Postmarket Environment.'' The purpose of this workshop is to provide a forum for an interactive discussion on assessing changes in medical device risk as quality and safety situations arise in the postmarket setting when a patient, operator, or member of the public uses the device. FDA is interested in obtaining input from stakeholders about assessing risk postmarket when new hazards develop in the postmarket setting that were not present or not known at the time of clearance or approval or hazards were anticipated, but harm occurs at an unexpected rate or in unexpected populations or use environments. Comments and suggestions generated through this workshop will facilitate the assessment of risk in postmarket quality and safety situations.

Date and Time: The public workshop will be held on April 21, 2015, from 8:30 a.m. to 5 p.m.

Location: The public workshop will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to: *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

Contact Person: Jean M. Cooper, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5540, Silver Spring, MD 20993, 301–796–6141, email: *Jean.Cooper@fda.hhs.gov.*

Registration: Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register

online by 4 p.m., April 13, 2015. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permits, onsite registration on the day of the public workshop will be provided beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact Susan Monahan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5231, Silver Spring, MD 20993–0002, 301–796–5661, email: *susan.monahan@fda.hhs.gov* no later than April 7, 2015.

To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this meeting/public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number. Those without Internet access should contact Susan Monahan (see *Registration*). Registrants will receive confirmation after they have been accepted and will be notified if they are on a waiting list.

Streaming Webcast of the Public Workshop: This public workshop will also be Web cast. Persons interested in viewing the Web cast must register online by 4 p.m., April 13, 2015. Early registration is recommended because Web cast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Web cast participants will be sent technical system requirements after registration and will be sent connection access information after April 14, 2015. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *http://www.adobe.com/go/connectpro_overview.* (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Request to Speak: This public workshop includes a public comment session and topic-focused sessions. During online registration, you may indicate if you wish to speak during a public comment session and which topic you wish to address. FDA has included general topics in this document. FDA will do its best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations and request time for a joint presentation. Following the close of registration, FDA will determine the amount of time allotted to each speaker and will select and notify speakers by April 16, 2015. All requests to speak must be received by the close of registration on April 13, 2015. If selected to speak, any presentation materials must be emailed to Jean Cooper (see *Contact Person*) no later than April 13, 2015. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

Comments: FDA is seeking input from FDA staff, medical device industry, standards organizations, health care providers, academia, patients, and other stakeholders. FDA is soliciting written or electronic comments on all aspects of the workshop topics. The deadline for submitting comments related to this public workshop is May 19, 2015.

Regardless of attendance at the public workshop, interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific questions as outlined in section II of this document, please identify the question you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list).

SUPPLEMENTARY INFORMATION:

I. Background

There is a strong desire by FDA and industry to harmonize their practices regarding assessment of risk in postmarket quality and safety situations including, but not limited to, product defects, failures, faults, or shortages, and any resulting harm. When postmarket safety or quality issues arise, both the firm and FDA conduct risk analyses of the device in order to decide what actions to take. During this analysis, firms typically look for changes from their preproduction risk analysis to their postmarket experience and apply or update their risk management plan as appropriate. In contrast, FDA responds to the same issue by assessing information submitted in the firm's premarket submission and may consider other information such as information collected during an inspection when it is available. The result is that FDA and industry may base their decisions about postmarket quality and safety on different information.

Managing risk does not mean eliminating risk. The medical device industry, FDA, doctors, and patients recognize that medical devices cleared or approved for market may pose some inherent risk, even when used appropriately according to labeling. Examples include, but are not limited to, manufacturing problems, materials changes, unanticipated design flaws, regional differences in clinical practice, measurement inaccuracies, incomplete instructions, transport and storage factors, and incorrect installation.

FDA anticipates that principles and factors developed with public input will help bridge differences in understanding when conducting risk assessments.

II. Topics for Discussion at the Public Workshop

FDA held discussions in the Fall of 2014 with a working group of the Association of Advancement of Medical Instrumentation to develop a draft list of risk principles and factors to consider in analyzing postmarket risk. The draft principles and factors will be presented for discussion at the public meeting. The purpose of this workshop is to provide a forum for a collaborative discussion on postmarket risk principles and factors assessing risk when changes occur due to postmarket quality and safety situations. The following questions are provided to optimize the discussion.

• What factors are important to take into account when conducting risk assessments of safety and quality issues that occur with marketed medical devices? What principles best guide the risk assessment process to assure timely, consistent, and optimal results?

• Are there improvements that FDA and stakeholders could make to enhance risk assessments in recall and shortage situations with medical devices?

• Are there specific activities or issues related to postmarket quality, safety, or compliance activities where approaches used by FDA and industry currently differ enough to create confusion or delay or limit appropriate public health actions? Please identify them.

• In which activities and areas of postmarket quality, compliance, and safety would more detailed policies or guidance be most useful?

At this public workshop, participants will engage in open dialogue to discuss the responses to issues raised by the presenters and the questions in this **Federal Register** notice.

III. Reference

The following reference has been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. We have verified all Web site addresses, but we are not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register.**

1. FDA, ''Quality System (QS) Regulation/Medical Device Good Manufacturing Practices,'' 2014, available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/PostmarketRequirements/QualitySystemsRegulations/default.htm.*

Dated: March 13, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–06278 Filed 3–18–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Center for Scientific Review Special Emphasis Panel, April 2, 2015, 1:00 p.m. to April 2, 2015, 2:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on March 6, 2015, 80 FR 12185.

The meeting has been cancelled due to the reassignment of applications.

Dated: March 13, 2015.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–06274 Filed 3–18–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2014–0033; OMB No. 1660–0132]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before April 20, 2015.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street SW., Washington, DC 20472–3172, facsimile number (202) 212–4701, or email address *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Level 1 Assessment Form, Level 3 Evaluation Form for Students, and Level 3 Evaluation Form for Supervisors.

Type of Information Collection: Revision of currently approved collection.

Form Titles and Numbers: FEMA Form 092–0–2, Level 1 Assessment Form; FEMA Form 092–0–2A, Level 3 Evaluation Form for Students; FEMA Form 092–0–2B, Level 3 Evaluation Form for Supervisors.

Abstract: The forms will be used to survey the Center for Domestic Preparedness (CDP) students enrolled in CDP courses and their supervisors. The surveys will collect information regarding quality of instruction, course material, and impact of training on their professional employment.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 44,600.

Estimated Total Annual Burden Hours: 11,150.

Estimated Cost: 403,795.25.

Dated: March 13, 2015.

Terry Cochran,

Acting Director, Records Management Division, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2015–06336 Filed 3–18–15; 8:45 am]

BILLING CODE 9111–53–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket No. FEMA–2015–0001; Internal Agency Docket No. FEMA–B–1301]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Notice; correction.

SUMMARY: On April 4, 2013, FEMA published in the **Federal Register** a proposed flood hazard determination notice at 78 FR 20340 that contained a table which included a Web page address through which the Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for the communities listed in the table could be accessed. The information available through the Web page address has subsequently been updated. The table provided here represents the proposed flood hazard

determinations and communities affected for New Orleans/Orleans Parish, Louisiana.

DATES: Comments are to be submitted on or before June 17, 2015.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1301, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://www.floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Correction

In the proposed flood hazard determination notice published at 78 FR 20340 in the April 4, 2013, issue of the **Federal Register**, FEMA published a table titled ''New Orleans/Orleans Parish, Louisiana.'' This table contained a Web page address through which the Preliminary FIRM, and where applicable, FIS report for the communities listed in the table could be accessed online. A Revised Preliminary FIRM and/or FIS report have subsequently been issued for some or all of the communities listed in the table. The information available through the Web page address listed in the table has been updated to reflect the Revised Preliminary information and is to be used in lieu of the information previously available.

Community	Community map repository address
New Orleans/Orleans Parish, Louisiana	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata.*	
New Orleans/Orleans Parish	Public Library, Archives Division, 219 Loyola Avenue, 3rd Floor, New Orleans, LA 70112.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: February 25, 2015.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2015–06339 Filed 3–18–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0049; Docket No. USCG–2015–0138]

Merchant Marine Personnel Advisory Committee; Merchant Mariner Medical Advisory Committee

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meetings; update.

SUMMARY: The Coast Guard published in the **Federal Register** on Friday, March 6, 2015, two meeting notices announcing the Merchant Marine Personnel Advisory Committee and Merchant Mariner Medical Advisory Committee. This notice corrects the previous notices to add an explanation for why 15-days advance notice was not given as required by the Federal Advisory Committee Act regulations. All other information regarding the meetings has not changed.

DATES: The Merchant Mariner Medical Advisory Committee met on Monday, March 16 and Tuesday, March 17, 2015, from 8 a.m. to 5 p.m. The Merchant Marine Personnel Advisory Committee working groups are scheduled to meet on March 18, 2015, from 8 a.m. until 4 p.m., and the full Committee is scheduled to meet on March 19, 2015, from 8 a.m. until 4 p.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ashley Holm, Alternate

Designated Federal Officer for Merchant Mariner Medical Advisory Committee, telephone 202–372–1128 or email *Ashley.F.Holm@uscg.mil* and Davis Breyer, Alternate Designated Federal Officer for Merchant Marine Personnel Advisory Committee, telephone 202–372–1445 or email *Davis.J.Breyer@uscg.mil.*

SUPPLEMENTARY INFORMATION: On March 6, 2015, the Coast Guard published two notices of Federal Advisory Committee Act meetings in the **Federal Register**. 80 FR 12187. These notices announced the meeting dates and information for the Merchant Marine Personnel Advisory Committee and Merchant Mariner Medical Advisory Committee, respectively. This update to those notices does not change any meeting dates or information provided in the original notices, which can be found at 80 FR 12187.

General Services Administration rules, Title 41, Code of Federal Regulations, § 102–365(b) requires meeting notices to be published at least 15 calendar days prior to an advisory committee meeting. In exceptional circumstances, the agency may provide notice in less than 15 calendar days but the agency must provide a reason as to why the notice is being published in less than 15 calendar days. This notice serves to provide the reasoning required by regulation as to why the Merchant Marine Personnel Advisory Committee and Merchant Mariner Medical Advisory Committee meeting notices were published in less than 15 calendar days prior to their respective meetings.

In the weeks leading up to the meetings, the Department of Homeland Security dedicated many of its resources to potential lapse in appropriation issues. Because of the redirection of resources to support the potential shutdown, the publication of the meeting notices for the Merchant Marine Personnel Advisory Committee and Merchant Mariner Medical Advisory Committee were delayed.

Dated: March 13, 2015.

J.C. Burton,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2015–06255 Filed 3–18–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–B–1436

Proposed Flood Hazard Determinations for Lee County, Illinois, and Incorporated Areas and Ogle County, Illinois, and Incorporated Areas

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed notice; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed notices concerning proposed flood hazard determinations, which may include the addition or modification of any Base Flood Elevation, base flood depth, Special Flood Hazard Area boundary or zone designation, or regulatory floodway (herein after referred to as proposed flood hazard determinations) on the Flood Insurance Rate Maps and, where applicable, in the supporting Flood Insurance Study reports for Lee County, Illinois, and Incorporated Areas and Ogle County, Illinois, and Incorporated Areas.

DATES: These withdrawals are effective March 19, 2015.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1436 to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: On November 3, 2014, FEMA published proposed notices at 79 FR 65231, proposing flood hazard determinations for Lee County, Illinois, and Incorporated Areas and Ogle County, Illinois, and Incorporated Areas. FEMA is withdrawing the proposed notices.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Dated: February 23, 2015.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2015–06337 Filed 3–18–15; 8:45 am]

BILLING CODE 9110–12–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–950]

Certain Electronic Products, Including Products With Near Field Communication (''NFC'') System-Level Functionality and/or Battery Power-Up Functionality, Components Thereof, and Products Containing Same; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 10, 2015, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of NXP B.V. of The Netherlands and NXP Semiconductors USA, Inc. of San Jose, California. A letter supplementing the complaint was filed on February 27, 2015. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic products, including products with near field communication (''NFC'') system-level functionality and/or battery power-up functionality, components thereof, and products containing same by reason of infringement of certain claims of U.S. Patent No. 7,412,230 (''the '230 patent''); U.S. Patent No. 8,280,304 (''the '304 patent''); U.S. Patent No. 8,065,389 (''the '389 patent''); U.S. Patent No. 8,204,959 (''the '959 patent''); U.S. Patent No. 8,412,185 (''the '185 patent''); and U.S. Patent No. 6,590,365 (''the '365 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection

during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2014).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 12, 2015, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electronic products, including products with near field communication (''NFC'') system-level functionality and/or battery power-up functionality, components thereof, and products containing same by reason of infringement of one or more of claims 6 and 7 of the '230 patent; claims 1 and 11 of the '304 patent; claims 1 and 5 of the '389 patent; claims 1 and 13 of the '959 patent; claims 1 and 8 of the '185 patent; and claims 1 and 7 of the '365 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

NXP B.V., High Tech Campus 60, 5656 AG, Eindhoven, The Netherlands.

NXP Semiconductors USA, Inc., 411 East Plumeria Drive, San Jose, CA 95134.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

Dell, Inc., One Dell Way, Round Rock, TX 78682.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: March 13, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–06245 Filed 3–18–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–15–009]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 23, 2015 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–459 and 731–TA–1155 (Review) (Commodity Matchbooks from India). The Commission is currently scheduled to complete and file its determinations and views of the Commission on April 2, 2015.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier announcement of this meeting was not possible.

By order of the Commission.

Issued: March 17, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–06430 Filed 3–17–15; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 002–2015]

Privacy Act of 1974; System of Records

AGENCY: Department of Justice.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, and Office of Management and Budget (OMB) Circular No. A–130, notice is hereby given that the Department of Justice (Department or DOJ) proposes to amend an existing Department-wide system of records notice titled, ''Debt Collection

Enforcement System,'' JUSTICE/DOJ–016, last published at 77 FR 9965, on February 21, 2012. The Department is adding one new routine use to the Debt Collection Enforcement System.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. Therefore, please submit any comments by April 20, 2015.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments to the Department of Justice, ATTN: Privacy Analyst, Office of Privacy and Civil Liberties, National Place Building, 1331 Pennsylvania Avenue NW., Suite 1000, Washington, DC 20530, or by facsimile at (202) 307–0693.

FOR FURTHER INFORMATION CONTACT: Dennis Dauphin, Director, Debt Collection Management Staff, Justice Management Division, U.S. Department of Justice, 145 N. Street NE., Washington, DC 20530, phone 202–514–7322.

SUPPLEMENTARY INFORMATION: The DOJ published a new Department-wide Privacy Act system of records notice on February 21, 2012, titled ''Debt Collection Enforcement System,'' JUSTICE/DOJ–016, to reflect the consolidation of the Department's debt collection enforcement systems that were previously maintained in various individual DOJ components into a single, centralized system. This system of records is maintained by the Department to cover records used by the Department's components or offices, and/or contract private counsel retained by DOJ to perform legal, financial and administrative services associated with the collection of debts due the United States, including related negotiation, settlement, litigation, and enforcement efforts. The DOJ also published an accompanying exemption regulation on April 18, 2012 (77 FR 23117), to exempt certain records in this system of records from certain provisions of the Privacy Act.

In this modification, DOJ proposes to add a new routine use, paragraph ''u'', to allow information from the Debt Collection Enforcement System to be disclosed to Federal or state agencies for the purpose of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds, including funds disbursed by a state in a state-administered, federally-funded program. This transfer of information is authorized pursuant to the Improper Payments Elimination and Recovery Act of 2010, as amended by the Improper Payments Elimination and Recovery Improvement Act of 2012; E.O. 13520, dated November 20, 2009; and Presidential Memorandum—Enhancing Payment Accuracy Through a ''Do Not Pay List,'' dated June 18, 2010, which required agencies to review existing databases known collectively as the ''Do Not Pay List'' before the release of any Federal funds. The purpose of the ''Do Not Pay List'' is to help prevent, reduce, and stop improper payments from being made, and to identify and mitigate fraud, waste, and abuse.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this modified system of records.

Dated: February 25, 2015.

Erika Brown Lee,

Chief Privacy and Civil Liberties Officer, United States Department of Justice.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(u) For the purpose of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds, including funds disbursed by a state in a state-administered, Federally-funded program, information from this system may be disclosed to (a) a Federal or state agency, its employees, agents (including contractors of its agents) or contractors; or (b) a fiscal or financial agent designated by the Financial Management Service or other Department of the Treasury bureau or office, including employees, agents or contractors of such agent; or (c) a contractor of the Financial Management Service.

* * * * *

[FR Doc. 2015–06335 Filed 3–18–15; 8:45 am]

BILLING CODE 4410–CN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Electrical Standards for Construction and for General Industry

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Electrical Standards for Construction and for General Industry,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 20, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201501-1218-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3507(a)(1)(D).

This ICR seeks to extend PRA authority for the Electrical Standards for Construction and for General Industry information collection. The information collection requirements specified by the Electrical Standards for Construction and for General Industry alert workers to the presence and types of electrical hazards in the workplace, and thereby prevent serious injury and death by electrocution. The information collection requirements in these Standards involve the following: The employer using electrical equipment that is marked with the manufacturer's name, trademark, or other descriptive markings that identify the producer of

the equipment, and marking the equipment with the voltage, current, wattage, or other ratings necessary; requiring each disconnecting means for motors and appliances to be marked legibly to indicate its purpose, unless located and arranged so the purpose is evident; requiring entrances to rooms and other guarded locations containing exposed live parts to be marked with conspicuous warning signs forbidding unqualified persons from entering; and, for construction employers only, establishing and implementing the assured equipment grounding conductor program instead of using ground-fault circuit interrupters. Occupational Safety and Health Act sections 2(b)(9), 6, and 8(c) authorize this information collection. *See* 29 U.S.C. 651(b)(9), 655, and 657(c).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0130.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on March 31, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 31, 2014 (79 FR 64838).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0130. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Electrical Standards for Construction and for General Industry.

OMB Control Number: 1218–0130.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 625,902.

Total Estimated Number of Responses: 3,039,860.

Total Estimated Annual Time Burden: 220,789 hours.

Total Estimated Annual Other Costs Burden: $3,772,760.

Dated: March 13, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–06292 Filed 3–18–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,679]

SST Truck Company, LLC; A Navistar, Inc. Company Truck Specialty Center and Warehouse and Distribution Including On-Site Leased Workers From Employee Solutions and ODW Contract Services, Garland, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on June 21, 2013, applicable to workers of SST Truck Company, LLC, A Navistar, Inc. Company, Truck Specialty Center (TSC), including on-site leased workers from Employee Solutions, Garland, Texas. The Notice of Determination was published in the **Federal Register** on July 5, 2013 (78 FR 40508).

At the request of former workers, the Department reviewed the certification for workers of the subject firm. The workers' firm is engaged in the production and modifications of class 4–8 trucks. The worker group includes workers at 3737 Grader Street and 3737 West Miller Road.

The investigation confirmed that worker separations at SST Truck Company, LLC, a Navistar, Inc. Company, Warehouse and Distribution, including on-site leased workers from ODW Contract Services, Garland, Texas, are attributable to the same shift in production to a foreign country that affected workers in the Truck Specialty Center.

Based on these findings, the Department is amending this certification to include workers from SST Truck Company, LLC, a Navistar, Inc. Company, Warehouse and Distribution, including on-site leased workers from ODW Contract Services, Garland, Texas.

The amended notice applicable to TA–W–82,679 is hereby issued as follows:

All workers of SST Truck Company, LLC, A Navistar, Inc. Company, Truck Specialty Center (TSC) and Warehouse and Distribution, including on-site leased workers from Employee Solutions and ODW Contract Services, Garland, Texas, who became totally or partially separated from employment on or after April 18, 2012 through June 21, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through June 21, 2015, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 20th day of February, 2015.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2015–06247 Filed 3–18–15; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Shipyard Employment Standards

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Shipyard Employment Standards,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 20, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201501-1218-011* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3507(A)(1)(D).

This ICR seeks to extend PRA authority for the Shipyard Employment Standards information collection requirements codified in regulations 29 CFR part 1915. The information collection requirements of the Standards are directed towards reducing workers' risk of death or serious injury by ensuring that equipment has been tested and is in safe operating condition. The Standards include information collections related to recordkeeping requirements and the notices (labeling requirements) an Occupation Safety and Health Act (OSH Act) covered employer subject to the Standards must provide covered workers. OSH Act sections 2(b)(9), 6, and 8(c) authorize this information collection. *See* 29 U.S.C. 651(b)(9), 655, and 657(c).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0220.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on March 31, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 13, 2014 (79 FR 67465).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0220. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Shipyard Employment Standards.

OMB Control Number: 1218–0220.

Affected Public: Private Sector—business or other for-profits.

Total Estimated Number of Respondents: 693.

Total Estimated Number of Responses: 23,805.

Total Estimated Annual Time Burden: 9,773 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: March 13, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–06291 Filed 3–18–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Electrical Standards for Construction and for General Industry

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Electrical Standards for Construction and for General Industry,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 20, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/*

PRAViewICR?ref_nbr=201501-1218-001 (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Electrical Standards for Construction and for General Industry information collection. The information collection requirements specified by the Electrical Standards for Construction and for General Industry alert workers to the presence and types of electrical hazards in the workplace, and thereby prevent serious injury and death by electrocution. The information collection requirements in these Standards involve the following: The employer using electrical equipment that is marked with the manufacturer's name, trademark, or other descriptive markings that identify the producer of the equipment, and marking the equipment with the voltage, current, wattage, or other ratings necessary; requiring each disconnecting means for motors and appliances to be marked legibly to indicate its purpose, unless located and arranged so the purpose is evident; requiring the entrances to rooms and other guarded locations containing exposed live parts to be marked with conspicuous warning signs forbidding unqualified persons from entering; and, for construction employers only, establishing and implementing the assured equipment grounding conductor program instead of using ground-fault circuit interrupters. Occupational Safety and Health Act sections 2(b)(9), 6, and 8(c) authorize this information collection. *See* 29 U.S.C. 651(b)(9), 655, and 657(c).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0130.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on March 31, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 31, 2014 (79 FR 64838).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0130. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Electrical Standards for Construction and for General Industry.

OMB Control Number: 1218–0130.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 625,902.

Total Estimated Number of Responses: 3,039,860.

Total Estimated Annual Time Burden: 220,789 hours.

Total Estimated Annual Other Costs Burden: $3,772,760.

Dated: March 13, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–06287 Filed 3–18–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Cotton Dust Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Cotton Dust Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 20, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201502-1218-007* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free

numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Cotton Dust Standard information collection codified in regulations 29 CFR 1910–1043. The purpose of the Standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to cotton dust. An Occupational Safety and Health Act (OSH Act) covered employer subject to the Standard must monitor employee exposure, reduce employee exposure to within permissible exposure limits, provide employees with medical examinations and training, and establish and maintain employee exposure monitoring and medical records. OSH Act sections 2(b)(9), 6, and 8(c) authorize this information collection. *See* 29 U.S.C. 651(b)(9), 655, and 657(c).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0061.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on March 31, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 13, 2014 (79 FR 67462).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0061. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Cotton Dust Standard.

OMB Control Number: 1218–0061.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 11,786.

Total Estimated Number of Responses: 58,992.

Total Estimated Annual Time Burden: 21,549 hours.

Total Estimated Annual Other Costs Burden: $2,896,328.

Dated: March 13, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–06310 Filed 3–18–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–85,617]

Day & Zimmermann, Inc., Kansas Division, Parsons, Kansas; Notice of Negative Determination on Reconsideration

On December 17, 2014, the Department of Labor issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of Day & Zimmermann, Inc., Parsons, Kansas. The notice was published in the **Federal Register** on December 31, 2014 (79 FR 78911).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a negative determination based on the findings that the subject firm did not import high explosive mortar rounds and demolition charges or shift production to a foreign country of such articles.

In the request for reconsideration, the Kansas Department of Commerce alleged workers at the subject firm had been impacted by foreign competition as production that could have taken place at the subject firm had instead been awarded to a firm in Canada.

According to 29 CFR 90.2, increased imports means that imports have increased either absolutely or relative to domestic production compared to a representative base period. The representative base period shall be one year consisting of the four quarters immediately preceding the date which is twelve months prior to the date of the petition. This petition was filed in October 2014. Therefore, the period under investigation is 2012, 2013,

January through September 2013, and January through September 2014.

During the reconsideration investigation, the Department collected additional information from the subject firm and the customer of the subject firm.

The information obtained confirmed that neither the subject firm nor its customer increased imports of articles like or directly competitive with high explosive mortar rounds and demolition charges. Additionally, the production of such articles did not shift to a foreign country in the period under investigation.

Therefore, after careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After careful review, I determine that the requirements of Section 222 of the Act, 19 U.S.C. 2272, have not been met and, therefore, deny the petition for group eligibility of Day & Zimmermann, Inc., Parsons, Kansas, to apply for adjustment assistance, in accordance with Section 223 of the Act, 19 U.S.C. 2273.

Signed in Washington, DC on this 26th day of February 2015.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2015–06246 Filed 3–18–15; 8:45 am]

BILLING CODE 4510–FN–P

LEGAL SERVICES CORPORATION

Extension of Comment Period for Agricultural Worker Population Data for Basic Field—Migrant Grants

AGENCY: Legal Services Corporation.

ACTION: Extension of comment period.

SUMMARY: The Legal Services Corporation (LSC) published in the **Federal Register** on February 3, 2015, a notice for comment regarding new data from the U.S. Department of Labor regarding agricultural workers and their dependents. LSC is extending the public comment period from March 20 to April 20, 2015, in response to requests for additional time and data.

DATES: Comments must be received on or before April 20, 2015.

ADDRESSES: Written comments must be submitted to Mark Freedman, Senior Assistant General Counsel, Legal Services Corporation, 3333 K St. NW., Washington, DC 20007; 202–295–1623 (phone); 202–337–6519 (fax); *mfreedman@lsc.gov.* Electronic submissions are preferred via email with attachments in Acrobat PDF format. Written comments sent to any other address or received after the end of the comment period may not be considered by LSC.

FOR FURTHER INFORMATION CONTACT: Mark Freedman, Senior Assistant General Counsel, Legal Services Corporation, 3333 K St. NW., Washington, DC 20007; 202–295–1623 (phone); 202–337–6519 (fax); *mfreedman@lsc.gov.*

SUPPLEMENTARY INFORMATION: In response to requests for additional time and data, LSC is extending the comment period noticed in the **Federal Register** on February 3, 2015, 80 FR 5791, from March 20, 2015 to April 20, 2015. In that document, LSC sought comment regarding new data from the U.S. Department of Labor regarding agricultural workers and their dependents. LSC proposes using this data to determine funding levels for Basic Field-Migrant grants and related adjustments to Basic Field—General grants. A description of these data and other related documents is available at: *http://www.lsc.gov/about/mattersforcomment.php.*

Dated: March 13, 2015.

Stefanie K. Davis,

Assistant General Counsel.

[FR Doc. 2015–06286 Filed 3–18–15; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIME AND DATES: The Members of the National Council on Disability (NCD) will hold a quarterly meeting on Monday and Tuesday, May 4–5, 2015, in Pittsburgh, Pennsylvania. The meeting on May 4 will begin at 9:30 a.m. and conclude at 5:00 p.m., Eastern Time, and the meeting on May 5 will begin at 9:00 a.m. and conclude at 12:30 p.m., Eastern Time.

PLACE: This meeting will occur in Pittsburgh, Pennsylvania and take place at the University of Pittsburgh at the William Pitt Union in the Kurzman Room, 3959 Fifth Avenue, Pittsburgh, Pennsylvania 15213. Interested parties are welcome to join in person or by phone in a listening-only capacity (other than the period allotted for by-phone public comment on Tuesday, May 5) using the following call-in number: 1–888–438–5524; Conference ID: 9117323; Conference Title: NCD Meeting; Host Name: Jeff Rosen.

MATTERS TO BE CONSIDERED: The Council will release its latest report on transportation; host a ''How I Got to Work'' symposium of presentations and discussions connecting transportation, asset building, and employment efforts in Pennsylvania; and receive public comment on education-related topics.

AGENDA: The times provided below are approximations for when each agenda item is anticipated to be discussed (all times Eastern):

Monday, May 4

9:30–10:30 a.m.—NCD Transportation Report Release
10:30–11:30 a.m.—Panel: ''We Are the ADA Generation''
11:30 a.m.–1:00 p.m.—Break
(1:00–3:00 p.m.—''How I Got to Work'' Symposium)
1:00–2:00 p.m.—Panel 1: Transition-age Youth Getting to the Marketplace
2:00–3:00 p.m.—Panel 2: Adults with Disabilities at Work
3:00–3:15 p.m.—Break
3:15–5:00 p.m.—Town Hall: How I Got to Work
5:00 p.m.—Adjournment

Tuesday, May 5

9:00–10:15 a.m.—Call to Order and Council Reports
10:15–10:30 a.m.—Break
10:30 a.m.–12:00 p.m.—Panel: Renewing the Federal Commitment to Students with Disabilities
12:00–12:30 p.m.—Public Comment (Note: Comments received will be limited to those regarding education-related issues)
12:30 p.m.—Adjournment

PUBLIC COMMENT: To better facilitate NCD's public comment, any individual interested in providing public comment is asked to register his or her intent to provide comment in advance by sending an email to *PublicComment@ncd.gov* with the subject line ''Public Comment'' with your name, organization, state, and topic of comment included in the body of your email. Full-length written public comments may also be sent to that email address. All emails to register for public comment at the quarterly meeting must be received by Friday, May 1, 2015. Priority will be given to those individuals who are in-person to provide their comments. Those commenters on the phone will be called on according to the list of those registered via email. Due to time constraints, NCD asks all commenters to limit their comments to three minutes.

CONTACT PERSON FOR MORE INFORMATION: Anne Sommers, NCD, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (V), 202–272–2074 (TTY).

ACCOMMODATIONS: A CART streamtext link has been arranged for this

teleconference meeting. The web link to access CART on May 4, 2015 is *http://www.streamtext.net/text.aspx?event=050415ncd0930am;* and on May 5, 2015 is *http://www.streamtext.net/text.aspx?event=050515ncd0900am.* Those who plan to attend the meeting in-person and require accommodations should notify NCD as soon as possible to allow time to make arrangements. To help reduce exposure to fragrances for those with multiple chemical sensitivities, NCD requests that all those attending the meeting in person refrain from wearing scented personal care products such as perfumes, hairsprays, and deodorants.

Dated: March 17, 2015.

Rebecca Cokley,

Executive Director.

[FR Doc. 2015–06481 Filed 3–17–15; 4:15 pm]

BILLING CODE 8421–03–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 80 FR 1670, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

Comments: Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street NW. Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton at (703) 292–7556 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for the Engineering Research Centers (ERCs).

OMB Number: 3145–0220.

Type of Request: Intent to seek approval to establish an information collection.

Abstract:

Proposed Project: The Engineering Research Centers (ERC) program supports an integrated, interdisciplinary research environment to advance fundamental engineering knowledge and engineered systems; educate a globally competitive and diverse engineering workforce from K–12 on; and join academe and industry in partnership to achieve these goals. ERCs conduct world-class research through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. New knowledge thus created is meaningfully linked to society.

ERCs conduct world-class research with an engineered systems perspective that integrates materials, devices, processes, components, control algorithms and/or other enabling elements to perform a well-defined function. These systems provide a unique academic research and education experience that involves integrative complexity and technological realization. The complexity of the systems perspective includes the factors associated with its use in industry, society/environment, or the human body.

ERCs enable and foster excellent education, integrate research and education, speed knowledge/technology transfer through partnerships between academe and industry, and prepare a more competitive future workforce. ERCs capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

Centers will be required to submit annual reports on progress and plans, which will be used as a basis for performance review and determining the level of continued funding. To support this review and the management of a Center, ERCs will also be required to submit management and performance indicators annually to NSF via a data collection Web site that is managed by a technical assistance contractor. These indicators are both quantitative and descriptive and may include, for example, the characteristics of center personnel and students; sources of cash and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students involved in Center activities; descriptions of significant advances and other outcomes of the ERC effort. Such reporting requirements will be included in the cooperative agreement which is binding between the academic institution and the NSF.

Each Center's annual report will address the following categories of activities: (1) Vision and impact, (2) strategic plan, (3) research program, (4) innovation ecosystem and industrial collaboration, (5) education, (6) infrastructure (leadership, management, facilities, diversity) and (7) budget issues.

For each of the categories the report will describe overall objectives for the year, progress toward center goals, problems the Center has encountered in making progress towards goals and how they were overcome, plans for the future and anticipated research and other barriers to overcome in the following

year, and specific outputs and outcomes.

Use of the Information: The data collected will be used for NSF internal reports, historical data, performance review by peer site visit teams, program level studies and evaluations, and for securing future funding for continued ERC program maintenance and growth.

Estimate of Burden: 100 hours per center for 17 centers for a total of 1,700 hours.

Respondents: Academic institutions.

Estimated Number of Responses per Report: One from each of the 17 ERCs.

Dated: March 16, 2015.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2015–06301 Filed 3–18–15; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 80 FR 1670, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230 or send email to *chines@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton at (703) 292–7556 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title: Request for Proposals.

OMB Control Number: 3145–0080.

Proposed Project: The Federal Acquisition Regulations (FAR) Subpart 15.2—''Solicitation and Receipt of Proposals and Information'' prescribes policies and procedures for preparing and issuing Requests for Proposals. The FAR System has been developed in accordance with the requirement of the Office of Federal Procurement Policy Act of 1974, as amended. The NSF Act of 1950, as amended, 42 U.S.C. 1870, Sec. II, states that NSF has the authority to:

(c) Enter into contracts or other arrangements, or modifications thereof, for the carrying on, by organizations or individuals in the United States and foreign countries, including other government agencies of the United States and of foreign countries, of such scientific or engineering activities as the Foundation deems necessary to carry out the purposes of this Act, and, at the request of the Secretary of Defense, specific scientific or engineering activities in connection with matters relating to international cooperation or national security, and, when deemed appropriate by the Foundation, such contracts or other arrangements or modifications thereof, may be entered into without legal consideration, without performance or other bonds and without regard to section 5 of title 41, U.S.C.

Use of the Information: Request for Proposals (RFP) is used to competitively solicit proposals in response to NSF need for services. Impact will be on those individuals or organizations who elect to submit proposals in response to the RFP. Information gathered will be evaluated in light of NSF procurement requirements to determine who will be awarded a contract.

Estimate of Burden: The Foundation estimates that, on average, 558 hours per respondent will be required to complete the RFP.

Respondents: Individuals; business or other for-profit; not-for-profit institutions; Federal government; state, local, or tribal governments.

Estimated Number of Responses: 75.

Estimated Total Annual Burden on Respondents: 41,850 hours.

Dated: March 16, 2015.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2015–06300 Filed 3–18–15; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering #1170.

Date/Time: April 15, 2015: 12:30 p.m. to 6:00 p.m.; April 16, 2015: 8:30 a.m. to 12:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1235, Arlington, Virginia 22230.

Type of Meeting: open.

Contact Person: Evette Rollins, National Science Foundation, 4201 Wilson Boulevard, Suite 505, Arlington, Virginia 22230; 703–292–8300.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

Agenda:

Wednesday, April 15, 2015

- Directorate for Engineering Report
- Electrical, Communications, and Cyber Systems (ECCS) Overview
- ECCS Committee of Visitors (COV) Report
- Broadening Participation in Engineering

Thursday, April 16, 2015

- Perspectives from the Office of the Director
- Emerging Frontiers of Research and Innovation (EFRI) Overview
- EFRI Committee of Visitors (COV) Report
- Roundtable on ENG Strategic Activities and Recommendations

Dated: March 13, 2015.

Suzanne Plimpton,

Acting, Committee Management Officer.

[FR Doc. 2015–06238 Filed 3–18–15; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 070–3103; NRC–2013–0044]

URENCO USA, Uranium Enrichment Facility

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering approval of the URENCO USA (UUSA) license amendment request 12–10 (LAR–12–10) that would authorize capacity expansion of the UUSA enrichment facility near Eunice, New Mexico. In addition the NRC is considering approval of related UUSA license amendment requests that would authorize increases in the mass possession limits for natural, depleted, and enriched uranium; and would authorize use of a modified enrichment process to utilize depleted uranium as the feed material.

DATES: The environmental assessment and finding of no significant impact referenced in this document is available on March 19, 2015.

ADDRESSES: Please refer to Docket ID NRC–2013–0044 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0044. Address questions about NRC dockets to Ms. Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Asimios Malliakos, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6458; email: *Asimios.Malliakos@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering approval of the UUSA LAR–12–10 (a publicly-available version is available in ADAMS under Accession No. ML12319A591), and UUSA's supplemental license amendment request (ADAMS Accession No. ML14171A092). The NRC's approval would authorize capacity expansion of the UUSA enrichment facility that operates near Eunice, New Mexico. LAR–12–10 and the supplemental request were submitted by URENCO USA (formerly Louisiana Energy Services, LLC), requesting amendment of its special nuclear material (SNM) License SNM–2010, under which UUSA operates its gas centrifuge uranium enrichment facility. The NRC's approval would increase the authorized mass possession limits for natural, depleted, and enriched uranium, and would authorize use of a modified enrichment process to utilize depleted uranium as the feed material. The NRC staff has prepared an Environmental Assessment (EA) (ADAMS Accession No. ML15072A016) of the proposed actions, in accordance with the requirements in Part 51 of Title 10 of the *Code of Federal Regulations* (10 CFR). Both LAR–12–10 and UUSA's June 2014, supplemental license amendment request were considered in the EA prepared by the NRC staff.

The NRC staff's safety evaluation of the proposed actions will be documented in a separate Safety Evaluation Report (SER). If the proposed actions are approved, the NRC will issue to UUSA an amended SNM–2010 license following the publication of this notice, and the amended license will be made publicly available.

II. Environmental Assessment

On September 10, 2012, UUSA submitted an Environmental Report (ER) (ADAMS Accession Nos. ML12262A539 and ML12262A540) that forms a basis for the NRC's EA of the proposed actions. On November 9, 2012, UUSA submitted the associated LAR–12–10 to expand the production capacity of the UUSA facility. Subsequent to LAR–12–10, UUSA submitted a supplemental license amendment request on June 17, 2014. The June 2014 submittal requested an increase in the authorized mass possession limits for natural, depleted, and enriched uranium. In addition, the June 2014 submittal requested authorization to use a modified enrichment process that would utilize depleted uranium instead of natural uranium as the feed material.

The NRC staff has assessed the potential environmental impacts associated with the 2012 and 2014 license amendment requests, as well as the no action alternative, and has documented the results in the EA. The NRC staff performed its environmental review in accordance with the requirements in 10 CFR part 51. In addition to the ER, the NRC staff also considered information received from a request for additional information (RAI); communications with the New Mexico State Historic Preservation Office (SHPO); the New Mexico Department of Game and Fish; information gathered from an NRC site visit; consultation with Native American Tribes, local governments and agencies officials; as well as information from independent analysis.

In the EA, the NRC staff evaluated the potential environmental impacts of the proposed action and the no action alternative on the affected environment. The resource areas evaluated include: land use; historical and cultural resources; visual and scenic resources; climatology, meteorology, and air quality; geology, minerals, and soils; water resources; ecological resources; socioeconomics; environmental justice; noise; transportation; public and occupational health and safety; and waste management.

Additionally, the NRC staff analyzed the potential cumulative impacts from past, present, and reasonably foreseeable future actions when combined with the environmental

impacts from the proposed action. The NRC staff concluded that there would not be significant adverse cumulative impacts to any resource area.

Based on its review of the proposed action relative to the requirements set forth in 10 CFR part 51, the NRC staff has determined that the amendment to NRC License SNM–2010, authorizing capacity expansion of UUSA's uranium enrichment facility near Eunice, New Mexico, would not significantly affect the quality of the human environment.

III. Finding of No Significant Impact (FONSI)

Based on its review of the proposed action, in accordance with the requirements in 10 CFR part 51, the NRC staff has concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Dated at Rockville, Maryland, this 13th day of March, 2015.

For the Nuclear Regulatory Commission.

Marissa G. Bailey,

Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2015–06334 Filed 3–18–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on April 9–11, 2015, 11545 Rockville Pike, Rockville, Maryland.

Thursday, April 9, 2015, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Topical Report NEDE–33766P, ''GEH Simplified Stability Solution (GS3)'' (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the staff and GE-Hitachi regarding the review of the GS3 topical report.

Note: A portion of this meeting may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4).

10:45 a.m.–12:15 p.m.: Draft Proposed Rulemaking for Mitigation of Beyond-Design-Basis Events (Open)—The Committee will hear presentations by and hold discussions with representatives of the staff regarding the draft proposed rulemaking package in support of mitigation of beyond-design-basis events that would, among other things, make generically applicable Order EA–12–049.

2:00 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting.

Note: A portion of this meeting may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4).

Friday, April 10, 2015, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

10:00 a.m.–10:15 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

10:30 a.m.–12:00 p.m.: Development of Interim Staff Guidance (ISG) in Support of Order EA–13–109 (Reliable Hardened Vents) (Open)—The Committee will hear presentations by and hold discussions with representatives of the staff regarding development of ISG in Support of Order EA–13–109.

2:00 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports on matters discussed during this meeting.

Note: A portion of this meeting may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4).

Saturday, April 11, 2015, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. **Note:** A portion of this meeting may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4).

11:30 a.m.–12:00 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 13, 2014 (79 FR 59307–59308). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of the April 9–11th meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as

determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated at Rockville, Maryland, this 12th day of March 2015.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2015–06333 Filed 3–18–15; 8:45 am]

BILLING CODE 7590–01–P

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Amended Columbia River Basin Fish and Wildlife Program

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power and Conservation Council, Council), an interstate compact agency organized under the authority of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. 839 *et seq.* (Northwest Power Act).

ACTION: Notice of final action adopting the amended *Columbia River Basin Fish and Wildlife Program.*

SUMMARY: Pursuant to Section 4(h) of the Northwest Power Act, the Council has amended its *Columbia River Basin Fish and Wildlife Program* (program). The final amended program may be found on the Council's Web site at *http://www.nwcouncil.org/fw/2014F&WProgram/.*

BACKGROUND: Pursuant to Section 4(h) of the Northwest Power Act, in March 2013 the Northwest Power and Conservation Council requested in writing that state and federal fish and wildlife agencies, Indian tribes, and others submit recommendations for amendments to the Council's *Columbia River Basin Fish and Wildlife Program.* The Council received over 1500 pages of recommendations and supporting information from 68 entities and 412 individuals. The Council subsequently received extensive written public comment on the program amendment recommendations.

In May 2014, after reviewing the recommendations, the supporting information, the comments received on the recommendations, and other information in the administrative record, the Council released for public review a draft revised program. The Council received over 1500 pages of substantial written comments on the draft amendments. The Council also took oral testimony at ten public hearings around the region and at regularly scheduled Council meetings. Transcripts of these hearings are in the administrative record along with the written comments. As specified in Section 4(h)(5), the Council also held a number of consultations on the recommendations and draft amendments with representatives of state and federal fish and wildlife agencies, Indian tribes, federal hydrosystem agencies, and customers of the Bonneville Power Administration. Notes from these consultations are also in the administrative record. Relevant documents from the program amendment process, including the recommendations, draft program amendments and comments, may be found on the Council's Web site at *http://www.nwcouncil.org/fw/program/2014/.*

Following this public review process required by the Northwest Power Act, and after deliberations in public over the course of several Council meetings, the Council adopted the final revised program in October 2014 at a regularly scheduled Council meeting in Pendleton, Oregon. The Council based its decisions on the recommendations, supporting documents, and views and information obtained through public comment and participation and consultation with the agencies, tribes, and customers. In the final step of this program amendment process, at its regularly scheduled March 2015 meeting in Eugene, Oregon, the Council adopted written findings as part of the program explaining its disposition of program amendment recommendations along with responses to comments received on the program amendment recommendations and on the draft amended program. The findings and responses have been made part of the program as Appendix S.

FOR FURTHER INFORMATION CONTACT: Please visit the Council's Web site at *www.nwcouncil.org* or contact the Council at (503) 222–5161 or toll free (800) 452–5161.

Stephen L. Crow,

Executive Director.

[FR Doc. 2015–06299 Filed 3–18–15; 8:45 am]

BILLING CODE P

POSTAL SERVICE

Temporary Emergency Committee of the Board of Governors; Sunshine Act Meeting

TIME AND DATE: March 11, 2015, at 4:30 p.m.

PLACE: Washington, DC, via Teleconference.

STATUS: *Committee Votes to Close March 11, 2015, Meeting:* By telephone vote on March 11, 2015, members of the Temporary Emergency Committee of the Board of Governors of the United States Postal Service met and voted unanimously to close to public observation its meeting held in Washington, DC, via teleconference. The Committee determined that no earlier public notice was possible.

MATTERS TO BE CONSIDERED: *Wednesday, March 11, 2015, at 4:30 p.m.*

1. Pricing.

General Counsel Certification: The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC, 20260–1000, telephone (202) 268–4800.

Julie S. Moore,

Secretary, Board of Governors.

[FR Doc. 2015–06372 Filed 3–17–15; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange

Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension: Rules 17Ad–6 and 17Ad–7. SEC File No. 270–151, OMB Control No. 3235–0291.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in the following rules: Rule 17Ad–6 (17 CFR 240.17Ad–6) and Rule 17Ad–7 (17 CFR 240.17Ad–7) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 17Ad–6 under the Exchange Act requires every registered transfer agent to make and keep current records about a variety of information, such as: (1) Specific operational data regarding the time taken to perform transfer agent activities (to ensure compliance with the minimum performance standards in Rule 17Ad–2 (17 CFR 240.17Ad–2)); (2) written inquiries and requests by shareholders and broker-dealers and response time thereto; (3) resolutions, contracts, or other supporting documents concerning the appointment or termination of the transfer agent; (4) stop orders or notices of adverse claims to the securities; and (5) all canceled registered securities certificates.

Rule 17Ad–7 under the Exchange Act requires each registered transfer agent to retain the records specified in Rule 17Ad–6 in an easily accessible place for a period of six months to six years, depending on the type of record or document. Rule 17Ad–7 also specifies the manner in which records may be maintained using electronic, microfilm, and microfiche storage methods.

These recordkeeping requirements are designed to ensure that all registered transfer agents are maintaining the records necessary for transfer agents to monitor and keep control over their own performance and for the Commission to adequately examine registered transfer agents on an historical basis for compliance with applicable rules.

The Commission estimates that approximately 429 registered transfer agents will spend a total of 214,500 hours per year complying with Rules 17Ad–6 and 17Ad–7 (500 hours per year per transfer agent).

The retention period under Rule 17Ad–7 for the recordkeeping requirements under Rule 17Ad–6 is six months to six years, depending on the particular record or document. The recordkeeping and retention requirements under Rules 17Ad–6 and 17Ad–7 are mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rules. These rules do not involve the collection of confidential information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 13, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–06316 Filed 3–18–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74505; File No. SR–ISEGemini–2015–06]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

March 13, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 2, 2015, ISE Gemini, LLC (the ''Exchange'' or ''ISE Gemini'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

ISE Gemini proposes to amend the Schedule of Fees as described in more detail below. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Schedule of Fees to increase Priority Customer [3] rebates in Penny Symbols [4] and SPY as well as related fees for non-Priority Customer orders trading against Priority Customer orders in these symbols.

Currently, Priority Customer orders that add liquidity on ISE Gemini are provided a maker rebate in Penny Symbols and SPY of $0.25 per contract for Tier 1,[5] $0.40 per contract for Tier 2, $0.46 per contract for Tier 3, $0.48 per contract for Tier 4, and $0.50 per contract for Tier 5. In order to incentivize members to bring their Priority Customer orders to ISE Gemini, the Exchange now proposes to provide higher maker rebates to members that achieve Tier 3 or higher. In particular, the Exchange proposes to increase the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Rule 100(a)(37A).

[4] ''Penny Symbols'' are options overlying all symbols listed on ISE Gemini that are in the Penny Pilot Program.

[5] This rebate is $0.32 per contract for members that execute a Priority Customer Maker ADV of 5,000 to 19,999 contracts in a given month.

Priority Customer rebate in Penny Symbols and SPY to $0.48 per contract for Tier 3, $0.50 per contract for Tier 4, and $0.52 per contract for Tier 5.

Market Maker,[6] Non-ISE Gemini Market Maker,[7] Firm Proprietary [8]/ Broker-Dealer,[9] and Professional Customer [10] (*i.e.* non-Priority Customer) orders currently pay a taker fee of $0.49 per contract, subject to a discount to $0.48 per contract for Market Makers that achieve the highest tier. In connection with the increased Priority Customer rebates described above, the Exchange further proposes to charge non-Priority Customer orders a taker fee of $0.50 per contract when trading against a Priority Customer order.[11]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[12] in general, and Section 6(b)(4) of the Act,[13] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that it is reasonable and equitable to increase the rebates offered to Priority Customer orders in Penny Symbols and SPY, as the proposed change is designed to attract additional Priority Customer volume to the Exchange. The Exchange already provides enhanced rebates for Priority Customer orders, and believes that further increasing the rebates will incentivize members to send additional Priority Customer order flow to ISE Gemini, creating additional liquidity to the benefit of all members that trade on the Exchange. The Exchange further believes that it is reasonable and equitable to increase the fee charged to non-Priority Customers that trade against a Priority Customer order as this change is designed to offset the enhanced rebates offered to incentivize the other side of the trade. As explained above, the Exchange believes that all members will benefit from the additional liquidity created by the higher Priority Customer rebates. Furthermore, the proposed taker fee for non-Priority Customer orders trading against a Priority Customer is within the range of fees charged by other options exchanges, including the BOX Options Exchange (''BOX''), which charges as much as $0.59 per contract for non-customer orders in penny pilot symbols that trade against a public customer.[14]

In addition, while the Exchange is increasing Priority Customer rebates as well as corresponding fees for non-Priority Customers trading against Priority Customer orders, the Exchange does not believe that these proposed changes are unfairly discriminatory. As has historically been the case, Priority Customer orders remain entitled to more favorable fees and rebates than other market participants in order to encourage this order flow. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). This limitation does not apply to participants whose behavior is substantially similar to that of market professionals, including Professional Customers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[15] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes to fees and rebates in Penny Symbols and SPY are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed fees and rebates are competitive with fees and rebates offered to orders executed on other options exchanges. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[16] and subparagraph (f)(2) of Rule 19b–4 thereunder,[17] because it establishes a due, fee, or other charge imposed by ISE Gemini.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISEGemini–2015–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISEGemini-2015–06. This file number should be included on the

[6] The term Market Maker refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Rule 100(a)(25).

[7] A ''Non-ISE Gemini Market Maker'' is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

[8] A ''Firm Proprietary'' order is an order submitted by a member for its own proprietary account.

[9] A ''Broker-Dealer'' order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

[10] A ''Professional Customer'' is a person or entity that is not a broker/dealer and is not a Priority Customer.

[11] The Exchange notes that there will be no Tier 5 Market Maker discount when trading against a Priority Customer.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

[14] *See* BOX Fee Schedule, Section 1, Exchange Fees, A. Non-Auction Transactions.

[15] 15 U.S.C. 78f(b)(8).

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISEGemini–2015–06, and should be submitted on or before April 9, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Brent J. Fields,

Secretary.

[FR Doc. 2015–06263 Filed 3–18–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74507; File Nos. SR–NYSE–2011–55; SR–NYSEAmex–2011–84]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Order Granting an Extension to Limited Exemptions From Rule 612(c) of Regulation NMS in Connection With the Exchanges' Retail Liquidity Programs Until September 30, 2015

March 13, 2015.

On July 3, 2012, the Securities and Exchange Commission (''Commission'') issued an order pursuant to its authority under Rule 612(c) of Regulation NMS (''Sub-Penny Rule'')[1] that granted the New York Stock Exchange LLC (''NYSE'') and NYSE MKT LLC[2] (''NYSE MKT'' and, together with NYSE, the ''Exchanges'') limited exemptions from the Sub-Penny Rule in connection with the operation of the Exchanges' respective Retail Liquidity Programs (the ''Programs'').[3] The limited exemptions were granted concurrently with the Commission's approval of the Exchanges' proposals to adopt their respective Programs for one-year pilot terms.[4] The exemptions were granted coterminous with the effectiveness of the pilot Programs; both the pilot Programs and exemptions are scheduled to expire on March 31, 2015.[5]

The Exchanges now seek to extend the exemptions until September 30, 2015.[6] The Exchanges' request was made in conjunction with immediately effective filings that extend the operation of the Programs through the same date.[7] In their request to extend the exemptions, the Exchanges note that the participation in the Programs has increased more recently. Accordingly, the Exchanges have asked for additional time to allow themselves and the Commission to analyze more robust data concerning the Programs, which the Exchanges committed to provide to the Commission.[8] For this reason and the reasons stated in the Order originally granting the limited exemptions, the Commission finds that extending the exemptions, pursuant to its authority under Rule 612(c) of Regulation NMS, is appropriate in the public interest and consistent with the protection of investors.

Therefore, it is hereby ordered that, pursuant to Rule 612(c) of Regulation NMS, each Exchange is granted a limited exemption from Rule 612 of Regulation NMS that allows it to accept and rank orders priced equal to or greater than $1.00 per share in increments of $0.001, in connection with the operation of its Retail Liquidity Program, until September 30, 2015.

The limited and temporary exemptions extended by this Order are subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934. Responsibility for compliance with any applicable provisions of the Federal securities laws must rest with the persons relying on the exemptions that are the subject of this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Brent J. Fields,

Secretary.

[FR Doc. 2015–06265 Filed 3–18–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74496; File No. SR–MIAX–2015–03]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Order Granting Approval to Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Adopt a ''Risk Protection Monitor'' Functionality Under Proposed MIAX Rule 519A and Amend the ''Aggregate Risk Monitor'' Functionality Under MIAX Rule 612

March 13, 2015.

I. Introduction

On January 8, 2015, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act

[18] 17 CFR 200.30–3(a)(12).

[1] 17 CFR 242.612(c).

[2] At the time it filed the original proposal to adopt the Retail Liquidity Program, NYSE MKT went by the name NYSE Amex LLC. On May 14, 2012, the Exchange filed a proposed rule change, immediately effective upon filing, to change its name from NYSE Amex LLC to NYSE MKT LLC. *See* Securities Exchange Act Release No. 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR–NYSEAmex–2012–32).

[3] *See* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR–NYSE–2011–55; SR–NYSEAmex–2011–84) (''Order'').

[4] *See id.*

[5] The pilot term of the Programs was originally scheduled to end on July 31, 2013, but the Exchanges initially extended the term for an additional year, through July 31, 2014, *see* Securities Exchange Act Release Nos. 70096 (August 2, 2013), 78 FR 48520 (August 8, 2013) (SR–NYSE–2013–48), and 70100 (August 2, 2013), 78 FR 48535 (August 8, 2013) (SR–NYSEMKT–2013–60), and then subsequently extended the term again through March 31, 2015, *see* Securities Exchange Act Release Nos. 72629 (July 16, 2014), 79 FR 42564 (July 22, 2014) (SR–NYSE–2014–35), and 72625 (July 16, 2014), 79 FR 42566 (July 22, 2014) (SR–NYSEMKT–2014–60). Each time the pilot term of the Programs was extended, the Commission granted the Exchanges' requests to also extend the Sub-Penny Exemption through July 31, 2014, *see* Securities Exchange Act Release No. 70085 (July 31, 2013), 78 FR 47807 (August 6, 2013), and March 31, 2015, *see* Securities Exchange Act Release No. 72732 (July 31, 2014), 79 FR 45851 (August 6, 2014), respectively.

[6] *See* Letter from Martha Redding, Senior Counsel, NYSE, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated February 27, 2015.

[7] *See* Securities Exchange Act Release Nos. 34–74454 (March 6, 2015), 80 FR 13054 (March 12, 2015) (SR–NYSE–2015–10), and 34–74455 (March 6, 2015), 80 FR 13047 (March 12, 2015) (SR–NYSEMKT–2015–14).

[8] *See* Order, *supra* note 3, 77 FR at 40681.

[9] 17 CFR 200.30–3(a)(83).

of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a voluntary Risk Protection Monitor functionality for orders (the ''RPM'') and codify existing functionality regarding the Exchange's Aggregate Risk Manager for quotes (the ''ARM''). On January 20, 2105, the Exchange filed Amendment No.1 to the proposal.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on January 28, 2015.[4] The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes new MIAX Rule 519A to establish a voluntary RPM that will be available to all MIAX members. The Exchange also proposes clarifying amendments to current MIAX Rule 612, which describes the Exchange's ARM functionality that is applicable to quoting activity by MIAX Market Makers.

A. Risk Protection Monitor

According to the Exchange, the RPM is intended to provide new risk protection functionality for *orders* entered by members. Under new MIAX Rule 519A, MIAX's automated trading system (the ''System'') will maintain a counting program (the ''counting program'') for each participating member. Member participation in the counting program will be voluntary. The counting program will count (i) the number of orders entered by the member on the Exchange within a specified time period that has been established by the member (the ''specified time period''), and (ii) the number of contracts traded via an order entered by the member on the Exchange within the specified time period.[5] The Exchange will establish a maximum duration for any specified time period and announce that maximum duration via a Regulatory Circular. To use the RPM functionality, members must establish an Allowable Order Rate and/or an Allowable Contract Execution Rate. The Allowable Order Rate is the maximum number of permissible orders (as specified by the member) entered during the specified time period designated by the member. The Allowable Contract Execution Rate is the maximum number of permissible contracts (as specified by the member) executed during the specified time period designated by the member.

If the RPM functionality is elected by a member, the System will trigger the RPM whenever the counting program determines that the member has entered a number of orders that exceeds the member's specified Allowable Order Rate during the specified time period, or executed a number of contracts that exceeds the member's specified Allowable Contract Execution Rate during the specified time period.[6]

Under new MIAX Rule 519A, a member may establish whether the RPM, once triggered, will: (i) Prevent the System from receiving any new orders in all series in all classes from the member; (ii) prevent the System from receiving any new orders in all series in all classes from the member and cancel all existing Day orders in all series in all classes from the member; or (iii) send a notification that the RPM has been triggered without any further preventative actions or cancellations by the System. Once engaged, the RPM will automatically take whatever action has been specified in advance by the member. However, PRIME Orders, PRIME Solicitation Orders, Auction or Cancel Orders (''AOC Order''), Opening Orders (''OPG Order''), or Good 'til Cancel Orders (''GTC Order'') will not participate in the RPM. [7] When engaged, the RPM will allow the member to interact with existing orders that were entered prior to the member exceeding the Allowable Order Rate or the Allowable Contract Execution Rate, including sending cancel order messages and receiving trade executions from those orders. The RPM will remain engaged until the member communicates with the Exchange's help desk (the ''Help Desk'') to re-enable the System to accept new orders from the member. The Exchange noted that this communication from the member to the Help Desk may be sent either via email or phone.[8]

In addition, the Exchange also proposes to allow members to group with other members so that the RPM would apply collectively to the group. The members in such a group must designate a group owner and may form a group together if: (i) There is at least 75% common ownership between the group's members, as reflected on each firm's Form BD, Schedule A; or (ii) there is written authorization signed by all members in the group, and the group owner maintains exclusive control of all orders sent to the Exchange from each MPID within the group. A clearing firm also may elect to group together with several members so that the RPM applies collectively to that group of members, provided that: (i) The clearing firm must be designated as the group owner; (ii) the clearing firm must serve as the clearing firm for all the MPIDs of the group; and (iii) there must be written authorization signed by the clearing firm and each member of the group.

In general, the RPM for groups will operate in the same manner as it does for individual members, except that that the counting program and RPM protections will apply to the group as a whole. Thus, the counting program will count the number of orders entered and the number of contracts traded resulting from orders entered by all MPIDs in the group collectively, and the System will trigger the RPM when the group collectively exceeds either the Allowable Order Rate or Allowable Contract Execution Rate for the group.[9] Once engaged, pursuant to the group owner's instructions, the RPM will automatically either: (i) Prevent the System from receiving any new orders in all series in all classes from each MPID in the group; (ii) prevent the System from receiving any new orders in all series in all classes from each MPID in the group and cancel all existing Day orders in all series in all classes from the group, or (iii) send a notification without any further

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange proposed changes to the Form 19b–4, Exhibit 1, and Exhibit 5 to clarify that once triggered, the Risk Protection Monitor described therein will apply to orders in all series in all classes of options from the Exchange Member.

[4] *See* Securities Exchange Act Release No. 74118 (January 22, 2015), 80 FR 4605 (''Notice'').

[5] In its filing, the Exchange noted that members may establish different specified time periods for the purpose of counting orders and the purpose of counting contracts traded via an order entered by the member under the RPM, and thus, the length of the specified time period for each purpose need not be the same. *See* Notice, *supra* note 4, at 4605 n.7.

[6] In the Notice, the Exchange provided examples demonstrating how the System will determine when the Allowable Order Rate or Allowable Contract Execution Rate for an individual member is exceeded. *See* Notice, *supra* note 4, at 4606–07.

[7] Interpretation and Policy .02 to new MIAX Rule 519A provides that PRIME Orders, PRIME Solicitation Orders, and GTC Orders will not participate in the RPM. The System will include PRIME Orders, PRIME Solicitation Orders, and GTC Orders in the counting program for purposes determining when the RPM is triggered. PRIME Orders, PRIME Solicitation Orders and Customer-to-Customer Orders will each be counted as two orders for the purpose of calculating the Allowable Order Rate. Once engaged, however, the RPM will not cancel any existing PRIME Orders, PRIME Solicitation Orders, AOC Orders, OPG Orders, or GTC Orders that are marked as Day orders.

[8] *See* Notice, *supra* note 4, at 4606 n.10.

[9] In the Notice, the Exchange provided examples demonstrating how the System will determine when the Allowable Order Rate or Allowable Contract Execution Rate is exceeded for a group. *See* Notice, *supra* note 4, at 4608.

preventative action or cancellations by the System. Only the designated group owner may re-enable the acceptance of new orders for all the members of the group, via a request to the Help Desk. In instances when a clearing firm has grouped several members for the purpose of the RPM, the clearing firm may only elect to receive warning notifications indicating that a specific percentage of an Allowable Order Rate or an Allowable Contract Execution Rate has been met, unless one member of the group maintains exclusive control of all orders routed through all MPIDs within the group.

In addition, members may elect to receive warning notifications from MIAX indicating that a specific percentage of an Allowable Order Rate or an Allowable Contract Execution Rate has been met. The Exchange also proposes that, at the request of a member, or if necessary to maintain a fair and orderly market, the Help Desk may pause and restart the specified time period used by the counting program or clear and reset any calculated Allowable Order Rate or Allowable Contract Execution Rate.

B. Aggregate Risk Manager

The Exchange also proposes to codify what it represents is existing functionality regarding the ARM under MIAX Rule 612.[10] Under MIAX Rule 612, the System maintains a counting program for each Market Maker who is required to submit continuous two-sided quotations pursuant to MIAX Rule 604 in each of its assigned option classes. The ARM counting program counts the number of contracts traded by a Market Maker's quotes in an assigned option class within a specified time period that has been established by the Market Maker; MIAX Rule 612 states that the specified time period for the ARM cannot exceed 15 seconds. Under the ARM, a Market Maker also establishes for each option class an Allowable Engagement Percentage. The System engages the ARM in a particular option class when the counting program has determined that a Market Maker has traded during the specified time period a number of contracts equal to or above its Allowable Engagement Percentage.[11] Once engaged, the ARM automatically removes the Market Maker's quotations on MIAX in all series of that particular option class until the Market Maker submits a new revised quotation.

The Exchange proposes to amend MIAX Rule 612 in two regards. First, the Exchange proposes to codify in its rules an existing requirement for a Market Maker to send a message to MIAX specifically to disengage the ARM and allow quoting before the Market Maker can begin to quote again in that class. As noted above, MIAX Rule 612 currently provides that once engaged, the ARM will automatically remove the Market Maker's quotations from MIAX in all series of that particular option class until the Market Maker submits a new revised quotation. The Exchange proposes to add rule text to MIAX Rule 612(b)(1) requiring a Market Maker also to send a notification to the System of its intent to reengage quoting in order to disengage the ARM. Second, the Exchange proposes to clarify, in new Interpretation and Policy .01 to Rule 612, that eQuotes [12] do not participate in the ARM. The Exchange states that the System does not include contracts traded through the use of an eQuote in the counting program for purposes of Rule 612, and that eQuotes will remain in the System available for trading when the Aggregate Risk Manager is engaged.[13]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the RPM may help members, and member groups, to mitigate the potential risks associated with the execution of an unacceptable level of orders that result from, *e.g.,* technology issues with electronic trading systems. The Commission also notes that other exchanges have established risk protection mechanisms for members and/or market makers that are similar in many respects to MIAX's proposal.[16] While the concept of member groups may be unique to MIAX's proposal, the Commission believes that MIAX has designed that portion of the proposed rule to be consistent with the Act, including section 6(b)(5), as it may foster cooperation and coordination with clearing transactions and protect investors and the public interest by providing a mechanism to reduce the risk of abnormal trading activity across multiple participants under common control or where the group otherwise provides written opt-in consent.

The Commission notes that the RPM is a voluntary mechanism. The Commission reminds members electing to use the RPM to be mindful of their obligations to, among other things, seek best execution of orders they handle on an agency basis. A broker-dealer has a legal duty to seek to obtain best execution of customer orders, and the decision to utilize the RPM, including the parameters set by the member for the RPM, must be consistent with this duty.[17] For instance, under the

[10] *See* Notice, *supra* note 4, at 4609.

[11] The Allowable Engagement Percentage cannot be less than 100%. The System calculates the Allowable Engagement Percentage by first determining the percentage that the number of contracts executed in an individual option in a class represents relative to the Market Maker's disseminated Standard quote and/or Day eQuote in that individual option (''option percentage''). *See* MIAX Rule 612(b)(2)(i). When the System calculates the option percentage, the number of contracts executed in that option class will be automatically offset by the number of contracts that are executed on the opposite side of the market in the same option class during the specified time period. *See* MIAX Rule 612(b)(3). The counting program will then combine the individual option percentages to determine the option class percentage (''class percentage''). *See* MIAX Rule 612(b)(2)(ii). When the class percentage equals or exceeds the Market Maker's Allowable Engagement Percentage, the ARM will be triggered. *See id.*

[12] An eQuote ''is a quote with a specific time in force that does not automatically cancel and replace a previous Standard quote or eQuote,'' and ''can be cancelled by the Market Maker at any time, or can be replaced by another eQuote that contains specific instructions to cancel an existing eQuote.'' *See* MIAX Rule 517(a)(2).

[13] *See* Notice, *supra* note 4, at 4609.

[14] 15 U.S.C. 78f. In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] *See, e.g.,* BATS Exchange (''BATS'') Rule 21.16 (Risk Monitor Mechanism available to all BATS Users); NASDAQ Options Market (''NOM'') Rule Chapter VI, Section 19 (Risk Monitor Mechanism available to all NOM Participants); BOX Options Exchange Rule 7280 (Bulk Cancellation of Trading Interest available to Options Participants); and Chicago Board Options Exchange (''CBOE'') Rule 8.18 (Quote Risk Monitor Mechanism available to certain CBOE Market-Makers and CBOE Trading Permit Holders associated with certain CBOE Market-Makers).

[17] *See* Securities Exchange Act Release Nos. 37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996) (''Order Handling Rules Release''); 51808

Continued

proposal, members have unfettered discretion to set the Allowable Order Rate and Allowable Contract Execution Rate for the RPM. While MIAX neglected to affirmatively establish minimum and maximum permissible settings for the RPM in its rule, the Commission expects MIAX periodically to assess whether the RPM functionality is operating in a manner that is consistent with the promotion of fair and orderly markets. In addition, the Commission expects that members will consider their best execution obligations when establishing the minimum and maximum parameters for the RPM.[18] For example, an abnormally low Allowable Order Rate set over an abnormally long specified time period should be carefully scrutinized, particularly if a member's order flow to MIAX contains agency orders. To the extent that the RPM is set to overly-sensitive parameters, a member should consider the effect of its chosen settings on its ability to receive a timely execution on marketable agency orders that it sends to MIAX in various market conditions.[19] The Commission cautions that brokers considering their best execution obligations should be aware that the agency orders they represent may be rejected on account of the RPM.

In addition, under the proposal, once the RPM is engaged, PRIME Orders, PRIME Solicitation Orders, GTC Orders, AOC Orders, and OPG Orders will not participate in the RPM.[20] The Commission notes that these are unique order types.[21] The Commission believes that these exceptions appear to be reasonably designed to not interfere with the operation of the PRIME and PRIME Solicitation auctions and also to restrict application of the RPM to specific types of orders, whose terms limit their application to specialized purposes for which members may not want or need order protection to apply.

The proposed rule change also codifies existing functionality in the ARM with respect to the procedures for resuming quoting and the non-participation of eQuotes. The Commission notes that the clarification of ARM procedures in Rule 612 could eliminate potential confusion for members regarding the need to affirmatively notify MIAX that the member wishes to re-start quoting following an ARM event as well as internal inconsistency in the rule about the inapplicability of ARM to eQuotes.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[22] that the proposed rule change (SR–MIAX–2015–03), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Brent J. Fields,

Secretary.

[FR Doc. 2015–06262 Filed 3–18–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension: Rule 11a1–1(T).
SEC File No. 270–428, OMB Control No. 3235–0478.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 11a1–1(T) (17 CFR 240.11a1–1(T)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a et *seq.*) (''Exchange Act'').

On January 27, 1976, the Commission adopted Rule 11a1–1(T), to exempt certain transactions of exchange members for their own accounts that would otherwise be prohibited under Section 11(a) of the Exchange Act. The rule provides that a member's proprietary order may be executed on the exchange of which the trader is a member, if, among other things: (1) The member discloses that a bid or offer for its account is for its account to any member with whom such bid or offer is placed or to whom it is communicated; (2) any such member through whom that bid or offer is communicated discloses to others participating in effecting the order that it is for the account of a member; and (3) immediately before executing the order, a member (other than a specialist in such security) presenting any order for the account of a member on the exchange clearly announces or otherwise indicates to the specialist and to other members then present that he is presenting an order for the account of a member.

Without these requirements, it would not be possible for the Commission to monitor its mandate under the Exchange Act to promote fair and orderly markets and ensure that exchange members have, as the principal purpose of their exchange memberships, the conduct of a public securities business.

There are approximately 663 respondents that require an aggregate total of 19 hours to comply with this rule. Each of these approximately 663 respondents makes an estimated 20 annual responses, for an aggregate of 13,260 responses per year. Each response takes approximately 5 seconds to complete. Thus, the total compliance burden per year is 19 hours (13,260 × 5 seconds/60 seconds per minute/60 minutes per hour = 19 hours). The approximate cost per hour is $323, resulting in a total cost of compliance for the annual burden of $6,137 (19 hours @$323).

Compliance with Rule 11a–1(T) is necessary for exchange members to make transactions for their own accounts under a specific exemption from the general prohibition of such transactions under Section 11(a) of the Exchange Act. Compliance with Rule 11a–1(T) does not involve the collection of confidential information. Rule 11a–1(T) does not have a record retention requirement per se. However, responses made pursuant to Rule 11a–1(T) may be subject to the recordkeeping requirements of Rules 17a–3 and 17a–4.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to (i) Desk Officer for the

(June 9, 2005), 70 FR 37496, 37537–8 (June 29, 2005).

[18] The Commission reminds broker-dealers that they must examine their procedures for seeking to obtain best execution in light of market and technology changes and modify those practices if necessary to enable their customers to obtain the best reasonably available prices. *See* Order Handling Rules Release, *supra* note 17, at 48323.

[19] For example, a marketable agency order that would have otherwise executed on MIAX might be prevented from reaching MIAX on account of other interest from the member that causes it to exceed its Allowable Order Rate and, thus, triggers the RPM, resulting in the System blocking new orders from the member.

[20] *See supra* note 7.

[21] For example, the Exchange argues that PRIME Orders submitted pursuant to MIAX Rule 515A have been guaranteed an execution at the time of acceptance into the System and, therefore, should not be cancelled when the RPM is engaged, because the execution has effectively already occurred. *See* Notice, *supra* note 4, at 4609.

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 13, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–06315 Filed 3–18–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74509; File No. SR–MIAX–2015–04]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Order Approving a Proposed Rule Change To Amend MIAX Rule 402

March 13, 2015.

I. Introduction

On January 16, 2015, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its listing standards under Exchange Rule 402 to eliminate a requirement that the Exchange obtain a comprehensive surveillance sharing agreement (''CSSA'') before listing and trading options that overlie certain exchange-traded fund shares (''ETFs''), provided such ETFs are listed pursuant to generic listing standards on an equities exchange for portfolio depositary receipts and index fund shares based on international or global indexes under which a CSSA with a foreign market is not required. The proposed rule change was published for comment in the **Federal Register** on January 30, 2015.[3] The Commission received one comment letter supporting the proposed rule change.[4] This order approves the proposed rule change.

II. Description of the Proposal

The Exchange allows for the listing and trading of options on ETFs that satisfy certain listing standards.[5] These rules require, in part, that (i) any non-U.S. component securities of an index or portfolio of securities on which the ETFs are based that are not subject to CSSAs do not in the aggregate represent more than 50% of the weight of the index or portfolio; [6] (ii) component securities of an index or portfolio of securities on which the ETFs are based for which the primary market is in any one country that is not subject to a CSSA do not represent 20% or more of the weight of the index; [7] and (iii) component securities of an index or portfolio of securities on which the ETFs are based for which the primary market is in any two countries that are not subject to CSSAs do not represent 33% or more of the weight of the index.[8] The generic listing standards on equities exchanges for the listing of portfolio depositary receipts and index fund shares based on international or global indexes do not, however, contain a parallel requirement regarding CSSAs.[9]

The Exchange proposes to amend its listing standards to enable the Exchange to list and trade options on certain ETFs without a CSSA provided that such ETFs that underlie options are listed on an equities exchange pursuant to the generic listing standards for portfolio depositary receipts and index fund shares based on international or global indexes under which a CSSA is not required.[10] Accordingly, the proposed rule change would provide a limited exception to the requirement regarding CSSAs under the Exchange's listing standards only in circumstances where the underlying ETF was listed on an equities exchange pursuant to generic listing standards for international or global indexes that do not require such exchange to enter into a CSSA with a foreign market.[11] The requirement for the Exchange to enter into a CSSA with a foreign market would continue to apply with respect to products that do not fit under the proposed exception.[12] In addition, options on ETFs that may be listed and traded without a CSSA under this proposal would be subject to, in all other respects, the Exchange's existing listing and trading rules that apply to options on ETFs and would be captured under the Exchange's surveillance program for options on ETFs.[13]

Finally, the Exchange proposes several technical and non-substantive changes to the formatting of Rule 402(i), including relocating current Rule 402(i)(5)(ii)(E) to proposed Rule 402(i)(E)(1)(iii) and the re-numbering of current Rule 402(i)(5)(ii) to proposed Rule 402(i)(E)(2)(ii). In addition, the Exchange proposes making corrections to inaccurate citations located in Rule 403(g)(1) and (2), so that Rule 403(g)(1) properly cites to Rule 402(i)(E)(1)(i) regarding closed-end ETFs and Rule 403(g)(2) properly cites to Rule 402(i)(E)(1)(ii) regarding open-end ETFs.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of section 6 of the Act [14] and the rules and regulations thereunder applicable to a national securities exchange.[15] Specifically, the Commission finds that the proposed rule change is consistent

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74131 (January 26, 2015), 80 FR 5161 (SR–MIAX–2015–04) (''Notice'').

[4] *See* Letter to Brent J. Fields, Secretary, Commission, from Elizabeth King, Secretary and General Counsel, New York Stock Exchange, dated February 6, 2015 (''NYSE Letter'') (stating that ''NYSE Group agrees with . . . and is supportive of MIAX's efforts to make options available as a risk management tool for those ETFs listed on an equities exchange pursuant to generic listing standards without the requirement for a CSSA'').

[5] *See* MIAX Rule 402(i).

[6] *See* MIAX Rule 402(i)(5)(ii)(A) (renumbered as 402(i)(E)(2)(ii)(A) as part of the proposed rule change).

[7] *See* MIAX Rule 402(i)(5)(ii)(B) (renumbered as 402(i)(E)(2)(ii)(B) as part of the proposed rule change).

[8] *See* MIAX Rule 402(i)(5)(ii)(C) (renumbered as 402(i)(E)(2)(ii)(C) as part of the proposed rule change).

[9] *See, e.g.,* NYSE MKT Rule 1000, Commentary .03(a)(B); NYSE MKT Rule 1000A, Commentary .02(a)(B); NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(B); NYSE Arca Equities Rule 8.100, Commentary .01(a)(B); NASDAQ Rule 5705(a)(3)(A)(ii); NASDAQ Rule 5705(b)(3)(A)(ii); BATS Rule 14.11(b)(3)(A)(ii); and BATS Rule 14.11(c)(3)(A)(ii). *See also* Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (SR-Amex-2006–78); 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca-2006–86); and 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR–NASDAQ–2006–050).

[10] *See* Proposed MIAX Rule 402(i)(E)(2)(i). *See also* NYSE MKT Rule 1000, Commentary .03(a)(B); NYSE MKT Rule 1000A, Commentary .02(a)(B); NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(B); NYSE Arca Equities Rule 8.100, Commentary .01(a)(B); NASDAQ Rule 5705(a)(3)(A)(ii); NASDAQ Rule 5705(b)(3)(A)(ii); BATS Rule 14.11(b)(3)(A)(ii); and BATS Rule 14.11(c)(3)(A)(ii).

[11] *Id.*

[12] *See* Proposed MIAX Rules 402(i)(E)(2)(ii)(A)–(C).

[13] *See* Notice, supra note 3.

[14] 15 U.S.C. 78f.

[15] Additionally, in approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

with section 6(b)(5) of the Act,[16] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

MIAX proposes to eliminate the requirement that it obtain a CSSA with the applicable foreign market before trading options on certain ETFs that track broad-based indexes of securities.[17] CSSAs help to ensure that the listing exchange has the ability to obtain the information necessary to detect and deter potential trading abuses.[18] According to the Exchange, it believes that this proposed listing standard for options on ETFs is reasonable for international and global indexes, and, when applied in conjunction with the other listing requirements, would result in options overlying ETFs that are sufficiently broad-based in scope and therefore not readily susceptible to manipulation.[19] Moreover, the Exchange believes that the proposed rule change would benefit investors by providing valuable risk management tools.[20] The NYSE Group agrees with these statements by the Exchange and supports the proposal.[21]

The Commission approved generic listing standards for ETFs based on international or global indexes in 2006.[22] At that time, the Commission determined that for certain ETFs based on broad-based indexes of securities, the generic listing standards for equities exchanges need not require the exchange to obtain a CSSA to list and trade such ETFs.[23] These generic ETF listing standards contain quantitative criteria with respect to components included in the ETF's underlying index that provide minimum thresholds regarding trading volume, market capitalization, number of index components, and index concentration limits.[24] They do not, however, require the listing exchange to obtain a CSSA with the home country market for the underlying index components.[25] The Commission stated that a CSSA with the home country market was not required, because the listing standards provided for minimum levels of liquidity, concentration, and pricing transparency for index components.[26] In addition, the Commission noted that the generic listing standards for ETFs based on global or international indexes applied in conjunction with the other applicable listing requirements would ''permit the listing only of ETFs that are sufficiently broad-based in scope to minimize potential manipulation . . . [and] are designed to preclude ETFs from becoming surrogates for trading in unregistered securities.'' [27]

MIAX now seeks to establish parallel listing standards for options. The Commission believes that it is consistent with the Act for the Exchange to list and trade options that overlie ETFs, provided such ETFs are listed pursuant to generic listing standards on equities exchanges for portfolio depositary receipts and index fund shares based on international or global indexes under which a CSSA with a foreign market is not required.[28] All of the other listing criteria under MIAX's rules would continue to apply to any such options. In addition, the Commission notes that the requirement for MIAX to obtain a CSSA will continue to apply to other products that do not fit this limited exception. The Commission believes that the proposed rule change should facilitate listing and trading of additional investment options for market participants seeking efficient trading and hedging vehicles and thereby, benefit investors by providing them with valuable risk management tools.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[29] that the proposed rule change (File No. SR–MIAX–2015–04) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–06285 Filed 3–18–15; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78f(b)(5).

[17] *See* Proposed MIAX Rule 402(i)(E)(2)(i). *See also* NYSE MKT Rule 1000, Commentary .03(a)(B); NYSE MKT Rule 1000A, Commentary .02(a)(B); NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(B); NYSE Arca Equities Rule 8.100, Commentary .01(a)(B); NASDAQ Rule 5705(a)(3)(A)(ii); NASDAQ Rule 5705(b)(3)(A)(ii); BATS Rule 14.11(b)(3)(A)(ii); and BATS Rule 14.11(c)(3)(A)(ii).

[18] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952, 70959 (December 22, 1998).

[19] *See* Notice, supra note 3.

[20] *Id.*

[21] *See* NYSE Letter, *supra* note 4.

[22] *See* Securities Exchange Act Release No. 54739, *supra* note 9 (SR-Amex-2006–78). Subsequently, other exchanges filed similar proposals that were approved by the Commission. *See, e.g.,* Securities Exchange Act Release Nos. 55621, *supra* note 9 (approving SR–NYSEArca-2006–86); and 55269, *supra* note 9 (approving SR–NASDAQ–2006–050).

[23] *See id.*

[24] For example, with respect to ETFs for portfolio depositary receipts based on international or global indexes, the generic listing standards generally contain the following requirements with respect to the underlying index: (1) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least $100 million; (2) component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume over the most recent six-month period of at least 250,000 shares; (3) that the index observe certain concentration limits (*e.g.,* that no component may exceed 25% of the weight of the index and that the five most heavily weighted components may not exceed 60% of the weight of the index); (4) that there be a minimum number of 20 component stocks in the index; and (5) that each component either be an exchange-listed NMS stock or, if a non-U.S. stock, be listed and traded on an exchange that has last-sale reporting. *See, e.g.,* NYSE MKT Rule 1000, Commentary .03; NYSE Arca Equities Rule 8.100, Commentary .01; NASDAQ Rule 5705(a); and BATS Rule 14.11(b). The requirements with respect to the underlying index under the generic listing standards for index fund shares based on international or global indexes are substantially similar. *See, e.g.,* NYSE MKT Rule 1000A, Commentary .02; NYSE Arca Equities Rule 5.2(j)(3), Commentary .01; NASDAQ Rule 5705(b); and BATS Rule 14.11(c).

[25] *See, e.g.,* Securities Exchange Act Release No. 54739, *supra* note 9.

[26] *Id.* at 71 FR 66995 n.18. *See also supra* note 24 and accompanying text.

[27] *See* Securities Exchange Act Release No. 54739, *supra* note 9, at 71 FR 66997.

[28] *See supra* note 24 and accompanying text.

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, Washington, DC 20549–2736.

Extension: Rule 15g–4.
SEC File No. 270–347, OMB Control No. 3235–0393.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget (''OMB'') a request for extension of the existing collection of information provided for in Rule 15g–4—Disclosure of compensation to brokers or dealers (17 CRF 240.15g–4) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15g–4 requires brokers and dealers effecting transactions in penny stocks for or with customers to disclose the amount of compensation received by the broker-dealer in connection with the transaction. The purpose of the rule is to increase the level of disclosure to investors concerning penny stocks

generally and specific penny stock transactions.

The Commission estimates that approximately 221 broker-dealers will spend an average of 87 hours annually to comply with this rule. Thus, the total compliance burden is approximately 19,245 burden-hours per year.

Rule 15g–4 contains record retention requirements. Compliance with the rule is mandatory. The required records are available only to the examination staff of the Commission and the self regulatory organizations of which the broker-dealer is a member.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or by sending an email to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 13, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–06313 Filed 3–18–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74506; File No. SR–NASDAQ–2015–020]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASDAQ Rules 7014

March 13, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 2, 2015, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing changes to the Investor Support Program (''ISP'') and the Qualified Market Maker (''QMM'') Incentive Program under NASDAQ Rule 7014.

The text of the proposed rule change is available at *nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to amend NASDAQ Rule 7014(c) to remove a member's ISP credit at the $0.00005 rate with respect to all shares of displayed liquidity that are executed at a price of $1 or more in the Nasdaq Market Center during a given month, as well as the related qualifying requirements for an ISP member to qualify for such a credit.

Also, the Exchange is proposing to amend NASDAQ Rule 7014(e)(1) to apply QMM rebates only to securities listed on NYSE (''Tape A'') and securities listed on exchanges other than NASDAQ and NYSE (''Tape B''). Specifically, only Tape A and Tape B securities will be eligible to receive the additional QMM rebate of $0.0002 per share executed with respect to orders that are executed at a price of $1 or more and (A) displayed a quantity of at least one round lot at the time of execution; (B) either established the NBBO or was the first order posted on NASDAQ that had the same price as an order posted at another trading center with a protected quotation that established the NBBO; (C) were entered through a QMM MPID; and (D) that no additional rebate will be issued with respect to Designated Retail Orders (as defined in NASDAQ Rule 7018) (''Additional QMM Rebate Criteria'').[3]

Similarly, the Exchange is proposing to amend NASDAQ Rule 7014(e)(2) to have only Tape A and Tape B securities receive the credit of $0.0001 per share executed with respect to all other displayed orders (other than Designated Retail Orders, as defined in Rule 7018) in securities priced at $1 or more per share that provide liquidity and that are entered through a QMM MPID.

The proposed changes are intended to better align credits within the ISP and QMM programs, as well as to fix a typographical error in the rule text of NASDAQ Rule 7014(e)(1).

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[4] in general, and with sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

NASDAQ believes that the proposed changes to the ISP Program in NASDAQ Rule 7014(c) is reasonable because it eliminates an unnecessary credit, and related qualifying requirements, at the $0.00005 rate with respect to all shares of displayed liquidity that are executed at a price of $1 or more in the Nasdaq Market Center during a given month. The Exchange believes that the two other credit tiers that remain available to ISP members provide sufficient incentive. Also, the credit proposed to be eliminated is the least economically advantageous to ISP members. The Exchange also believes this change is consistent with a fair allocation of a reasonable fee and not unfairly discriminatory because the removal of this credit applies to all ISP members equally.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The correction of a typographical error in the numbering in the middle of NASDAQ Rule 7014(e)(1) will also be included (changing a ''(4)'' to (''E'')).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that the proposed change to the QMM Program in NASDAQ Rule 7014(e)(1) of only having Tape A and Tape B securities be eligible to receive the additional QMM rebate of $0.0002 per share executed with respect to orders that are executed at a price of $1 or more and that meet the Additional QMM Rebate Criteria, is reasonable because the Exchange believes that firms no longer need the additional incentive to quote at the NBBO in Nasdaq-listed securities (''Tape C''). The Exchange also believes this change is consistent with a fair allocation of a reasonable fee and not unfairly discriminatory because the additional rebate only applying to Tape A and Tape B securities will apply uniformly to all QMM members.

The Exchange also believes that the proposed change to the QMM Program in NASDAQ Rule 7014(e)(2) of only having Tape A and Tape B securities receive the additional QMM credit of $0.0001 per share executed with respect to all other displayed orders (other than Designated Retail Orders, as defined in Rule 7018) in securities priced at $1 or more per share that provide liquidity and that are entered through a QMM MPID is reasonable because the Exchange believes that firms no longer need the additional incentive to quote in Tape C.

The Exchange also believes that this change is consistent with a fair allocation of a reasonable fee and not unfairly discriminatory because the additional QMM credit only applying to Tape A and Tape B securities will apply uniformly to all QMM members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[6] NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices,

NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited or even non-existent. In this instance, the changes to credits for the ISP and QMM programs do not impose a burden on competition because these NASDAQ incentive programs remain in place, still offer economically advantageous credits, and are reflective of the need for exchanges to offer and to let the financial incentives to attract order flow evolve. While the Exchange does not believe that the proposed changes will result in any burden on competition, if the changes proposed herein are unattractive to market participants it is likely that NASDAQ will lose market share as a result.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act.[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2015–020 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2015–020. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2015–020, and should be submitted on or before April 9, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Brent J. Fields,

Secretary.

[FR Doc. 2015–06264 Filed 3–18–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, Washington, DC 20549–2736.

Extension: Rule 15g-3,
SEC File No. 270–346, OMB Control No. 3235–0392.

[6] 15 U.S.C. 78f(b)(8).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 200.30–3(a)(12).

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in Rule 15g-3—Broker or dealer disclosure of quotations and other information relating to the penny stock market (17 CFR 240.15g-3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15g-3 requires that brokers and dealers disclose to customers current quotation prices or similar market information in connection with transactions in penny stocks. The purpose of the rule is to increase the level of disclosure to investors concerning penny stocks generally and specific penny stock transactions.

The Commission estimates that approximately 221 broker-dealers will spend an average of 87 hours annually to comply with this rule. Thus, the total compliance burden is approximately 19,245 burden-hours per year.

Rule 15g-3 contains record retention requirements. Compliance with the rule is mandatory. The required records are available only to the examination staff of the Commission and the self regulatory organizations of which the broker-dealer is a member.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or by sending an email to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 13, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–06314 Filed 3–18–15; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. Chapter 35 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before May 18, 2015.

ADDRESSES: Send all comments to Barbara Brannan, Special Assistant, Office of Surety Guarantee, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Barbara Brannan, Special Assistant, Office of Surety Guarantee, *Barbara.brannan@sba.gov* 202–205–6545, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: Small Business Administration (SBA) Surety Bond Guarantee Program was created to encourage surety companies to provide bonding for small contractors. The information collected on this form from small businesses and surety companies will be used to evaluate the eligibility of applicants for contracts up to $250,000.

Solicitation of Public Comments: SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection:

Title: Quick Bond Guarantee Application and Agreement.

Description of Respondents: Surety Companies.

Form Number: SBA Form 990A.

Total Estimated Annual Responses: 4,450.

Total Estimated Annual Hour Burden: 369.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2015–06328 Filed 3–18–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14239 and #14240]

California Disaster #CA–00233

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 03/11/2015.

Incident: Round Fire.

Incident Period: 02/06/2015 through 02/12/2015.

Dates: Effective Date: 03/11/2015.

Physical Loan Application Deadline Date: 05/11/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 12/11/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Mono.

Contiguous Counties:

California: Alpine, Fresno, Inyo, Madera, Tuolumne.

Nevada: Douglas, Esmeralda, Lyon, Mineral.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.625
Homeowners Without Credit Available Elsewhere	1.813
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625

	Percent
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14239 5 and for economic injury is 14240 0.

The States which received an EIDL Declaration # are California, Nevada.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 11, 2015.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2015–06330 Filed 3–18–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. chapter 35 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before May 18, 2015.

ADDRESSES: Send all comments to Jamie Davenport, Financial Analyst, Office of Microloan, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Jamie Davenport, Financial Analyst, Office of Microloan, *Jamie.davenport@sba.gov* 202–205–7516, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: This information collection is reported to SBA's Office Credit Risk Management (OCRM) by SBA's 7(A) Lenders, Certified Development Companies Microloan Lenders, and Non-Lending Technical Assistance Providers. OCRM uses the information reported to facilitate its oversight and monitoring of these groups, including their overall performance on SBA loans and their compliance with the applicable program requirements.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Title: SBA Lender Microloan Intermediary and NTAP Reporting Requirements.

Description of Respondents: SBA Loan Applicants.

Form Number: N/A.

Total Estimated Annual Responses: 2,422.

Total Estimated Annual Hour Burden: 6,840.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2015–06329 Filed 3–18–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. Chapter 35 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before May 18, 2015.

ADDRESSES: Send all comments to Louis Cupp, New Markets Policy Analyst, Office of Investment and Innovation, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Louis Cupp, New Markets Policy Analyst, Office of Investment and Innovation, 202–619–0511, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov;*

SUPPLEMENTARY INFORMATION: Small Business Investment Companies will use this form to request a determination of eligibility for SBA leverage in form of a deferred interest ''energy saving debenture'' which can be used only to make an ''Energy Saving Qualified Investment'' Eligibility is based on whether the Small Business to be financed with leverage proceeds ''primarily engaged'' in Energy Savings Activities as defined in the SBIC program regulations.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Title: Financing Eligibility Statement for Usage of Energy Saving Debenture.

Description of Respondents: Small Business Investment Companies.

Form Number: SBA Form 2428.

Total Estimated Annual Responses: 5.

Total Estimated Annual Hour Burden: 50.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2015–06327 Filed 3–18–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. Chapter 35 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public

comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before May 18, 2015.

ADDRESSES: Send all comments to Erin Kelley, Director of Research and Policy, Office of National Women's Business Council, Small Business Administration, 409 3rd Street, 5th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Erin Kelley, Director of Research and Policy, Office of National Women's Business Council, *erin.kelley@nwbc.gov* 202–205–6826, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: The National Women's Business Council (NWBC) advises the SBA, the President, and Congress on issues affecting women business owners, NWBC will conduct six focus groups to probe the perceived and actual barriers to women obtaining IP protection and examine how to address such barriers. The participants will be women entrepreneurs who: (1) Successfully obtained patents and trademarks; (2) have applied for but not relived patents and trademarks; (3) have no knowledge of patents or trademarks.

Solicitation of Public Comments:

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection:

Title: Small Business Administration, Nation Women's Intellectual Property and Women Entrepreneurs.

Description of Respondents: Women Entrepreneurs.

Form Number: N/A.

Total Estimated Annual Responses: 60.

Total Estimated Annual Hour Burden: 100.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2015–06326 Filed 3–18–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14248 and #14249]

Maine Disaster #ME–00043

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Maine (FEMA—4208—DR), dated 03/12/2015.

Incident: Severe Winter Storm, Snowstorm, and Flooding

Incident Period: 01/26/2015 through 01/28/2015

Effective Date: 03/12/2015

Physical Loan Application Deadline Date: 05/11/2015

Economic Injury (EIDL) Loan Application Deadline Date: 12/14/2015

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/12/2015, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Androscoggin, Cumberland, York.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14248B and for economic injury is 14249B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2015–06332 Filed 3–18–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14241 and #14242]

Hawaii Disaster #HI–00035

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Hawaii (FEMA–4201–DR), dated 03/04/2015.

Incident: Pu u O o Volcanic Eruption and Lava Flow.

Incident Period: 09/04/2014 and continuing.

Effective Date: 03/04/2015.

Physical Loan Application Deadline Date: 05/04/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 12/04/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/04/2015, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Hawaii.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14241D and for economic injury is 14242D.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–06331 Filed 3–18–15; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2015–0012]

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*.

(SSA)

Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*.

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2015–0008].

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than May 18, 2015. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Application for Supplemental Security Income—20 CFR 416.305–416.335, Subpart C—0960–0444. SSA uses Form SSA–8001–BK to determine an applicant's eligibility for Supplemental Security Income (SSI) and SSI payment amounts. SSA employees also collect this information during interviews with members of the public who wish to file for SSI. SSA uses the information for two purposes: (1) To formally deny SSI for non-medical reasons when information the applicant provides results in ineligibility; or (2) to establish a disability claim, but defer the complete development of non-medical issues until SSA approves the disability. The respondents are applicants for SSI.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Modernized SSI Claims System (MSSICS)/Signature Proxy	1,195,521	1	20	398,507
Non-MSSICS (Paper Version)	140,145	1	20	46,715
Totals	1,335,666			445,222

2. Statement of Reclamation Action—31 CFR 210—0960–0734. Regulations governing the Federal Government Participation in the Automated Clearing House (1) allow SSA to send Social Security payments to Canada, and (2) mandate the reclamation of funds paid erroneously to a Canadian bank or financial institution after the death of a Social Security beneficiary. SSA uses Form SSA–1713, Notice of Reclamation Action, to determine if, how, and when the Canadian bank or financial institution will return erroneous payments after the death of a Social Security beneficiary who elected to have payments sent to Canada. Form SSA–1712 (or SSA–1712 CN), Notice of Reclamation-Canada Payment Made in the United States, is the cover sheet SSA prepares to request return of the payment. The respondents are Canadian banks and financial institutions who erroneously received Social Security payments.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1713	15	1	5	1

Dated: March 13, 2015.

Faye Lipsky,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2015–06277 Filed 3–18–15; 8:45 am]

BILLING CODE 4191–02–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The TVA Regional Resource Stewardship Council (RRSC) will hold a meeting on Wednesday, April 8, and Thursday, April 9, 2015, to consider various matters.

The RRSC was established to advise TVA on its natural resource stewardship activities. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.

The meeting agenda includes the following:

1. Introductions
2. Updates on Natural Resources issues
3. Presentations regarding Floating Houses, TVA's Natural Resource Plan, and other stewardship initiatives
4. Public Comments
5. Council Discussion and Advice

The RRSC will hear opinions and views of citizens by providing a public comment session starting at 9 a.m., CDT, on Thursday, April 9. Persons wishing to speak are requested to register at the door by 8:30 a.m. CDT on Thursday, April 9 and will be called on during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT–9 D, Knoxville, Tennessee 37902.

DATES: The public meeting will be held on Wednesday, April 8, from 8:00 a.m. to noon, and Thursday, April 9, from 8 a.m. to 11:45 a.m. CDT.

ADDRESSES: The meeting will be held at the Marriott Shoals Hotel, 10 Hightower Place, Florence, AL 35630 and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Beth Keel, 400 West Summit Hill Drive, WT–9 D, Knoxville, Tennessee 37902, (865) 632–6113.

Dated: March 12, 2015.

Joseph J. Hoagland,

Vice President, Stakeholder Relations, Tennessee Valley Authority.

[FR Doc. 2015–06293 Filed 3–18–15; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Thirty-Second Meeting: RTCA Special Committee 224, Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT)

ACTION: Meeting Notice of RTCA Special Committee 224, Airport Security Access Control Systems.

SUMMARY: The FAA is issuing this notice to advise the public of the thirty-second meeting of the RTCA Special Committee 224, Airport Security Access Control Systems.

DATES: The meeting will be held on April 9th 2015 from 10:00 a.m.–3:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 224. The agenda will include the following:

April 9th 2015

- Welcome/Introductions/ Administrative Remarks
- Review/Approve Previous Meeting Summary
- Report from the TSA
- Report on Safe Skies on Document Distribution
- Program Management Committee/ TOR report
- Review of comments on standard sections completed in Plenary 31
- Review of the Credentialing section
- Action Items for Next Meeting
- Time and Place of Next Meeting
- Any Other Business
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 13, 2015.

Mohannad Dawoud,

Management Analyst, NextGen, Program Oversight and Administration, Federal Aviation Administration.

[FR Doc. 2015–06343 Filed 3–18–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Organization Designation Authorization

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 22, 2014. This collection involves organizations applying to perform certification functions on behalf of the FAA, including approving data and issuing various aircraft and organization certificates.

DATES: Written comments should be submitted by April 20, 2015.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0704.

Title: Organization Designation Authorization.

Form Numbers: FAA Form 8100–13.

Type of Review: Extension without change of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published

on December 22, 2014 (79 FR 76436). Subpart D to part 183 allows the FAA to appoint organizations as representatives of the administrator. As authorized, these organizations perform certification functions on behalf of the FAA. Applications are submitted to the appropriate FAA office and are reviewed by the FAA to determine whether the applicant meets the requirements necessary to be authorized as a representative of the Administrator. Procedures manuals are submitted and approved by the FAA as a means to ensure that the correct processes are utilized when performing functions on behalf of the FAA. These requirements are necessary to manage the various approvals issued by the organization and to document approvals issued and must be maintained in order to address potential future safety issues.

Respondents: Approximately 84 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 41.7 hours.

Estimated Total Annual Burden: 5,623 hours.

Issued in Washington, DC on March 10, 2015.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2015–06338 Filed 3–18–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2008–0010]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated November 10, 2014, Sonoma-Marin Area Rail Transit District (SMART), owner of 77 miles of former Northwestern Pacific Railroad Company, and Southern Pacific Transportation Company trackage in Marin, Sonoma, and Napa Counties, CA, has petitioned the Federal Railroad Administration (FRA) for reconsideration of an approval condition, granted on February 24, 2009, on the Brazos Drawbridge at Milepost 64.7, specifically, condition 4 of FRA–2008–0010, which states ''Approval is for freight movements only and shall be revisited prior to any passenger operations.''

SMART, Amtrak, and the Capitol Corridor Joint Powers Authority are formally asking for an exception to the condition cited above to permit operation of two round-trip chartered Amtrak passenger trains, over the Brazos Drawbridge, to Sonoma Raceway on Sunday, June 28, 2015, for NASCAR Specials, on Sunday, August 2, 2015, for NHRA Specials, and on Sunday, August 30, 2015, for Indy Car Specials.

FRA has previously granted an exception to this condition to allow a chartered Amtrak special train on June 23, 2013, which was a 1-day passenger train movement over the Brazos Drawbridge operating between Sacramento and Sonoma Raceway. That special was considered a great success. FRA also granted an exception to the condition for the operation of two special trains on June 22, 2014, as well as two special trains on August 24, 2014.

The intended operating route of these 2015 specials is from Sacramento and San Jose on the Union Pacific Railroad to Suisun-Fairfield, then via the California Northern Railroad from Suisun-Fairfield to Brazos Junction, and over SMART trackage from Brazos Junction over the Brazos Drawbridge to Sonoma Raceway and return via the same route.

As was the case in 2013, and 2014, a specific operating plan will be in place to ensure correct operation of the Brazos Drawbridge, the safety of train operations, equipment, passenger boarding/alighting, staffing, and raceway access/egress.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by May 4, 2015 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC, on March 13, 2015.

Ron Hynes,

Director of Technical Oversight.

[FR Doc. 2015–06254 Filed 3–18–15; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35911]

Portland & Western Railroad, Inc.—Acquisition and Operation Exemption—Port of Tillamook Bay

Portland & Western Railroad, Inc. (PNWR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and continue to operate approximately 3.5 miles of rail line (the Line) owned by Port of Tillamook Bay (POTB), between milepost 774.0, at Banks, and milepost 770.5, at Schefflin, in Washington County, Or.

PNWR is the current operator of the Line pursuant to a lease agreement dated May 6, 1999, between PNWR and

POTB, subject to trackage rights over the Line retained by POTB.[1] PNWR states that the parties have entered into a purchase and sale agreement dated June 16, 2015. PNWR states that acquisition of the Line should allow PNWR to expand its rail network and establish a direct connection to its adjacent lines in the Willamette River Valley for a more cost efficient handling of traffic and will justify PNWR's investments in the Line. As part of the transaction, POTB will discontinue its trackage rights over the Line.[2]

PNWR has certified that the transaction does not include an interchange commitment.

PNWR states that it projected annual revenues as a result of this transaction will not result in PNWR's becoming a Class II or Class I rail carrier, but that its projected annual revenues will exceed $5 million. Accordingly, PNWR is required, at least 60 days before this exemption is to become effective, to send notice of the transaction to the national offices of the labor unions with employees on the affected line, post a copy of the notice at the workplace of the employees on the affected line, and certify to the Board that it has done so. 49 CFR 1150.42(e). PNWR's verified notice, however, includes a request to waive that requirement. PNWR states that: (1) No POTB employee will be affected because none have worked on the Line for more than five years; and (2) there will be no operational changes, and no PNWR employees will be affected. PNWR asserts that providing the 60-day notice would serve no useful purpose because PNWR is merely acquiring the Line that it has been leasing and operating since 1999. PNWR's waiver request will be addressed in a separate decision.

PNWR states that it expects to consummate the transaction on or shortly after the effective date of this exemption. The Board will establish in the decision on the waiver request the earliest date this transaction may be consummated.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than March 26, 2015.

An original and 10 copies of all pleadings, referring to Docket No. FD 35911, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market St., Suite 1000, Philadelphia, PA 19103.

Board decisions and notices are available on our Web site at *''WWW.STB.DOT.GOV''.*

Decided: March 16, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2015–06297 Filed 3–18–15; 8:45 am]

BILLING CODE 4915–01–P

[1] *See Portland & W. R.R.—Lease & Operation Exemption—Port of Tillamook Bay R.R.,* FD 33734 (STB served May 14, 1999); *Port of Tillamook Bay R.R.—Trackage Rights Exemption—Portland & W. R.R.,* FD 33741 (STB served May 14, 1999). The entity PNWR refers to here as Port of Tillamook Bay is referred to in those cases as Port of Tillamook Bay *Railroad,* but it appears to be the same entity.

[2] PNWR states that POTB's discontinuance is the subject of a separate notice to be filed by POTB.

FEDERAL REGISTER

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Part II

Securities and Exchange Commission

17 CFR Parts 232, 240, 249
Security-Based Swap Data Repository Registration, Duties, and Core Principles; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 240, and 249

[Release No. 34–74246; File No. S7–35–10]

RIN 3235–AK79

Security-Based Swap Data Repository Registration, Duties, and Core Principles

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: Pursuant to Section 763(i) of Title VII (''Title VII'') of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), the Securities and Exchange Commission (''Commission'') is adopting new rules under the Securities Exchange Act of 1934 (''Exchange Act'') governing the security-based swap data repository (''SDR'') registration process, duties, and core principles. The Commission is also adopting a new registration form. Additionally, the Commission is amending several of its existing rules and regulations in order to accommodate SDRs. First, the Commission is amending Regulation S–T and Exchange Act Rule 24b–2 to clarify that all filings by SDRs, including any confidential portion, and their requests for confidential treatment must be filed electronically. Second, the Commission is amending Regulation S–T by, among other things, adding a new rule that specifically applies to the electronic filing of SDRs' financial reports.

DATES: *Effective Date:* May 18, 2015.

Compliance Date: March 18, 2016.

FOR FURTHER INFORMATION CONTACT: Paula Jenson, Acting Chief Counsel; Jo Anne Swindler, Assistant Director; Richard Vorosmarti, Branch Chief; Angie Le, Special Counsel; or Kevin Schopp, Special Counsel, Division of Trading and Markets, at (202) 551–5750, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549. For questions regarding the SDR registration process, please contact Jeffrey Mooney, Assistant Director, Stephanie Park, Senior Special Counsel, Andrew Shanbrom, Special Counsel, or Elizabeth Fitzgerald, Special Counsel, Division of Trading and Markets, at (202) 551–5710.

SUPPLEMENTARY INFORMATION: The Commission is taking several actions. First, the Commission is adopting Rules 13n–1 to 13n–12 (''SDR Rules'') under the Exchange Act governing SDRs and a new form for registration as a security-based swap data repository (''Form SDR''). Second, the Commission is adopting technical amendments to Regulation S–T and Exchange Act Rule 24b–2 to clarify that all filings by SDRs, including any confidential portion, and their requests for confidential treatment must be filed electronically. Third, the Commission is amending Regulation S–T, including adopting new Rule 407, as a technical amendment related to Rule 13n–11, which is applicable to the electronic filing of SDRs' financial reports.

Table of Contents

I. Introduction

A. Proposed Rules Governing the SDR Registration Process, Duties, and Core Principles, and Form SDR

Title VII of the Dodd-Frank Act provides for a comprehensive new regulatory framework for security-based swaps (''SBSs''), including the regulation of SDRs.[1] SDRs are required to collect and maintain accurate SBS transaction data so that relevant authorities can access and analyze the data from secure, central locations, thereby putting them in a better position to monitor for potential market abuse and risks to financial stability. On November 19, 2010, the Commission proposed new Rules 13n–1 to 13n–11 under the Exchange Act governing the SDR registration process, duties, and core principles, and new Form SDR, through which applicants would seek to register as SDRs.[2]

Subsequently, on May 1, 2013, the Commission issued a proposing release discussing cross-border SBS activities, including activities involving SDRs.[3] In that release, the Commission proposed guidance regarding the application of certain SDR requirements in the cross-border context;[4] new Rule 13n–12 under the Exchange Act, which would provide certain SDRs with an exemption from Exchange Act Section 13(n) and the rules and regulations thereunder;[5] and guidance to specify how SDRs may comply with the notification requirement in the Exchange Act and how the Commission proposes to determine whether a relevant authority is appropriate for purposes of receiving SBS data from an SDR.[6] In addition, the Commission proposed an exemption from the indemnification requirement in the Exchange Act.[7]

B. Related Commission Actions

In conjunction with issuing the Proposing Release on November 19, 2010, the Commission also proposed Regulation SBSR to implement the Dodd-Frank Act's provisions relating to reporting SBS information to SDRs, including standards for the data elements that must be provided to SDRs.[8] Subsequently, on June 15, 2011, the Commission issued an exemptive order, which provided guidance and certain exemptions with respect to the requirements under Title VII, including requirements governing SDRs, which would have had to be complied with as of July 16, 2011 (*i.e.,* the effective date of Title VII).[9] Later, on June 11, 2012, the Commission issued a statement of general policy on the anticipated sequencing of compliance dates of final rules to be adopted under Title VII.[10] On May 1, 2013, the Commission re-proposed Regulation SBSR in the Cross-Border Proposing Release.[11] At the same time, the Commission reopened the comment period for certain rules proposed under Title VII, including the SDR Rules and Form SDR, and the Implementation Policy Statement.[12]

The Commission is concurrently adopting Regulation SBSR in a separate release.[13] The Dodd-Frank Act requires the Commission to engage in rulemaking for the public dissemination of SBS transaction, volume, and pricing data,[14] and provides the Commission with discretion to determine an appropriate approach to implement this important function. Regulation SBSR requires SDRs to undertake this role.[15]

As discussed in the Proposing Release, when considered in conjunction with Regulation SBSR, the rules that the Commission adopts in this release seek to provide improved transparency to regulators and the markets through comprehensive regulations for SBS transaction data and

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[1] Public Law 111–203, section 761(a) (adding Exchange Act Section 3(a)(75) (defining SDR)) and section 763(i) (adding Exchange Act Section 13(n) (establishing a regulatory regime for SDRs)).

[2] *See* Security-Based Swap Data Repository Registration, Duties, and Core Principles, Exchange Act Release No. 63347 (Nov. 19, 2010), 75 FR 77306 (Dec. 10, 2010), *corrected at* 75 FR 79320 (Dec. 20, 2010) *and* 76 FR 2287 (Jan. 13, 2011) (''Proposing Release'').

[3] Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30968 (May 23, 2013) (''Cross-Border Proposing Release'').

[4] Cross-Border Proposing Release, 78 FR at 31041–44, *supra* note 3.

[5] Cross-Border Proposing Release, 78 FR at 31209, *supra* note 3.

[6] Cross-Border Proposing Release, 78 FR at 31046–48, *supra* note 3.

[7] Cross-Border Proposing Release, 78 FR at 31209, *supra* note 3 (proposing Rule 13n–4(d)).

[8] Regulation SBSR-Reporting and Dissemination of Security-Based Swap Information, Exchange Act Release No. 63346 (Nov. 19, 2010), 75 FR 75208 (Dec. 2, 2010) (''Regulation SBSR Proposing Release'').

[9] *See* Temporary Exemptions and Other Temporary Relief, Together With Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps, Exchange Act Release No. 64678 (June 15, 2011), 76 FR 36287 (June 22, 2011) (''Effective Date Order''). The Effective Date Order included temporary exemptions from Exchange Act Sections 13(n)(5)(D)(i), 13(n)(5)(F), 13(n)(5)(G), 13(n)(5)(H), 13(n)(7)(A), 13(n)(7)(B), and 13(n)(7)(C), each of which will expire on the earlier of (1) the date the Commission grants registration to the SDR and (2) the earliest compliance date set forth in any of the final rules regarding the registration of SDRs. *Id.* at 36306. In addition, the Commission granted temporary exemptions from Exchange Act Section 29(b) in connection with the above listed provisions of the Exchange Act until such date as the Commission specifies. *Id.* at 36307. Section 29(b) generally provides that contracts made in violation of any provision of the Exchange Act, or the rules thereunder, shall be void ''(1) as regards the rights of any person who, in violation of any such provision . . . shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision. . . .'' 15 U.S.C. 78cc(b).

[10] *See* Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act, Exchange Act Release No. 67177 (June 11, 2012), 77 FR 35625 (June 14, 2012) (''Implementation Policy Statement'').

[11] Cross-Border Proposing Release, 78 FR at 31210–31216, *supra* note 3. The Commission subsequently adopted certain aspects of the Cross-Border Proposing Release, which, as discussed below, has implications on this release. *See* Application of ''Security-Based Swap Dealer'' and ''Major Security-Based Swap Participant'' Definitions to Cross-Border Security-Based Swap Activities, Exchange Act Release No. 72472 (June 25, 2014), 79 FR 39068 (July 9, 2014) *republished at* 79 FR 47278 (Aug. 12, 2014) (''Cross-Border Adopting Release'').

[12] Reopening of Comment Periods for Certain Rulemaking Releases and Policy Statement Applicable to Security-Based Swaps Proposed Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act, Exchange Act Release No. 69491 (May 1, 2013), 78 FR 30800 (May 23, 2013) (''Reopening Release'').

[13] Regulation SBSR-Reporting and Dissemination of Security-Based Swap Information, Exchange Act Release No. 74244 (Feb. 11, 2015) (''Regulation SBSR Adopting Release''). The Commission is also concurrently proposing certain new rules and amendments to Regulation SBSR. *See* Regulation SBSR-Reporting and Dissemination of Security-Based Swap Information, Exchange Act Release No. 74245 (Feb. 11, 2015) (''Regulation SBSR Proposed Amendments Release'').

[14] Exchange Act Section 13(m)(1), 15 U.S.C. 78m(m)(1), as added by Dodd-Frank Act Section 763(i).

[15] *See* Regulation SBSR Adopting Release, *supra* note 13. In a separate proposal relating to implementation of Dodd-Frank Act Section 763(i) (adding Exchange Act Section 13(n)(5)(E)), the Commission proposed rules that would require SDRs to collect data related to monitoring the compliance and frequency of end-user clearing exemption claims. *See* End-User Exception to Mandatory Clearing of Security-Based Swaps, Exchange Act Release No. 63556 (Dec. 15, 2010), 75 FR 79992 (Dec. 21, 2010) (''End-User Exception Proposing Release'').

SDRs.[16] In combination, these rules represent a significant step forward in providing a regulatory framework that promotes transparency and efficiency in the OTC derivatives markets and creates important infrastructure to assist relevant authorities in performing their market oversight functions.

C. Public Comment

In each of the releases discussed above, the Commission requested comment on a number of issues related to the proposed SDR Rules. In addition, Commission staff and Commodity Futures Trading Commission (''CFTC'') staff conducted joint public roundtables, including, for example, a joint public roundtable on implementation issues raised by Title VII (''Implementation Joint Roundtable'')[17] and a joint public roundtable on international issues relating to the implementation of Title VII (''International Joint Roundtable'').[18]

The Commission received twenty comment letters in response to the Proposing Release and the Reopening Release[19] as well as six letters submitted with respect to SDRs prior to the Proposing Release.[20] The Commission also received three comment letters that address issues related to SDRs, among others, after the Proposing Release through the Commission's solicitation for comments,[21] which will be addressed in this release. In addition, the Commission received one letter in response to the Implementation Policy Statement,[22] two letters in response to the Implementation Joint Roundtable[23] and a letter in response to the International Joint Roundtable,[24] all of which are relevant to the Proposing Release and are addressed in this release.[25] The Commission also received four comment letters in response to the Cross-Border Proposing Release relating directly to the proposed SDR Rules.[26]

The Commission also considered relevant comments submitted with respect to proposed Regulation SBSR,[27] the interim temporary final rule for reporting of SBS transaction data,[28] and proposed rules for the registration and regulation of security-based swap execution facilities (''SB SEFs'').[29]

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[16] Proposing Release, 75 FR at 77307, *supra* note 2.

[17] *See* Joint Public Roundtable on Issues Related to the Schedule for Implementing Final Rules for Swaps and Security-Based Swaps Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Exchange Act Release No. 64314 (Apr. 20, 2011), 76 FR 23221 (Apr. 26, 2011). Transcripts for the public roundtable are available on the Commission's Web site at *http://www.sec.gov/news/press/2011/2011-90-transcript.pdf*.

[18] *See* Joint Public Roundtable on International Issues Relating to the Implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Exchange Act Release No. 64939 (July 21, 2011); 76 FR 44507 (July 26, 2011). The transcript for the public roundtable is available on the Commission's Web site at: *http://www.sec.gov/news/press/2011/2011-151-transcript.pdf*.

[19] *See* letters from The Bank of New York Mellon Corporation (''BNY Mellon''); Better Markets, Inc. dated January 24, 2011 (''Better Markets 1''); Better Markets, Inc. dated July 22, 2013 (''Better Markets 2''); Better Markets, Inc. dated October 18, 2013 (''Better Markets 3''); Chris Barnard (''Barnard''); Depository Trust & Clearing Corporation dated January 24, 2011 (''DTCC 2''); Depository Trust & Clearing Corporation dated June 3, 2011 (''DTCC 3''); Depository Trust & Clearing Corporation dated July 21, 2011 (''DTCC 4''); Depository Trust & Clearing Corporation dated July 22, 2013 (''DTCC 5''); Ethics Metrics (''Ethics Metrics''); European Securities and Markets Authority (''ESMA''); International Swaps and Derivatives Association dated June 28, 2013 (''ISDA''); Managed Funds Association dated January 24, 2011 (''MFA 1''); Managed Funds Association dated March 24, 2011 (''MFA 2''); Markit North America Inc. (''Markit''); MarkitSERV LLC (''MarkitSERV''); Ralph S. Saul (''Saul''); and TriOptima AB (''TriOptima''). Two of these comment letters did not raise issues relating to the SDR Rules. *See* letters from the Chicago Mercantile Exchange, Inc. and ICE Trade Vault, LLC dated November 19, 2013 (relating to Regulation SBSR) and Financial Services Roundtable, Futures Industry Association, Institute of International Bankers, International Swaps and Derivatives Association, Investment Company Institute, Securities Industry and Financial Markets Association dated May 21, 2013 (requesting 90-day extension of the comment period for the Cross-Border Proposing Release). The comments that the Commission received on the Proposing Release and the Reopening Release are available on the Commission's Web site at *http://www.sec.gov/comments/s7-35-10/s73510.shtml*.

[20] *See* letters from Benchmark Solutions (''Benchmark*''); Coalition for Derivatives End-Users (''CDEU*''); Depository Trust & Clearing Corporation dated November 15, 2010 (''DTCC 1*''); Morgan Stanley (''Morgan Stanley*''); Robin McLeish (''McLeish*''); and Securities Industry and Financial Markets Association (''SIFMA*''), available on the Commission's Web site at *http://www.sec.gov/comments/df-title-vii/swap-data-repositories/swap-data-repositories.shtml*. To facilitate public input on the Dodd-Frank Act, the Commission provided a series of email links, organized by topic, on its Web site at *http://www.sec.gov/spotlight/regreformcomments.shtml*.

[21] *See* letters from Barclays Capital Inc. (''Barclays*''); Financial Services Forum, Futures Industry Association, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association (''FSF*''); and Futures Industry Association, The Financial Services Roundtable, Institute of International Bankers, Insured Retirement Institute, International Swaps and Derivatives Association, Securities Industry and Financial Markets Association, and U.S. Chamber of Commerce (''FIA*''), available on the Commission's Web site at *http://www.sec.gov/comments/df-title-vii/swap-data-repositories/swap-data-repositories.shtml*.

[22] *See* letter from Securities Industry and Financial Markets Association (''SIFMA Implementation''), available on the Commission's Web site at *http://www.sec.gov/comments/s7-05-12/s70512-11.pdf*.

[23] *See* letters from The Financial Services Roundtable (''FSR Implementation''), available on the Commission's Web site at *http://www.sec.gov/comments/4-625/4625-1.pdf*; and Association of Institutional Investors (''AII Implementation''), available on the Commission's Web site at *http://www.sec.gov/comments/4-625/4625-5.pdf*.

[24] *See* letter from Bank of America Merrill Lynch, Barclays Capital, BNP Paribas, Citi, Crédit Agricole Corporate and Investment Bank, Credit Suisse Securities (USA), Deutsche Bank AG, HSBC, Morgan Stanley, Nomura Securities International, Inc., Société Générale, and UBS Securities LLC (''US & Foreign Banks''), available on the Commission's Web site at *http://www.sec.gov/comments/4-636/4636-4.pdf*; Joint Public Roundtable on International Issues Relating to the Implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Exchange Act Release No. 64939 (July 21, 2011); 76 FR 44507 (July 26, 2011).

[25] One commenter recommended that the Commission ''encourage the formation of a planning group composed of market participants'' to address the questions in the Proposing Release. Saul, *supra* note 19. The Commission believes that market participants have had sufficient opportunities to comment on the Proposing Release and market participants have taken advantage of these opportunities. Therefore, the Commission does not believe that a planning group composed of market participants is necessary.

[26] *See* letters from Better Markets, Inc. dated August 21, 2013 (''Better Markets CB''); Depository Trust & Clearing Corporation dated August 21, 2013 (''DTCC CB''); ICE Trade Vault, LLC (''ICE CB''); and Institute of International Bankers (''IIB CB''). The comments that the Commission received on the Cross-Border Proposing Release are available on the Commission's Web site at *http://sec.gov/comments/s7-02-13/s70213.shtml*. The Commission addressed comment letters in response to the Cross-Border Proposing Release that address Title VII generally and do not relate directly to the proposed SDR Rules in the Cross-Border Adopting Release. *See* Cross-Border Adopting Release, 79 FR at 47281–2, *supra* note 11.

[27] Regulation SBSR Proposing Release, *supra* note 8. *See* letters from Bank of America, Merrill Lynch et al. (''BofA SBSR''); Barclays Bank PLC, BNP Paribas S.A., Deutsche Bank AG, Royal Bank of Canada, The Royal Bank of Scotland Group PLC, Société Générale, and UBS AG (''Foreign Banks SBSR''); Depository Trust & Clearing Corporation (''DTCC SBSR''); Financial Industry Regulatory Authority (''FINRA SBSR''); International Swaps and Derivatives Association & Securities Industry and Financial Markets Association (''ISDA SIFMA SBSR''); Managed Funds Association (''MFA SBSR''); Société Générale (''Société Générale SBSR''); The Bank of Tokyo-Mitsubishi UFJ, Ltd., Mizuho Corporate Bank, Ltd., and Sumitomo Mitsui Banking Corporation (''Bank of Tokyo SBSR''); Tradeweb (''Tradeweb SBSR''); and Wholesale Markets Brokers' Association, Americas (''WMBAA SBSR''). The comments that the Commission received on the Regulation SBSR Proposing Release are available on the Commission's Web site at *http://www.sec.gov/comments/s7-34-10/s73410.shtml*. *See also* Cross-Border Proposing Release, 78 FR at 31210–6, *supra* note 3 (re-proposing Regulation SBSR).

[28] Reporting of Security-Based Swap Transaction Data, Exchange Act Release No. 63094 (Oct. 13, 2010), 75 FR 64643 (Oct. 20, 2010) (''Temporary Rule Release''). *See* letters from International Swaps and Derivatives Association (''ISDA Temp Rule'') and Deutsche Bank AG (''Deutsche Temp Rule''). The comments that the Commission received on the Temporary Rule Release are available on the Commission's Web site at *http://www.sec.gov/comments/s7-28-10/s72810.shtml*.

[29] Registration and Regulation of Security-Based Swap Execution Facilities, Exchange Act Release No. 63825 (Feb. 2, 2011), 76 FR 10948 (Feb. 28, 2011) (''SB SEF Proposing Release''). *See* letter from Tradeweb Markets LLC (''Tradeweb SB SEF''). The comments that the Commission received on the SB SEF Proposing Release are available on the

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While commenters generally supported the Commission's approach set forth in the Proposing Release and the Cross-Border Proposing Release with respect to the proposed SDR Rules,[30] they set forth a range of opinions addressing issues raised by the proposed rules and provided information regarding industry practices. In particular, commenters discussed SDRs' registration, enumerated duties, market access to services and data, governance arrangements, conflicts of interest, data collection and maintenance, privacy and disclosure requirements, and chief compliance officers (''CCOs''). The Commission has carefully reviewed and considered all of the comments that it received relating to the proposed rules.[31] As adopted, the SDR Rules and new Form SDR have been modified from the proposal, in part to respond to these comments.[32] The revisions to each proposed rule are described in more detail throughout this release. The following are among the most significant changes from the Commission's proposed rules:

- Form SDR: In the Proposing Release, the Commission asked whether it should combine Form SDR and Form SIP such that an SDR would register as an SDR and a securities information processer (''SIP'') using only one form.[33] After further consideration and in response to comments received, the Commission has determined that Form SDR should be modified from the proposal to allow an SDR to register as both an SDR and SIP on one form.[34]
- Access by Relevant Authorities: The Commission proposed Rules 13n–4(b)(9) and (10) and Rule 13n–4(d) relating to relevant authorities' access to SBS data maintained by SDRs. The Commission has determined not to adopt these rules at this time and anticipates soliciting additional public comment regarding such relevant authorities' access.
- Automated Systems: The Commission proposed Rule 13n–6 to provide standards for SDRs with regard to their automated systems' capacity, resiliency, and security. After further consideration, and as explained more fully below, the Commission has determined to adopt an abbreviated version of proposed Rule 13n–6.[35]
- CCO: In the Proposing Release, the Commission asked whether it should prohibit officers, directors, or employees of an SDR from, directly or indirectly, taking any action to coerce, manipulate, mislead, or fraudulently influence the SDR's CCO in the performance of his responsibilities. The Commission has decided to adopt new Rule 13n–11(h).

D. Other Initiatives Considered in This Rulemaking

The Commission also recognizes the CFTC's companion efforts in promulgating rules governing swap data repositories pursuant to Dodd-Frank Act Section 728. The CFTC adopted final rules on swap data repositories on August 4, 2011.[36] The CFTC also adopted rules regarding swap data recordkeeping and reporting requirements, some of which pertain to subjects covered in this release.[37] Commission staff consulted with CFTC staff with respect to the rules applicable to swap data repositories and SDRs, as well as with prudential regulators,[38] and the Commission has taken into consideration comments received supporting harmonization of the CFTC's rules for swap data repositories with the SDR Rules.[39] The Commission believes that the final SDR Rules are largely consistent with the rules adopted by the CFTC.[40] While one commenter recommended adopting joint rules with the CFTC,[41] the Commission has not done so. Congress did not require the two agencies to engage in joint rulemakings on this topic.[42] In addition, the CFTC has already adopted its final rules for swap data repositories.[43] The Commission does not believe that the differences between the rules adopted herein and the CFTC's rules regarding

Commission's Web site at *http://www.sec.gov/comments/s7-06-11/s70611.shtml*.

[30] *See, e.g.,* Barnard, *supra* note 19 (generally supporting the proposed SDR Rules and agreeing that establishing SDRs will enhance transparency and promote standardization in the SBS market); MFA 1, *supra* note 19 (fully supporting the objectives of the Dodd-Frank Act and the proposed rules to enhance transparency in the SBS market); Markit, *supra* note 19 (supporting the Commission's objectives of increasing transparency and efficiency in the OTC derivatives markets and of reducing both systemic and counterparty risk); DTCC 2, *supra* note 19 (supporting the Commission's efforts to establish a comprehensive new framework for the regulation of SDRs and noting that ''[i]mposing requirements on [SDRs] would promote safety and soundness for all U.S. markets by bringing increased transparency and oversight to [the SBS market]''); IIB CB, *supra* note 26 (believing that ''the Commission has appropriately sought to take into account the greater extent to which the SBS markets are globally interconnected, as well as the role that foreign regulators therefore must play as the primary supervisors of SBS market participants based abroad'').

[31] The Commission also considered certain comments submitted with respect to other proposed Commission rulemakings, related CFTC rulemakings, and international initiatives. *See* Sections I.C and I.D discussing other comments and initiatives considered in this rulemaking.

[32] As discussed below, comments relating to relevant authorities' access to SBS data will be addressed in a separate release.

[33] Proposing Release, 75 FR at 77313, *supra* note 2.

[34] *See* Section VI.A.1.c of this release discussing the combination of Form SDR and Form SIP.

[35] *See* Section VI.F of this release discussing Rule 13n–6.

[36] *See* Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011) (''CFTC Part 49 Adopting Release''). *See also* Swap Data Repositories—Access to SDR Data by Market Participants, 79 FR 16672 (Mar. 26, 2014) (CFTC adopting interim final rule regarding access to swap data repositories' data).

[37] *See* Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012) (''CFTC Part 45 Adopting Release''). *See also* Review of Swap Data Recordkeeping and Reporting Requirements, 79 FR 16689 (Mar. 26, 2014) (CFTC requesting comment on specific swap data reporting and recordkeeping rules).

[38] *See* Dodd-Frank Act Section 712(a)(2) (requiring the Commission to consult and coordinate to the extent possible with the CFTC and prudential regulators for ''the purposes of assuring regulatory consistency and comparability, to the extent possible'').

[39] *See* DTCC 2, *supra* note 19 (recommending that to the extent that there are any differences, ''the Commission and the CFTC should harmonize the regimes that oversee SDRs'' and noting that ''harmonization is a more important priority than the exact nature of the consistent standard, as SDRs can adjust to meet a single standard but not multiple, inconsistent standards''); DTCC 5, *supra* note 19 (urging the Commission to harmonize its rules with the CFTC's rules by working, to the extent possible, with the CFTC to minimize the number of regulatory inconsistencies between the two agencies); DTCC CB, *supra* note 26 (''Given the significant number of registered entities (execution platforms, clearinghouses, SDRs, dealers, and major swap participants) that will face dual oversight, unnecessary distinctions in the registration and regulation of these entities risk jeopardizing regulatory compliance, add confusion to Dodd-Frank Act implementation, and ultimately impose unnecessary costs.''); Better Markets CB, *supra* note 26 (recommending that the Commission ''promote harmony with the CFTC's cross-border guidance, subject to its primary duty and recognizing that its statutory authority and jurisdiction is distinct from that of the CFTC'' and that the Commission ''adopt rules that are at least as strong as the CFTC's guidance, consistent with its statutory authority, but should go further than the CFTC wherever necessary, and again consistent with its statutory authority, to better fulfill the goals of the Dodd-Frank Act''). *But see* Better Markets 2, *supra* note 19 (recommending that ''all of the substantive rule provisions proposed [as of July 22, 2013] must remain as strong as possible, irrespective of . . . the CFTC's approach to the implementation of Title VII'').

[40] *See* DTCC 2, *supra* note 19 (observing that, with respect to the Commission's proposed rules and the CFTC's proposed rules for swap data repositories, ''[t]here appear to be relatively narrow differences between the Commission's and the CFTC's approaches to the regulation of SDRs'').

[41] FSR Implementation, *supra* note 23 (supporting a Title VII-wide harmonization process and recommending adopting joint SEC–CFTC rules in areas, such as SDRs, where they are not required to do so). The commenter stated that the ''process of jointly adopting final rules would ensure consistency on the most critical points. It would also ensure that final rules are adopted at the same time, so that market participants do not have to bear the cost of complying with one set of rules before they know whether their actions will be consistent with the other rules to which they will be subject.'' *Id.*

[42] *Cf., e.g.,* Dodd-Frank Act Section 712(d) (requiring joint rulemaking regarding certain definitions).

[43] CFTC Part 49 Adopting Release, *supra* note 36; CFTC Part 45 Adopting Release, *supra* note 37.

swap data repositories will place undue burdens on persons that register as both SDRs and swap data repositories.[44]

Finally, Commission staff has consulted and coordinated with foreign regulators through bilateral and multilateral discussions, including in groups that have prepared reports related to SDRs.[45] For example, the Committee on Payments and Market Infrastructures (''CPMI''), formerly known as the Committee on Payment and Settlement Systems (''CPSS''),[46] and the International Organization of Securities Commissions (''IOSCO,'' [47] jointly, ''CPSS–IOSCO'') have issued several reports applicable to SDRs. First, in May 2010, CPSS and the Technical Committee of IOSCO issued a consultative report that presented a set of factors for trade repositories in the OTC derivatives markets to consider in designing and operating their services and for relevant authorities to consider in regulating and overseeing trade repositories (''CPSS–IOSCO Trade Repository Report'').[48] Second, in January 2012, CPSS and the Technical Committee of IOSCO issued a final report on OTC derivatives data reporting and aggregation requirements.[49] Third, in April 2012, CPSS–IOSCO issued a final report that sets forth risk management and related standards applicable to financial market infrastructures, including trade repositories (''PFMI Report'').[50] Fourth, in August 2013, CPSS and the Board of IOSCO issued a report on authorities' access to trade repository data (''CPSS–IOSCO Access Report'').[51] The Commission has taken these discussions and reports into consideration in developing the final SDR Rules and Form SDR.[52]

II. Broad Economic Considerations and Baseline

This section describes the most significant economic considerations that the Commission has taken into account in adopting Form SDR and the SDR Rules, as well as the baseline for evaluating the economic effects of the final SDR Rules. The Commission is sensitive to the economic consequences and effects, including the costs and benefits, of Form SDR and the SDR Rules. A detailed analysis of the particular economic effects—including the costs and benefits and the impact on efficiency, competition, and capital formation—that may result from Form SDR and the final SDR Rules is discussed in Section VIII of this release.

A. Broad Economic Considerations

The SBS market prior to the passage of the Dodd-Frank Act has been described as being opaque,[53] in part because price and volume data for SBS transactions were not publicly available. In opaque markets, price and volume information is difficult or impossible to obtain, and access to price and volume information confers a competitive advantage on market participants with such access. In the SBS market, for example, SBS dealers currently gain access to proprietary transaction-level price and volume information by observing order flow. Large SBS dealers and other large market participants with a large share of order flow have an informational advantage over smaller SBS dealers and non-dealers who, in the absence of pre-trade transparency, observe a smaller subset of the market. As the Commission highlights in Section II.B below, the majority of SBS market activity, and therefore information about market activity, is concentrated in a small number of SBS dealers and widely dispersed among other market participants. Greater access by SBS dealers to non-public information about order flow enables better assessment of current market values by SBS dealers, permitting them to extract economic rents from counterparties who are less informed.[54] Non-dealers are aware of this information asymmetry, and certain non-dealers—particularly larger entities who transact with many dealers—may be able to obtain access to competitive pricing or otherwise demand a price discount that reflects the information asymmetry. Typically, however, the market participants with an information advantage will earn economic rents from their non-public information. In the SBS market, it is predominantly SBS dealers who observe the greatest order flow and benefit from market opacity.

The Commission expects that SDRs will play a critical role in enhancing transparency and competitive access to information in the SBS market. In order to increase the transparency of the OTC derivatives market, Title VII requires the Commission to undertake a number of rulemakings, including the SDR Rules and Regulation SBSR,[55] to establish a framework for the regulatory reporting of SBS transaction information to SDRs, public dissemination of transaction-level information, and a framework for SDRs to provide access to the

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[44] *See* Section VIII of this release discussing economic analysis.

[45] *See* Dodd-Frank Act Section 752 (relating to international harmonization); DTCC 3, *supra* note 19 (''The global SDR framework emerging from the Dodd-Frank Act and European regulatory processes must provide comprehensive data for all derivatives markets globally. If the global regulatory process is not harmonized, both the published and regulator-only accessible data will be fragmented, resulting in misleading reporting of exposures, uncertain risk concentration reports and a decreased ability to identify systemic risk.'').

[46] CPMI is an international standard setting body for payment, clearing, and securities settlement systems. It serves as a forum for central banks to monitor and analyze developments in domestic payment, clearing, and settlement systems as well as in cross-border and multicurrency settlement schemes. *See http://www.bis.org/cpmi/.*

[47] IOSCO is an international standard setting body for securities regulation. It serves as a forum to review regulatory issues related to international securities and futures transactions. *See http://www.iosco.org.*

[48] *See* Considerations for Trade Repositories in OTC Derivatives Markets, CPSS–IOSCO (May 2010), *available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD321.pdf.*

[49] *See* Report on OTC Derivatives Data Reporting and Aggregation Requirements, CPSS–IOSCO (Jan. 2012), *available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD366.pdf.*

[50] *See* Principles for Financial Market Infrastructures, CPSS–IOSCO (Apr. 2012), *available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf.* The PFMI Report incorporated feedback received on the CPSS–IOSCO Trade Repository Report. Commission representatives participated in the development and drafting of the PFMI Report. In particular, Commission staff co-chaired the Editorial Team, a working group within CPSS–IOSCO that drafted both the consultative and final versions of the PFMI Report. The Commission believes that the standards applicable to trade repositories set forth in the PFMI Report are generally consistent with the final SDR Rules.

[51] *See* Authorities' Access to Trade Repository Data, CPSS–IOSCO (Aug. 2013), *available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD417.pdf.*

[52] If any provision of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

[53] With respect to one type of SBS, credit default swaps (''CDSs''), the Government Accountability Office found that ''comprehensive and consistent data on the overall market have not been readily available,'' ''authoritative information about the actual size of the [CDS] market is generally not available,'' and regulators currently are unable ''to monitor activities across the market.'' Government Accountability Office, GAO–09–397T, *Systemic Risk: Regulatory Oversight and Recent Initiatives to Address Risk Posed by Credit Default Swaps,* at 2, 5, 27, (2009) *available at http://www.gao.gov/new.items/d09397t.pdf; see also* Robert E. Litan, *The Derivatives Dealers' Club and Derivatives Market Reform: A Guide for Policy Makers, Citizens and Other Interested Parties,* Brookings Institution (Apr. 7, 2010), *http://www.brookings.edu/~/media/research/files/papers/2010/4/07%20derivatives%20litan/0407_derivatives_litan.pdf;* Michael Mackenzie, *Era of an Opaque Swaps Market Ends,* Financial Times, June 25, 2010, *http://www.ft.com/intl/cms/s/0/f49f635c-8081-11df-be5a-00144feabdc0.html#axzz3HLUjYNI7.*

[54] In this situation, economic rents are the profits that SBS dealers earn by trading with counterparties who are less informed. In a market with competitive access to information, there is no informational premium; SBS dealers only earn a liquidity premium. The difference between the competitive liquidity premium and the actual profits that SBS dealers earn is the economic rent.

[55] *See* Regulation SBSR Adopting Release, *supra* note 13.

information to the Commission. Persons that meet the definition of an SDR will be required, absent an exemption, to comply with all SDR obligations, including the SDR Rules requiring SDRs to collect and maintain accurate data and the requirements under Regulation SBSR to publicly disseminate transaction-level information. Reporting of SBS transaction information and public dissemination of accurate transaction price and volume information should promote price discovery and lessen the informational advantage enjoyed by SBS dealers with access to order flow.[56] By requiring SDRs to collect SBS transaction, volume, and pricing information and publicly disseminate information, the SDR Rules and Regulation SBSR may promote transparency in the SBS market.[57]

In addition to lessening the informational advantage currently available to SBS dealers, increased transparency of the SBS market could have other widespread benefits. Public availability of SBS price and volume information could lower the costs of SBS trading by reducing implicit trading costs.[58] To the extent that implicit costs of SBS trading are reduced and the availability of the data necessary to evaluate the performance of a market participant's SBS dealer using transaction cost analysis, more market participants may be inclined to trade in the SBS market.[59]

Allowing competitive, impartial access to the most recent transaction price and volume information may promote the efficiency of SBS trading and increase opportunities for risk-sharing in other ways. In particular, as in other securities markets, quoted bids and offers should form and adjust according to the reporting of executed trades, attracting liquidity from hedgers and other market participants that do not observe customer order flow and do not benefit from opacity.

Separately, the SDR Rules are designed to, among other things, make available to the Commission SBS data that will provide a broad view of the SBS market and help monitor for pockets of risk that might not otherwise be observed by financial market regulators.[60] Unlike most other securities transactions, SBSs involve ongoing financial obligations between counterparties during the life of transactions that typically span several years. Counterparties to an SBS rely on each other's creditworthiness and bear this credit risk and market risk until the SBS terminates or expires. This can lead to market instability when a large market participant, such as an SBS dealer, major SBS market participant, or central counterparty (''CCP''), becomes financially distressed. The default of a large market participant could introduce the potential for sequential counterparty failure; the resulting uncertainty could reduce the willingness of market participants to extend credit, and substantially reduce liquidity and valuations for particular types of financial instruments.[61] A broad view of the SBS market, including aggregate market exposures to referenced entities (instruments), positions taken by individual entities or groups, and data elements necessary for a person to determine the market value of the transaction could provide the Commission with a better understanding of the actual and potential risks in the SBS market and promote better risk monitoring efforts. The information provided by SDRs could also help the Commission detect market manipulation, fraud, and other market abuses.

The extent of the benefits discussed above may be limited by the inaccuracy or incompleteness of SBS data maintained by SDRs.[62] The Commission believes, however, that the SDR Rules relating to data accuracy [63] and maintenance [64] will help minimize the inaccuracy or incompleteness of SBS data maintained by SDRs. The benefits discussed above may have associated costs for compliance with the SDR Rules and Regulation SBSR. Persons that meet the definition of an SDR will be required to invest in infrastructure necessary to comply with rules for collecting, maintaining, and disseminating accurate data. Such infrastructure costs may ultimately be reflected in the prices that SBS dealers charge to customers, mitigating the reduction in indirect trading costs that may accrue from reducing SBS dealers' information advantage.

The SDR Rules permit the possibility of multiple SDRs within an asset class.[65] If there are multiple SDRs in any given asset class, then differences in how each

[56] Price discovery refers to the process by which buyers seek the lowest available prices and sellers seek the highest available prices. This process reveals the prices that best match buyers to sellers. *See* Larry Harris, *Trading & Exchanges: Market Microstructure for Practitioners* 94 (2003). Price discovery may be hindered by such things as a scarcity of buyers or sellers or an asymmetry of information between potential buyers and sellers. For example, when traders are asymmetrically informed, liquidity suppliers set their prices far from the market to recover from uninformed traders what they lose to well-informed traders. *See id.* at 312.

[57] Regulation SBSR requires that the economic terms of the transaction, with the exception of the identities of the counterparties, be publicly disseminated. These terms include the product ID, date and time of execution, price, and notional amount of an SBS. *See* Regulation SBSR Adopting Release, *supra* note 13 (Rules 901(c) and 902).

[58] Implicit trading cost is the difference between the price at which a market participant can enter into an SBS and the theoretical fundamental value of that SBS. Post-trade transparency has been shown to lower implicit trading costs in US corporate bond markets, which, prior to the introduction of FINRA's Trade Reporting and Compliance Engine (TRACE), was a dealer-centric over-the-counter (''OTC'') market characterized by limited transparency, similar to the SBS market. *See, e.g.,* Amy K. Edwards, Lawrence Harris, & Michael S. Piwowar, *Corporate Bond Market Transparency and Transaction Costs,* 62 Journal of Finance 1421 (2007); Hendrik Bessembinder, William F. Maxwell, & Kumar Venkataraman, *Market Transparency, Liquidity, Externalities and Institutional Trading Costs in Corporate Bonds,* 82 Journal of Financial Economics 251 (2006).

[59] Transaction cost analysis refers to an evaluation of the price received by a market participant relative to prevailing market prices at the time the decision to transact was made as well as transaction prices received by other market participants just before and just after the transaction.

[60] *See* Exchange Act Section 13(n)(5)(D), 15 U.S.C. 78m(n)(5)(D), and Rule 13n-4(b)(5) (requiring SDRs to provide direct electronic access to the Commission). *See also* 156 Cong. Rec. S5920 (daily ed. July 15, 2010) (statement of Sen. Lincoln) (''These new 'data repositories' will be required to register with the CFTC and the SEC and be subject to the statutory duties and core principles which will assist the CFTC and the SEC in their oversight and market regulation responsibilities.'').

[61] *See, e.g.,* Markus K. Brunnermeier and Lasse Heje Pedersen, *Market Liquidity and Funding Liquidity,* 22 Review of Financial Studies 2201 (2009); Denis Gromb and Dimitri Vayanos, *A Model of Financial Market Liquidity Based on Intermediary Capital,* 8 Journal of the European Economic Association 456 (2010).

[62] The CFTC's experience with collecting swap data suggests that the benefits of receiving information from trade repositories may be reduced by inaccuracies or inconsistencies in information maintained by trade repositories. *See, e.g.,* Andrew Ackerman, *CFTC Seeks Comment on Improving Swaps Data Stream; Data Problems Have Hobbled Efforts to See More Clearly Into Swaps Market,* Wall Street Journal Mar. 19, 2014, *http://online.wsj.com/news/articles/SB10001424052702304026304579449552899867592* (noting that ''a series of data problems . . . have hobbled efforts to see more clearly into the multitrillion-dollar swaps market''). The CFTC has published a request for comment on specific swap data reporting and recordkeeping rules to determine how these rules were being applied and whether or what clarifications, enhancements, or guidance may be appropriate. *See* Review of Swap Data Recordkeeping and Reporting Requirements, 79 FR 16689 (Mar. 26, 2014).

[63] *See, e.g.,* Rule 13n–5(b)(3) (requiring an SDR to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that the transaction data and positions that it maintains are complete and accurate).

[64] *See, e.g.,* Rule 13n–5(b)(4) (requiring an SDR to maintain transaction data and related identifying information for not less than five years after the applicable SBS expires and historical positions for not less than five years); Rule 13n–5(b)(5) (requiring an SDR to establish, maintain, and enforce written policies and procedures reasonably designed to prevent any provision in a valid SBS from being invalidated or modified through the procedures or operations of the SDR).

[65] *See* Section IV of this release discussing number of SDRs and consolidation of SBS data.

SDR accepts, stores, and disseminates SBS data may cause fragmentation in the SBS data, thereby making it more difficult for the Commission and the public to compile, compare, and analyze market information. As discussed below, the Commission anticipates that it will propose for public comment detailed specifications of acceptable formats and taxonomies that would facilitate an accurate interpretation, aggregation, and analysis of SBS data by the Commission.[66] The Commission believes that these specifications may help reduce any difficulties resulting from the fragmentation of data among multiple SDRs by facilitating the clear, uniform reporting of SBS data to the Commission.

B. Baseline

To assess the economic impact of the SDR Rules described in this release, the Commission is using as a baseline the SBS market as it exists today, including applicable rules that have already been adopted and excluding rules that have been proposed, but not yet finalized. The Commission acknowledges limitations in the degree to which the Commission can quantitatively characterize the current state of the SBS market. As described in more detail below, because the available data on SBS transactions do not cover the entire market, the Commission has developed an understanding of market activity using a sample that includes only certain portions of the market.

1. Transparency in the SBS Market

There currently is no robust, widely accessible source of information about individual SBS transactions. Nevertheless, market participants can gather certain limited information for the single-name CDS market from a variety of sources. For example, some vendors provide indicative quotes. Indicative quotes are not based on actual transactions and, as such, they may not reflect the true value. Moreover, these quotes do not represent firm commitments to buy or sell protection on particular reference entities. However, market participants can gather information from indicative quotes that may inform their trading. In addition, one entity as part of its single-name CDS clearing, makes its daily settlement prices on 5 year single-name CDSs available to the public on its Web site.[67] A more complete database of current and historical settlement prices is available by subscription.

In addition to the pricing data discussed above, there is limited, publicly-disseminated information about aggregate SBS market activity. The Depository Trust and Clearing Corporation—Trade Information Warehouse (''DTCC–TIW'') publishes weekly transaction and position reports for single-name CDSs. ICE Clear Credit also provides aggregated volumes of clearing activity. Additionally, large multilateral organizations periodically report measures of market activity. For example, the Bank for International Settlements (''BIS'') reports gross notional outstanding for single-name CDSs and equity forwards and swaps semiannually.

Market participants that are SBS dealers can also draw inferences about SBS market activity by observing order flow. This source of proprietary information is most useful for SBS dealers with large market shares.

Finally, DTCC–TIW voluntarily provides to the Commission data on individual CDS transactions. This information is made available to the Commission in accordance with an agreement between the DTCC–TIW and the OTC Derivatives Regulators' Forum (''ODRF''), of which the Commission is a member. While DTCC–TIW generally provides this information to regulators that are members of the ODRF, DTCC–TIW does not make the information available to the public.

2. Current Security-Based Swap Market

The Commission's analysis of the current state of the SBS market is based on data obtained from DTCC–TIW, particularly data regarding the activity of market participants for single-name CDSs from 2008 to 2013. While other repositories may collect data on transactions in total return swaps on equity and debt, the Commission does not currently have access to such data for these products (or other products that are SBSs). Although the Commission has previously noted that the definition of SBS is not limited to single-name CDSs, the Commission believes that the single-name CDS data is sufficiently representative of the SBS market and therefore can directly inform the analysis of the state of the current SBS market.[68] The Commission believes that DTCC–TIW's data for single-name CDSs is reasonably comprehensive because it includes data on almost all single-name CDS transactions and market participants trading in single-name CDSs.[69] The Commission notes that the data that it receives from DTCC–TIW does not encompass CDS transactions that both: (i) Do not involve any U.S. counterparty,[70] and (ii) are not based on a U.S. reference entity. Notwithstanding this limitation, the Commission believes that DTCC–TIW data provides sufficient information to identify the types of market participants active in the SBS market and the general pattern of dealing within that market.[71]

a. Security-Based Swap Market Participants

A key characteristic of SBS activity is that it is concentrated among a relatively small number of entities that

[66] *See* Section VI.D.2.c.ii of this release.

[67] *See https://www.theice.com/cds/MarkitSingleNames.shtml.* End-of-Day (''EOD'') prices are established for all cleared CDS single name and index instruments using a price discovery process developed for the CDS market. Clearing participants are required to submit prices every business day, and the clearing house conducts a daily auction-like process resulting in periodic trade executions among clearing participants. This process determines the clearing house EOD prices, which are used for daily mark-to-market purposes.

[68] According to data published by BIS, the global notional amount outstanding in equity forwards and swaps as of December 2013 was $2.28 trillion. The notional amount outstanding was approximately $11.32 trillion for single-name CDSs, approximately $9.70 trillion for multi-name index CDSs, and approximately $0.95 trillion for multi-name, non-index CDSs. *See* Bank of International Settlement, BIS Quarterly Review, Statistical Annex, Table 19 (June 2014), *available at http://www.bis.org/publ/qtrpdf/r_qt1406.htm.* For purposes of this analysis, the Commission assumes that multi-name index CDSs are not narrow-based index CDSs, and therefore do not fall within the definition of SBS. *See* Exchange Act Section 3(a)(68)(A), 15 U.S.C. 78c(a)(68)(A); *see also* Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48207 (Aug. 13, 2012). The Commission also assumes that instruments reported as equity forwards and swaps include instruments such as total return swaps on individual equities that fall with the definition of SBS, potentially resulting in underestimation of the proportion of the SBS market represented by single-name CDSs. Although the BIS data reflects the global OTC derivatives market, and not only the U.S. market, the Commission is not aware of any reason to believe that these ratios differ significantly in the U.S. market.

[69] *See* ISDA, CDS Marketplace, Exposures & Activity, *http://www.isdacdsmarketplace.com/exposures_and_activity* (''DTCC Deriv/SERV's Trade Information Warehouse is the only comprehensive trade repository and post-trade processing infrastructure for OTC credit derivatives in the world. Its Deriv/SERV matching and confirmation service electronically matches and confirms more than 98% of credit default swaps transactions globally.'').

[70] The Commission notes that DTCC–TIW's entity domicile determinations may not reflect the Commission's definition of ''U.S. person'' in all cases.

[71] In 2013, DTCC–TIW reported on its Web site new trades in single-name CDSs with gross notional of $12.0 trillion. DTCC–TIW provided to the Commission data that included only transactions with a U.S. counterparty or a U.S. reference entity. During the same period, this data included new trades with gross notional equaling $9.3 trillion, or 77% of the total reported by DTCC–TIW.

engage in dealing activities.[72] Based on DTCC–TIW data that the Commission has received, thousands of other market participants appear as counterparties to SBS transactions, including, but not limited to, investment companies, pension funds, private (hedge) funds, sovereign entities, and industrial companies. The Commission observes that most end users of SBSs do not directly trade SBSs, but instead use dealers, banks, or investment advisers as agents to establish the end users' positions. Based on the Commission's analysis of DTCC–TIW data, there were 1,800 entities engaged directly in trading CDSs between November 2006 and December 2013.[73] Table 1 below highlights that of these entities, there were 17, or approximately 0.9%, that were ISDA-recognized dealers.[74] The vast majority of transactions (84.1%) measured by the number of counterparties (each transaction has two counterparties or transaction sides) were executed by ISDA-recognized dealers. Thus, a small set of dealers observe the largest share of the market and potentially benefit the most from opacity.

TABLE 1—THE NUMBER OF TRANSACTING AGENTS IN THE CDS MARKET BY COUNTERPARTY TYPE AND THE FRACTION OF TOTAL TRADING ACTIVITY, FROM NOVEMBER 2006 THROUGH DECEMBER 2013, REPRESENTED BY EACH COUNTERPARTY TYPE.

Transacting agents	Number	Percent	Transaction share (%)
Investment Advisers	1,347	74.8	9.7
—SEC registered	*529*	*29.4*	*5.9*
Banks	256	14.2	5.0
Pension Funds	29	1.6	0.1
Insurance Companies	36	2.0	0.2
ISDA-Recognized Dealers	17	0.9	84.1
Other	115	6.4	1.0
Total	1,800	100.0	100.0

Principal holders of CDS risk exposure are represented by accounts in DTCC–TIW.[75] As highlighted in Table 2 below, Commission staff's analysis of these accounts in DTCC–TIW shows that the 1,800 transacting agents (entities directly engaged in trading) described above represented 10,054 principal risk holders (entities bearing the risk of the CDS). In some cases, the principal risk holder may have been represented by an investment adviser that served as the transacting agent. In other cases, the principal risk holder may have participated directly as the transacting agent. Each account does not necessarily represent a separate legal person; one legal person may allocate transactions across multiple accounts. For example, the 17 ISDA-recognized dealers described above allocated transactions across 69 accounts.

Among the accounts, there are 1,086 Dodd-Frank Act-defined special entities and 636 investment companies registered under the Investment Company Act of 1940.[76] Private funds comprise the largest type of account holders that the Commission was able to classify, and although not verified through a recognized database, most of the funds the Commission was not able to classify appear to be private funds.[77] While the Commission anticipates that some of these accounts may prefer to operate in an opaque market (if, for example, they are relying on a proprietary trading strategy and wish to keep their transactions anonymous), the data suggest that the vast majority of principal risk holders in CDS may benefit from the Dodd-Frank Act's transparency requirements. As discussed above and in Section VIII below, dealers are the category of market participants most likely to benefit from opaqueness. As shown in Table 1, of the 1,800 transacting agents in the 2006–2013 sample, 17 (or 0.9%) are ISDA-recognized dealers. Similarly, as shown in Table 2, of the 10,054 accounts with CDS transactions, 69 (or 0.7%) are accounts held by ISDA-recognized dealers. As many as 99% of market participants may benefit from increasing transparency.

[72] *See* Cross-Border Adopting Release, 79 FR at 47293, *supra* note 11. All data in this section cites updated data from this release and the accompanying discussion.

[73] These 1,800 transacting agents represent over 10,000 accounts representing principal risk holders. *See* Regulation SBSR Adopting Release, *supra* note 13 and Cross Border Adopting Release, 79 FR at 47293–4, *supra* note 11 (discussing the number of transacting agents and accounts of principal risk holders).

[74] For the purpose of this analysis, the ISDA-recognized dealers are those identified by ISDA as a recognized dealer in any year during the relevant period. Dealers are only included in the ISDA-recognized dealer category during the calendar year in which they are so identified. The complete list of ISDA recognized dealers is: JP Morgan Chase NA (and Bear Stearns), Morgan Stanley, Bank of America NA (and Merrill Lynch), Goldman Sachs, Deutsche Bank AG, Barclays Capital, Citigroup, UBS, Credit Suisse AG, RBS Group, BNP Paribas, HSBC Bank, Lehman Brothers, Société Générale, Credit Agricole, Wells Fargo, and Nomura. *See* ISDA, Operations Benchmarking Surveys, *available at http://www2.isda.org/functional-areas/research/surveys/operations-benchmarking-surveys.*

[75] ''Accounts'' as defined in the DTCC–TIW context are not equivalent to ''accounts'' in the definition of ''U.S. person'' provided by Exchange Act Rule 3a71–3(a)(4)(i)(C). They also do not necessarily represent separate legal persons. One entity or legal person may have multiple accounts. For example, a bank may have one DTCC account for its U.S. headquarters and one DTCC account for one of its foreign branches.

[76] There remain over 4,600 DTCC ''accounts'' unclassified by type. Although unclassified, each was manually reviewed to verify that it was not likely to be a special entity within the meaning of the Dodd-Frank Act and instead was likely to be an entity such as a corporation, an insurance company, or a bank.

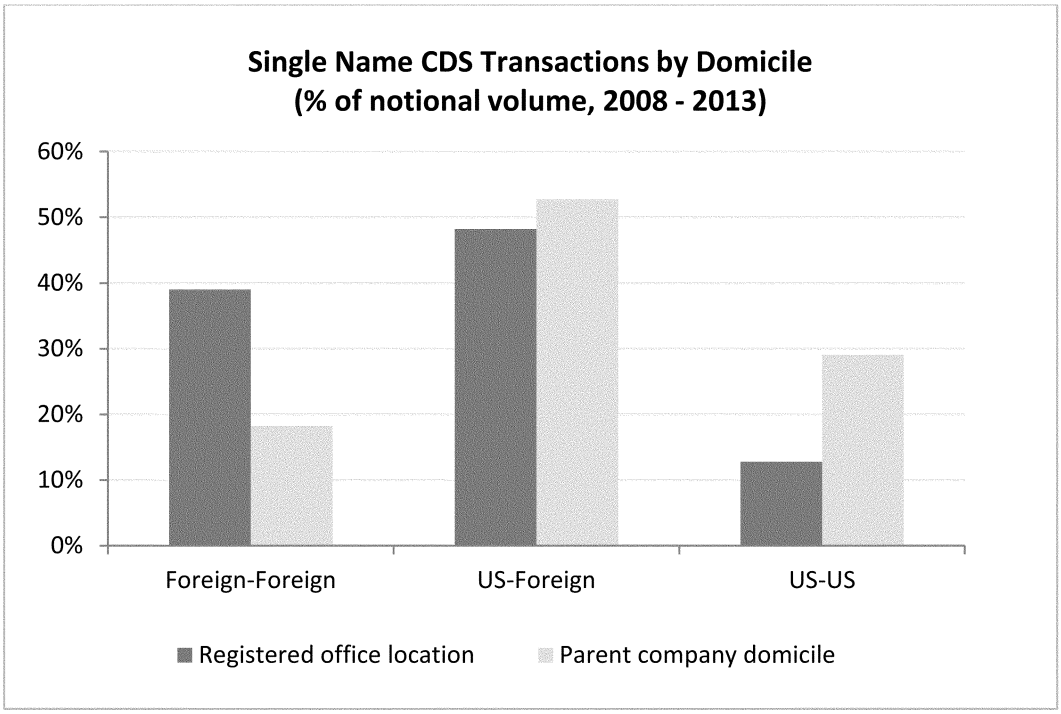
[77] ''Private funds'' encompass various unregistered pooled investment vehicles, including hedge funds, private equity funds, and venture capital funds.

TABLE 2—THE NUMBER AND PERCENTAGE OF ACCOUNT HOLDERS—BY TYPE—WHO PARTICIPATE IN THE CDS MARKET THROUGH A REGISTERED INVESTMENT ADVISER, AN UNREGISTERED INVESTMENT ADVISER, OR DIRECTLY AS A TRANSACTING AGENT FROM NOVEMBER 2006 THROUGH DECEMBER 2013

Account holders by type	Number	Represented by a registered investment adviser		Represented by an unregistered investment adviser		Participant is transacting agent [78]	
Private Funds	2,914	1,395	48%	1,496	51%	23	1%
Dodd-Frank Act Special Entities	1,086	1,050	97%	12	1%	24	2%
Registered Investment Companies	636	620	97%	14	2%	2	0%
Banks (non-ISDA-recognized dealers)	369	25	7%	5	1%	339	92%
Insurance Companies	224	144	64%	21	9%	59	26%
ISDA-Recognized Dealers	69	0	0%	0	0%	69	100%
Foreign Sovereigns	63	45	71%	2	3%	16	25%
Non-Financial Corporations	57	39	68%	3	5%	15	26%
Finance Companies	10	5	50%	0	0%	5	50%
Other/Unclassified	4,626	3,131	68%	1,295	28%	200	4%
All	10,054	6,454	64%	2,848	28%	752	7%

Although the SBS market is global in nature, 61% of the transaction volume in the 2008–2013 period included at least one U.S.-domiciled entity (see Figure 1). Moreover, 18% of the CDS transactions reflected in DTCC–TIW data that include at least one U.S.-domiciled counterparty or a U.S. reference entity were between U.S.-domiciled entities and foreign-domiciled counterparties.

Figure 1: The fraction of notional volume in North American corporate single-name CDS between (1) two U.S.-domiciled accounts, (2) one U.S.-domiciled account and one non-U.S.-domiciled account, and (3) two non-U.S.-domiciled accounts, computed from January 2008 through December 2013.



The cross-border nature of the SBS market is growing over time. Figure 2 below is a chart of (1) the percentage of new accounts with a domicile in the United States,[79] (2) the percentage of new accounts with a domicile outside

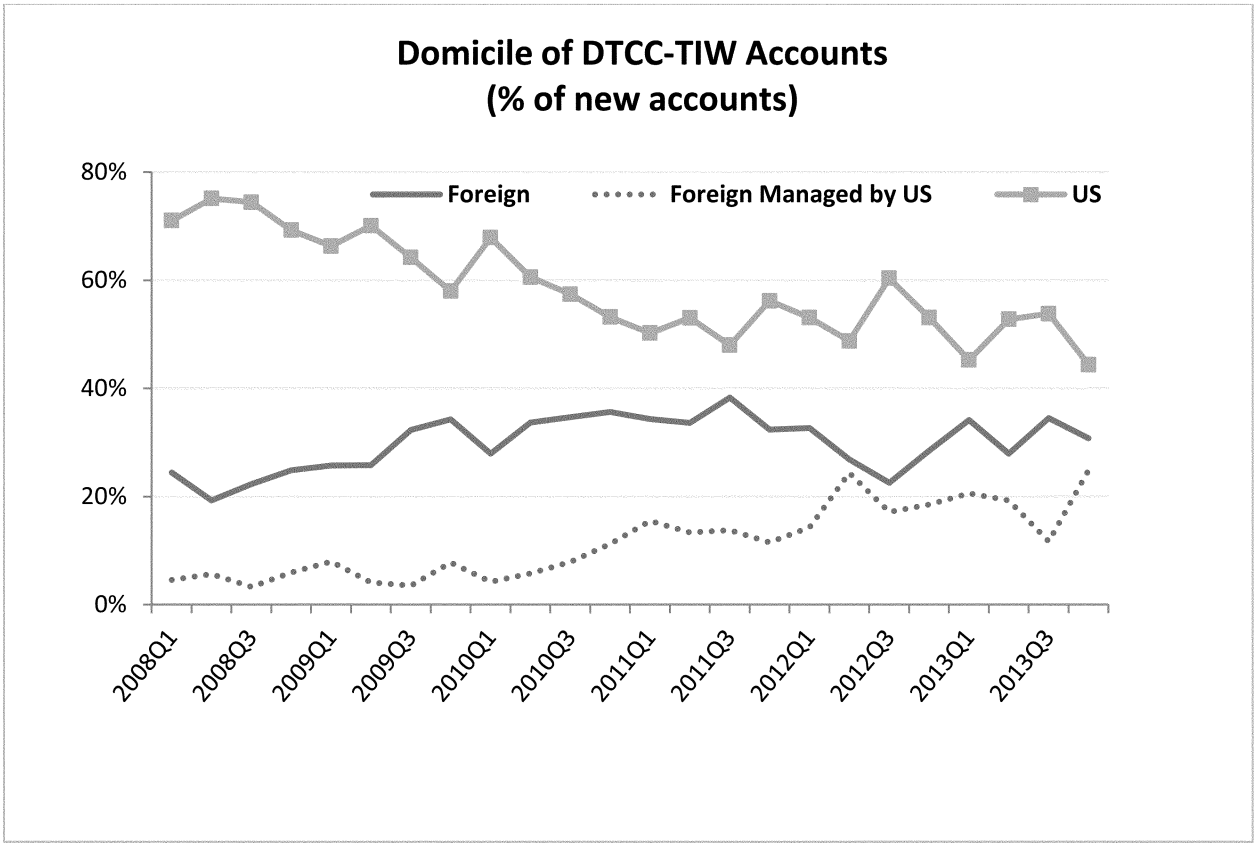
[78] This column reflects the number of participants who are also trading for their own accounts.

[79] The domicile classifications in DTCC–TIW are based on the market participants' own reporting and have not been verified by Commission staff. Prior to enactment of the Dodd-Frank Act, account holders did not formally report their domicile to DTCC–TIW because there was no systematic requirement to do so. After enactment of the Dodd-Frank Act, the DTCC–TIW has collected the registered office location of the account. This information is self-reported on a voluntary basis. It is possible that some market participants may misclassify their domicile status because the databases in DTCC–TIW do not assign a unique legal entity identifier to each separate entity. It is

Continued

the United States, and (3) the percentage of new accounts outside the United States, but managed by a U.S. entity, foreign accounts that include new accounts of a foreign branch of a U.S. bank, and new accounts of a foreign subsidiary of a U.S. entity. Over time, a greater share of accounts entering the DTCC–TIW data either have a foreign domicile or have a foreign domicile while being managed by a U.S. person. The increase in foreign accounts may reflect an increase in participation by foreign accountholders and the increase in foreign accounts managed by U.S. persons may reflect the flexibility with which market participants can restructure their market participation in response to regulatory intervention, competitive pressures, and other factors. There are, however, alternative explanations for the shifts in new account domicile in Figure 2. Changes in the domicile of new accounts through time may reflect improvements in reporting by market participants to DTCC–TIW. Additionally, because the data includes only accounts that are domiciled in the United States, transact with U.S.-domiciled counterparties, or transact in single-name CDSs with U.S. reference entities, changes in the domicile of new accounts may reflect increased transaction activity between U.S. and non-U.S. counterparties.

Figure 2: The percentage of (1) new accounts with a domicile in the United States (referred to below as "US"), (2) new accounts with a domicile outside the United States (referred to below as "Foreign"), and (3) new accounts outside the United States, but managed by a U.S. entity, new accounts of a foreign branch of a U.S. bank, and new accounts of a foreign subsidiary of a U.S. entity (collectively referred to below as "Foreign managed by US"). Unique, new accounts are aggregated each quarter and shares are computed on a quarterly basis, from January 2008 through December 2013. The sample includes accounts that are domiciled in the United States, transact with U.S.-domiciled accounts, or transact in CDSs that reference U.S. entities. (Source: DTCC-TIW)



b. Security-Based Swap Data Repositories

No SDRs are currently registered with the Commission. The Commission is aware of one entity in the market (*i.e.,* the DTCC–TIW) that has been accepting voluntary reporting of single-name and index CDS transactions. In 2013, DTCC–TIW received approximately 3.1 million records of CDS transactions, of which

also possible that the domicile classifications may not correspond precisely to the definition of U.S. person under the rules defined in Exchange Act Rule 3a71–3(a)(4), 17 CFR 240.3a71–3(a)(4). Notwithstanding these limitations, the Commission believes that the cross-border and foreign activity demonstrates the nature of the single-name CDS market.

approximately 800,000 were price forming.[80]

The CFTC has provisionally registered four swap data repositories.[81] These swap data repositories are: BSDR LLC, Chicago Mercantile Exchange Inc., DTCC Data Repository LLC, and ICE Trade Vault, LLC. The Commission believes that most of these entities will likely register with the Commission as SDRs and that other persons may seek to register with both the CFTC and the Commission as swap data repositories and SDRs, respectively. As stated above, the Commission believes that the final SDR Rules are largely consistent with the CFTC's rules governing swap data repositories.

Efforts to regulate the swap and SBS market are underway not only in the United States, but also abroad. In 2009, leaders of the G20—whose members include the United States, 18 other countries, and the European Union—called for global improvements in the functioning, transparency, and regulatory oversight of OTC derivatives markets and agreed, among other things, that OTC derivatives contracts should be reported to trade repositories.[82] Substantial progress has been made in establishing the trade repository infrastructure to support the reporting of all contracts.[83] Currently, multiple trade repositories operate, or are undergoing approval processes to do so, in a number of different jurisdictions.[84] The requirements for trade reporting differ across jurisdictions. The result is that trade repository data is fragmented across many locations, stored in a variety of formats, and subject to many different rules for authorities' access. The data in these trade repositories will need to be aggregated in various ways if authorities are to obtain a comprehensive and accurate view of the global OTC derivatives markets and to meet the original financial stability objectives of the G20 in calling for comprehensive use of trade repositories.

III. Definition, Scope of Registration, Services, and Business Models of SDRs

The Proposing Release generally discussed the role, regulation, and business models of SDRs,[85] but it did not specifically address the applicability of the statutory definition of an SDR.[86] The Commission received several comments that addressed broad issues regarding what persons fall within the statutory definition of an SDR, what services can or must be provided by SDRs, and what business models are appropriate for SDRs. In light of these comments, the Commission believes that it is useful to provide clarity on the definition of an SDR and the services that are required or permitted to be provided by SDRs. For purposes of this release, the Commission will refer to services that are specifically included in the statutory definition of an SDR[87] as ''core'' services. All other services—both those required by the Dodd-Frank Act and the rules and regulations thereunder, and those not required, but which the Commission believes are permissible for SDRs to perform—will be referred to as ''ancillary'' services.

A. Definition of SDR: Core Services

Exchange Act Section 3(a)(75), enacted by Dodd-Frank Act Section 761, defines a ''security-based swap data repository'' to mean ''any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for security-based swaps.''[88]

One commenter requested that ''the Commission provide clear guidance as to the scope of the entities covered within the [statutory] definition of SDR in the Dodd-Frank Act.''[89] The commenter stated as follows: ''The statutory duties required of an SDR are extensive and can form a business in their own right. The requirements of an SDR should not be imposed upon service providers looking to provide targeted solutions to specific processes, as opposed to providers looking more broadly to fulfill the role of an SDR. All third party service providers have to perform a level of recordkeeping and often retain data previously submitted by customers to offer services efficiently. This should not transform them into an SDR unless there is a corresponding policy reason for doing so. In fact, there is a strong policy reason to exclude them, the goal of countering the risk of fragmentation in data collection and dissemination on a global basis.''[90] Another commenter described an SDR's core functions as ''basic receipt and storage of [SBS] data.''[91]

The Commission believes that the statutory definition in Exchange Act Section 3(a)(75) describes the core services or functions of an SDR. Whether a person falls within the statutory definition of an SDR is fact-specific. An example of a person that would likely meet the statutory definition of an SDR is a person that provides the service of maintaining a centralized repository of records of SBSs for counterparties to SBS transactions that are intended to be relied on by counterparties for legal purposes. Providing this service would cause the person to meet the statutory definition of an SDR because the person is ''collect[ing] and maintain[ing] information or records with respect to transactions or positions in, or the terms and conditions of, [SBSs] entered into by third parties for the purpose of providing a centralized recordkeeping facility for [SBSs].''[92] In contrast, a law firm, trustee, custodian, or broker-dealer that holds SBS records likely would not meet the statutory definition of an SDR because those persons would not be doing so ''for the purpose of providing a centralized recordkeeping facility for [SBSs].''[93]

One commenter identified countering the risk of fragmentation in data collection and dissemination as a policy reason to exclude certain persons, such as certain third party service providers, from the definition of an SDR.[94] The Commission believes that while third party service providers may collect and maintain SBS data, they generally do not do so ''for the purpose of providing a centralized recordkeeping facility.'' As such, third party service providers

[80] Price-forming CDS transactions include all new transactions, assignments, modifications to increase the notional amounts of previously executed transactions, and terminations of previously executed transactions. Transactions terminated or entered into in connection with a compression exercise, and expiration of contracts at maturity are not considered price-forming and are therefore excluded, as are replacement trades and all bookkeeping-related trades.

[81] CFTC Rule 49.3(b) provides for provisional registration of a swap data repository. 17 CFR 49.3(b).

[82] *See* Leaders' Statement, The Pittsburgh Summit, September 24–25, 2009, *available at http://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf*.

[83] *See* OTC Derivatives Market Reforms Eighth Progress Report on Implementation (Nov. 2014), *available at http://www.financialstabilityboard.org/wp-content/uploads/r_141107.pdf*.

[84] *Id.*

[85] *See* Proposing Release, 75 FR at 77307–77308, *supra* note 2.

[86] In the Cross-Border Proposing Release, the Commission discussed several examples of circumstances in which a person would be performing the functions of an SDR in the cross-border context. 78 FR at 31041–31043, *supra* note 3. The Commission did not receive any comments on this aspect of the Cross-Border Proposing Release.

[87] Exchange Act Section 3(a)(75), 15 U.S.C. 78c(a)(75).

[88] Exchange Act Section 3(a)(75), 15 U.S.C. 78c(a)(75).

[89] DTCC 2, *supra* note 19.

[90] DTCC 2, *supra* note 19.

[91] MarkitSERV, *supra* note 19.

[92] *See* Exchange Act Section 3(a)(75), 15 U.S.C. 78c(a)(75).

[93] *See* Exchange Act Section 3(a)(75), 15 U.S.C. 78c(a)(75).

[94] *See* DTCC 2, *supra* note 19.

generally would not fall within the statutory definition of an SDR. Thus, they do not need to be excluded from the definition of an SDR, as the commenter suggested. If, however, the third party service provider collects and maintains the SBS data ''for the purpose of providing a centralized recordkeeping facility,'' [95] it would likely fall within the definition of an SDR. The Commission does not believe that there are any policy reasons, including countering the risk of fragmentation, to warrant a broad-based exemption from registration for third party service providers that collect and maintain SBS data ''for the purpose of providing a centralized recordkeeping facility.''

B. SDRs Required To Register With the Commission

To the extent that a person falls within the statutory definition of an SDR, and makes use of the mails or any means or instrumentality of interstate commerce to perform the functions of an SDR, then that person is required to register with the Commission,[96] absent an exemption.[97] As discussed in the Cross-Border Proposing Release,[98] the Commission believes that U.S. persons [99] that perform the functions of an SDR are required to register with the Commission and comply with Exchange Act Section 13(n) [100] and the rules and regulations thereunder, as well as other requirements applicable to SDRs registered with the Commission.[101] Requiring U.S. persons that perform the functions of an SDR to be operated in a manner consistent with the Title VII regulatory framework and subject to the Commission's oversight, among other things, helps ensure that relevant authorities are able to monitor the build-up and concentration of risk exposure in the SBS market, reduce operational risk in that market, and increase operational efficiency.[102] SDRs themselves are subject to certain operational risks that may impede the ability of SDRs to meet these goals,[103] and the Title VII regulatory framework is intended to address these risks.

Also, as stated in the Cross-Border Proposing Release, the Commission believes that a non-U.S. person [104] that performs the functions of an SDR within the United States would be required to register with the Commission, absent an exemption.[105] The Commission's interpretation of the scope of SDR registration is consistent with the Commission's territorial approach to the application of Title VII, as discussed in the Cross-Border Adopting Release.[106] As noted in that release, the Commission takes the view that a territorial approach to the application of Title VII is grounded in the text of the relevant statutory provisions and is designed to help ensure that the Commission's application of the relevant provisions is consistent with the goals that the statute was intended to achieve.[107] Once the focus of the statute has been identified using this analysis, determining whether a particular application of the statute is territorial turns on whether any relevant conduct that is the focus of the statute has a sufficient territorial nexus with the United States.[108]

As stated in the Cross-Border Proposing Release, the Commission believes that ''a non-U.S. person would be performing 'the functions of a security-based swap data repository within the United States' if, for example, it enters into contracts, such as user or technical agreements, with a U.S. person to enable the U.S. person to report [SBS] data to such non-U.S. person.'' [109] As another example, ''a non-U.S. person would be performing 'the functions of a security-based swap data repository within the United States' if it has operations in the United States, such as maintaining [SBS] data on servers physically located in the United States, even if its principal place of business is not in the United States.'' [110]

One commenter submitted a comment relating to the Commission's guidance on SDR registration in the cross-border context.[111] This commenter suggested

[95] Exchange Act Section 3(a)(75), 15 U.S.C. 78c(a)(75).

[96] *See* Exchange Act Section 13(n)(1), 15 U.S.C. 78m(n)(1).

[97] *See* Section VI.K of this release discussing Rule 13n-12.

[98] Cross-Border Proposing Release, 78 FR at 31042, *supra* note 3.

[99] The term ''U.S. person'' is defined in Rule 13n–12(a), as discussed in Section VI.K.3 of this release, and cross-references to the definition of ''U.S. person'' in Exchange Act Rule 3a71–3(a)(4)(i), 17 CFR 240.3a71–3(a)(4)(i). *See* Cross-Border Adopting Release, 79 FR at 47371, *supra* note 11. Rule 3a71–3(a)(4)(i) defines ''U.S. person'' to mean ''any person that is: (A) A natural person resident in the United States; (B) A partnership, corporation, trust, investment vehicle, or other legal person organized, incorporated, or established under the laws of the United States or having its principal place of business in the United States; (C) An account (whether discretionary or non-discretionary) of a U.S. person; or (D) An estate of a decedent who was a resident of the United States at the time of death.'' *Id.* at 47371. As the Commission noted in the Cross-Border Adopting Release, the definition of ''U.S. person'' in Rule 3a71–3(a)(4)(i) ''reflect[s] a territorial approach to the application of Title VII.'' Cross-Border Adopting Release, 79 FR at 47306, *supra* note 11. The Commission believes that the territorial focus of the definition is appropriate in the context of the SDR Rules because it will enable the Commission to identify those SDRs that should be required to register with the Commission by virtue of the location of a significant portion of their commercial and legal relationships within the United States. *Cf.* Cross-Border Adopting Release, 79 FR at 47337, *supra* note 11.

[100] 15 U.S.C. 78m(n).

[101] In addition to the SDR Rules, the Commission is adopting Regulation SBSR, which imposes certain obligations on SDRs registered with the Commission. *See* Regulation SBSR Adopting Release, *supra* note 13. In a separate proposal relating to implementation of Dodd-Frank Act Section 763(i) (adding Exchange Act Section 13(n)(5)(E), 15 U.S.C. 78m(n)(5)(E)), the Commission proposed rules that would require SDRs registered with the Commission to collect data related to monitoring the compliance and frequency of end-user clearing exemption claims. *See* End-User Exception Proposing Release, *supra* note 15.

[102] *See* Proposing Release, 75 FR at 77307, *supra* note 2 (''The enhanced transparency provided by an SDR is important to help regulators and others monitor the build-up and concentration of risk exposures in the SBS market . . . . In addition, SDRs have the potential to reduce operational risk and enhance operational efficiency in the SBS market.'').

[103] *See* Proposing Release, 75 FR at 77307, *supra* note 2 (''The inability of an SDR to protect the accuracy and integrity of the data that it maintains or the inability of an SDR to make such data available to regulators, market participants, and others in a timely manner could have a significant negative impact on the SBS market. Failure to maintain privacy of such data could lead to market abuse and subsequent loss of liquidity.'').

[104] Under this interpretation, the term ''non-U.S. person'' would have the same meaning as set forth in Rule 13n–12(a), as discussed in Section VI.K.3 of this release.

[105] Cross-Border Proposing Release, 78 FR at 31042, *supra* note 3. *See also* Exchange Act Section 13(n)(1), 15 U.S.C. 78m(n)(1) (requiring persons that, directly or indirectly, make use of the mails or any means or instrumentality of interstate commerce to perform the functions of an SDR to register with the Commission). The Commission recognizes that some non-U.S. persons that perform the functions of an SDR may do so entirely outside the United States, and thus, are not required to register with the Commission. *See* Cross-Border Proposing Release, 78 FR at 31042 n.721, *supra* note 3.

[106] Cross-Border Adopting Release, 79 FR at 47287, *supra* note 11. *Accord* IIB CB, *supra* note 26 (believing that the Commission's territorial approach to registration is appropriate for market infrastructures, including SDRs, and stating that ''[t]his approach will help [ ] achieve the Commission's market oversight objectives while avoiding conflicts with foreign regulators, and it is consistent with the CFTC's approach'').

[107] Cross-Border Adopting Release, 79 FR at 47287, *supra* note 11.

[108] *See* Cross-Border Adopting Release, 79 FR at 47287, *supra* note 11.

[109] Cross-Border Proposing Release, 78 FR at 31042, *supra* note 3.

[110] Cross-Border Proposing Release, 78 FR at 31042, *supra* note 3. The Commission notes that if a person performing the functions of an SDR has operations in the United States to the extent that such operations constitute a principal place of business, then the person would fall within the definition of ''U.S. person'' in Rule 13n–12, which cross-references to Exchange Act Rule 3a71–3(a)(4)(i), 17 CFR 240.3a71–3(a)(4)(i). As adopted, the term ''U.S. person'' includes a partnership, corporation, trust, investment vehicle, or other legal person having its principal place of business in the United States. *See* Cross-Border Adopting Release, 79 FR at 47371, *supra* note 11. As a result of being a ''U.S. person,'' the person with its principal place of business in the United States would be required to register as an SDR with the Commission.

[111] *See* DTCC CB, *supra* note 26.

that ''[t]he SDR registration requirement should apply to any entity, regardless of physical location of servers, that receives [SBS] transaction data from reporting sides who are U.S. persons for the purpose of complying with the Commission's reporting regulations.'' [112] The commenter also suggested that if an SDR ''collects and maintains [SBS] transaction information or records in furtherance of these obligations, then it should be deemed to 'function' as an SDR in the United States and face the registration requirements.'' [113] The Commission agrees generally with the commenter, but notes that determination of whether or not an SDR is required to register with the Commission is based on relevant facts and circumstances, including, for example, whether the SDR performs the functions of an SDR within the United States, such as having operations within the United States, as discussed above. Thus, an SDR's registration requirements should be analyzed separately from the reporting requirements of Title VII and Regulation SBSR.

The commenter stated that ''an entity that (i) collects and maintains [non-SBS] transaction information, (ii) collects and maintains [SBS] transaction information from activity between non-U.S. persons, or (iii) collects and maintains [SBS] transaction information reported to the entity pursuant to regulatory requirements or commitments unrelated to those imposed by the Commission . . . should not be considered to function in the United States,'' and ''[a]ccordingly, such an entity would not be required to register with the Commission as an SDR.'' [114] The Commission believes that this position is overly broad. The Commission agrees that a person that collects and maintains only non-SBS transaction information would not have to register with the Commission because it would not fall within the statutory definition of an SDR.[115] However, consistent with the Commission's territorial approach to the application of Title VII, an SDR that collects and maintains data relating to SBS transactions between non-U.S. persons may still be required to register with the Commission if the SDR makes use of the mails or any means or instrumentality of interstate commerce to perform the functions of an SDR—for example by maintaining SBS data on servers physically located in the United States. Similarly, an SDR that collects and maintains SBS transaction information reported to the SDR pursuant to requirements or commitments unrelated to those imposed by the Commission may still be required to register with the Commission if the SDR makes use of the mails or any means or instrumentality of interstate commerce to perform the functions of an SDR.

Determination of whether or not an SDR is required to register with the Commission is fact-specific. As stated in the Cross-Border Proposing Release, given the constant innovation in the market and the fact-specific nature of the determination, it is not possible to provide a comprehensive discussion of every activity that would constitute a non-U.S. person performing ''the functions of a security-based swap data repository within the United States.'' [116] In order to provide legal certainty to market participants and to address commenters' concerns regarding the potential for duplicative regulatory requirements, the Commission is adopting Rule 13n–12, which exempts certain non-U.S. persons performing ''the functions of a security-based swap data repository within the United States'' from the registration and other requirements set forth in Exchange Act Section 13(n) and the rules and regulations thereunder. Rule 13n–12 is discussed in Section VI.K of this release.

C. Ancillary Services

As stated above, the Commission believes that the statutory definition of an SDR describes the core services or functions of an SDR. This release will refer to all other services or functions provided by an SDR as ''ancillary services.'' SDRs are required to provide some ancillary services under the Exchange Act and the rules and regulations thereunder (''required ancillary services''). These required ancillary services include certain duties of SDRs that are set forth in Exchange Act Section 13(n)(5) [117] and the duties imposed by the SDR Rules. SDRs also may voluntarily choose to provide other ancillary services (''voluntary ancillary services'').

Five commenters submitted comments relating to ''ancillary services.'' [118] Three commenters recommended that SDRs be allowed (but not be required) to offer ancillary services to SBS counterparties.[119] One of these commenters recommended that SDRs be allowed (but not be required) to offer ''ancillary services,'' which, according to that commenter, ''may include: Asset servicing, confirmation, verification and affirmation facilities, collateral management, settlement, trade compression and netting services, valuation, pricing and reconciliation functionalities, position limits management, dispute resolution, counterparty identity verification and others.'' [120] The commenter noted that allowing SDRs to offer such services would ''promote greater efficiencies and greater accuracy of data.'' [121] The commenter also recommended allowing an SDR's affiliates, which may not be registered with the Commission, to perform such ''ancillary services.'' [122] The second commenter recommended that life cycle event processing and legal recordkeeping services be treated as ''ancillary'' services.[123] The second commenter also recommended allowing SDRs to offer ''an asset servicing function,'' which would allow SDRs to ''assist in systemic risk monitoring by providing regulators with regular reports analyzing the data (such as position limit violations or certain identified manipulative trading practices).'' [124] With respect to bundling, both commenters agreed that an SDR should not be allowed to require counterparties to use ''ancillary services'' in order to gain access to the SDR.[125] The third commenter believed that SDRs should be able to offer ''ancillary services,'' but did not support the bundling of such services with mandatory or regulatory services.[126] The

[112] DTCC CB, *supra* note 26.

[113] DTCC CB, *supra* note 26.

[114] DTCC CB, *supra* note 26.

[115] *See* Exchange Act Section 3(a)(75), 15 U.S.C. 78c(a)(75).

[116] Cross-Border Proposing Release, 78 FR at 31042–3, *supra* note 3.

[117] 15 U.S.C. 78m(n)(5).

[118] *See* Barnard, *supra* note 19; BNY Mellon, *supra* note 19; DTCC 2, *supra* note 19; MarkitSERV, *supra* note 19; TriOptima, *supra* note 19; *see also* DTCC 1*, *supra* note 20; DTCC 3, *supra* note 19. These commenters generally did not define ''ancillary services.'' *But see* MarkitSERV, *supra* note 19 (referring to ''an array of services that are ancillary . . . to those narrowly outlined in the [SDR Rules] (*i.e.,* basic receipt and storage of [SBS] data.)'').

[119] *See* MarkitSERV, *supra* note 19; DTCC 2, *supra* note 19; Barnard, *supra* note 19; *see also* TriOptima, *supra* note 19 (contemplating that an SDR would provide ancillary services and stressing the importance of equal access to SDR data when such services are provided).

[120] MarkitSERV, *supra* note 19.

[121] MarkitSERV, *supra* note 19.

[122] MarkitSERV, *supra* note 19.

[123] DTCC 2, *supra* note 19.

[124] DTCC 1*, *supra* note 20.

[125] MarkitSERV, *supra* note 19; DTCC 3, *supra* note 19; *see also* DTCC 4, *supra* note 19 (stating that providers offering services for one asset class should not be permitted to bundle or tie these services with services for other asset classes); TriOptima, *supra* note 19 (agreeing that ''it is important that market participants have the ability to access specific services separately''). *See* Section VI.D.3.a of this release discussing bundling of services.

[126] Barnard, *supra* note 19.

fourth commenter believed that if SDRs provide ''ancillary services,'' then the SDRs should not have advantages in providing these services over competitors offering the same services.[127] This commenter noted, for example, that SDRs will maintain granular trade data that is valuable in providing post-trade services, and that other post-trade service providers should have the same access to the granular trade data as the SDR and its affiliates when providing post-trade services.[128] The fifth commenter suggested that certain functions that an SDR may perform (*e.g.,* confirmation of trades, reconciliation, valuation of transactions, life-cycle management, collateral management) should not be considered as ''processing of [SBSs]'' for the purposes of SB SEF registration.[129]

It appears that the commenters generally used the term ''ancillary services'' to mean voluntary ancillary services. The Commission, however, notes that at least two services identified by a commenter as ''ancillary services'' are considered by the Commission to be required ancillary services for an SDR. This commenter suggested that ''confirmation'' and ''dispute resolution'' are ancillary to ''those [services] narrowly outlined in the SBS SDR Regulation (*i.e.,* basic receipt and storage of swaps data).'' [130] The Commission agrees with the commenter's suggestion that these two services are not ''core'' SDR services, which would cause a person providing such core services to meet the definition of an SDR, and thus, require the person to register with the Commission as an SDR. However, SDRs are required to perform these two services or functions, and thus, they are required ancillary services; as discussed in Sections VI.E.1.c and VI.E.6.c of this release, the Exchange Act requires SDRs to ''confirm'' the accuracy of the data submitted,[131] and the final SDR Rules include a dispute resolution requirement.[132]

An SDR may delegate some of these required ancillary services to third party service providers, who do not need to register as SDRs to provide such services. The SDR will remain legally responsible for the third party service providers' activities relating to the required ancillary services and their compliance with applicable rules under the Exchange Act. For example, as discussed above, the Exchange Act requires SDRs to ''confirm'' the accuracy of the data submitted.[133] If an SDR delegates its confirmation obligation to a third party service provider, then the third party service provider that provides this required ancillary service would not need to register as an SDR, unless it otherwise falls within the definition of an SDR; however, the SDR that delegates its obligation to the third party service provider would remain responsible for compliance with the statutory requirement.[134]

The Commission agrees with the commenters' view that SDRs should be allowed to offer voluntary ancillary services.[135] The Commission believes that use of such services by market participants and market infrastructures will likely improve the quality of the data held by the SDRs.[136] The Commission believes that when the data held at an SDR is used by counterparties for their own business purposes, rather than solely for regulatory purposes, the counterparties will have additional opportunities to identify errors in the data and will likely have incentives to ensure the accuracy of the data held by the SDR.[137] Such voluntary ancillary services that an SDR could provide include, for example, collateral management, clearing and settlement, trade compression and netting services, and pricing and reconciliation functionalities. These services could also be provided by persons that are not SDRs and would not, in and of themselves, require the providers to register as SDRs.[138]

The Commission also agrees with the commenters' view that market participants should not be required to use voluntary ancillary services offered by an SDR as a condition to use the SDR's repository services,[139] and that SDRs should not be permitted to use their repository function to gain

[127] TriOptima, *supra* note 19.

[128] TriOptima, *supra* note 19.

[129] BNY Mellon, *supra* note 19. *See also* Exchange Act Section 3D(a)(1), 15 U.S.C. 78c–4(a)(1) (stating that ''[n]o person may operate a facility for the trading or processing of security-based swaps, unless the facility is registered as a security-based swap execution facility or as a national securities exchange under this section''). Subsequent to receiving this comment, the Commission issued a proposing release on the registration and regulation of SB SEFs, interpreting the Dodd-Frank Act to key the SB SEF registration obligation on the definition of an SB SEF in Exchange Act Section 3(a)(77). *See* 15 U.S.C. 78c(a)(77), as added by Dodd-Frank Act Section 761(a). *See* SB SEF Proposing Release, 76 FR at 10959 n.62, *supra* note 29. The Commission expects to address the scope of SB SEF registration when it adopts final rules relating to the registration and regulation of SB SEFs.

[130] *See* MarkitSERV, *supra* note 19.

[131] *See* Exchange Act Section 13(n)(5)(B), 15 U.S.C. 78m(n)(5)(B); Rule 13n–4(b)(3) (requiring an SDR to ''[c]onfirm, as prescribed in Rule 13n–5(§ 240.13n–5), with both counterparties to the [SBS] the accuracy of the data that was submitted''); Rule 13n–5(b)(1)(iii) (requiring an SDR to establish, maintain, and enforce written policies and procedures reasonably designed to satisfy the SDR that the transaction data that has been submitted to the SDR is complete and accurate).

[132] *See* Section VI.E.6.c of this release discussing Rule 13n–5(b)(6).

[133] *See* Exchange Act Section 13(n)(5)(B), 15 U.S.C. 78m(n)(5)(B). In a separate release, the Commission proposed rules under Exchange Act Section 15F(i)(1), which provides that SBS dealers and major SBS participants must ''conform with such standards as may be prescribed by the Commission, by rule or regulation, that relate to timely and accurate confirmation . . . of all security-based swaps.'' *See* Trade Acknowledgment and Verification of Security-Based Swap Transactions, Exchange Act Release No. 63727 (Jan. 14, 2011), 76 FR 3859 (Jan. 21, 2011) (''Trade Acknowledgment Release''). SDRs are not required to perform confirmations under Exchange Act Section 15F(i)(1) and the rules and regulations thereunder, but, in certain circumstances, SDRs may be able to rely on confirmations that are provided pursuant to Exchange Act Section 15F(i)(1). *See* Section VI.E.1.c of this release discussing the circumstances where a single confirmation could fulfill both requirements.

[134] An SDR that delegates required ancillary services to a third party service provider must have a reasonable basis for relying on the third party service provider. *See* Section VI.E.1.c of this release discussing reasonable reliance in the context of confirmations. *Cf.* Exchange Act Rule 17a–4(i), 71 CFR 240.17a–4(i) (stating that an agreement with an outside entity to maintain and preserve records for a member, broker, or dealer will not relieve the member, broker, or dealer from its responsibilities under Exchange Act Rules 17a–3 or 17a–4).

[135] *See* MarkitSERV, *supra* note 19; DTCC 2, *supra* note 19; Barnard, *supra* note 19.

[136] *See* MarkitSERV, *supra* note 19 (recommending allowing SDRs to offer ''ancillary services'' because it would ''promote greater efficiencies and greater accuracy of data'').

[137] For example, counterparties might use the data maintained by the SDR as part of their risk management activities. *See* MarkitSERV, *supra* note 19 (''[O]ne of the critical components in ensuring the accuracy of swaps data is the degree to which such data is utilized by industry participants in other processes. The existence of a number of feedback loops and distribution channels through which data will flow will enable participants to identify, test and correct inaccuracies and errors.'').

[138] The performance of some of these services, such as clearing and settlement and netting services, may cause a person to be a ''clearing agency,'' as defined in Exchange Act Section 3(a)(23), 15 U.S.C. 78c(a)(23); *see also* Clearing Agency Standards, Exchange Act Release No. 68080 (Oct. 22, 2012), 77 FR 66220, 66227–28 (Nov. 2, 2012) (''Clearing Agency Standards Release'') ([T]he definition of clearing agency in Section 3(a)(23)(A) of the Exchange Act covers any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities and provides facilities for the comparison of data regarding the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities. . . . The determination of whether particular activities meet the definition of a clearing agency depends on the totality of the facts and circumstances involved.''). It is unlawful for a clearing agency to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security (other than exempted securities) unless it is registered with the Commission, or exempted from registration, pursuant to Exchange Act Sections 17A(b) and 19(a), and the rules and regulations thereunder.

[139] *See* MarkitSERV, *supra* note 19; DTCC 2, *supra* note 19; Barnard, *supra* note 19.

advantages in providing voluntary ancillary services over competitors offering the same services.[140] As discussed further below, the Commission is adopting Rule 13n–4(c)(1), which should address commenters' concerns.[141]

D. Business Models of SDRs

The Commission understands that SDRs might operate under a number of business models and did not intend for the proposed SDR Rules to mandate any particular business model.[142] In the Proposing Release, the Commission solicited comments on whether the SDR Rules should favor or discourage one business model over another.[143] Three commenters, including one comment submitted prior to the Proposing Release, suggested that SDRs should be required to operate on an at-cost utility model.[144]

Consistent with commenters' views, the Commission understands that an SDR operating on a for-profit, non-utility model, or commercial basis, may be presented with more conflicts of interest, including economic self-interest in pricing or bundling its services, than an SDR operating on an at-cost utility model, or non-profit basis.[145] The Commission believes, however, that if an SDR operating on an at-cost utility model has an affiliate that provides ancillary services for SBSs for profit, then that SDR may be presented with conflicts of interest similar to conflicts at an SDR operating on a for-profit, non-utility model.[146] For example, an SDR that has an affiliate that provides asset servicing for profit would most likely face similar conflicts as a for-profit SDR that provides asset servicing itself.

The Commission believes that the final SDR Rules, including rules pertaining to conflicts of interest, are sufficiently broad to address the range of conflicts of interest inherent in different SDR business models. For instance, under Rule 13n–4(c)(3), each SDR is required to identify conflicts of interest applicable to it and establish, maintain, and enforce written policies and procedures to mitigate these conflicts.[147] In addition, the Commission believes that allowing SDRs to pursue different business models will increase competition, efficiency, and innovation among SDRs. For example, by not prescribing one particular business model, new entrants may have an incentive to develop business models for SDRs that efficiently provide core services to the industry and effectively mitigate conflicts.[148] Therefore, after considering the comments, the Commission continues to believe that it is not necessary to mandate any particular business model for SDRs.

IV. Number of SDRs and Consolidation of SBS Data

The Commission received several comments relating to the issue of data fragmentation among SDRs. The Commission believes that if there are multiple SDRs in any given asset class, then it may be more difficult for regulators to monitor the SBS market because of the challenges in aggregating SBS data from multiple SDRs.[149] Some commenters suggested limiting the number of SDRs to one per asset class in order to address these concerns.[150] While such a limitation would resolve many of the challenges involved in aggregating SBS data, the Commission believes that imposing such a limitation would stymie competition among SDRs, and, consequently, may lead to increased costs to market participants.[151] The Commission believes that the better avenue at this point is to refrain from regulating the number of SDRs in an asset class to permit market forces to determine an efficient outcome. Therefore, the Commission is not adopting the commenters' suggestions to limit the number of SDRs in each asset class.

In the Proposing Release, the Commission requested comment on whether the Commission should designate one SDR as the recipient of the information from all other SDRs in order to provide the Commission and relevant authorities with a consolidated location from which to access SBS data for regulatory monitoring and oversight purposes.[152] Some commenters suggested that an SDR's duties should include reporting SBS data to a single SDR that would consolidate the data for relevant authorities or otherwise mandating the consolidation of SBS data.[153] Specifically, one commenter recommended that the Commission ''designate one SDR as the recipient of the information of other SDRs to ensure the efficient consolidation of data.'' [154] The commenter further stated that the designated SDR would need to have ''the organization and governance structure that is consistent with being a

[140] *See* TriOptima, *supra* note 19.

[141] *See* Section VI.D.3.a of this release discussing Rule 13n–4(c)(1).

[142] *See* Proposing Release, 75 FR at 77308, *supra* note 2.

[143] Proposing Release, 75 FR at 77308, *supra* note 2.

[144] *See* DTCC 2, *supra* note 19 (stating that ''there is a significant advantage to the market if SDRs are required to provide basic services on an at-cost or utility model basis, as it avoids the potential abuse or conflict of interest related to a relatively small number of service providers in the SDR industry'' and that ''SDR fee structures should reflect an at-cost operating budget''); Benchmark*, *supra* note 20 (stating that a non-profit utility structure ''helps promote innovative uses'' of SBS data ''to maximize its value to market participants''); Saul, *supra* note 19 (stating that SDRs should ''serve the entire industry as a utility'' and that ''[t]reating an SDR as a utility would also make it easier for the industry to provide the manpower and the capital to form an SDR''); *see also* DTCC 3, *supra* note 19 (''SDRs should serve an impartial, utility function.'').

[145] *See* Section VIII of this release discussing the costs and benefits of different business models.

[146] *See* Section VIII of this release for further discussion.

[147] *See* Section VI.D.3.c.iii of this release discussing Rule 13n–4(c)(3).

[148] *See* Section VIII of this release discussing the costs and benefits of different business models.

[149] *See* FINRA SBSR, *supra* note 27 (recognizing ''the Commission's acknowledgement of 'the possibility that there could emerge multiple registered SDRs in an asset class,' and, in the event this should occur that 'the Commission and the markets would be confronted with the possibility that different registered SDRs could adopt different dissemination protocols, potentially creating fragmentation in SBS market data' '') (citations omitted); DTCC 3, *supra* note 19 (''When there are multiple SDRs in any particular asset class, the [Commission] should take such action as is necessary to eliminate any overstatements of open interest or other inaccuracies that may result from having broader market data published from separate SDRs.'').

[150] *See* ISDA Temp Rule, *supra* note 28 (''[T]he designation of a single [SDR] per class of security-based swap would provide the Commission and market participants with valuable efficiencies. In particular, there would be no redundancy of platforms, no need for additional levels of data aggregation for each asset class and reduced risk of errors and greater transparency (because a single [SDR] per asset class would avoid the risk of errors associated with transmitting, aggregating and analyzing multiple sources of potentially incompatible and duplicative trade data).''); *see also* Saul, *supra* note 19 (suggesting that the Commission should seek to have only one or two SDRs to service the SBS market).

[151] *See* Section VIII.C.3.b of this release discussing the SDR Rules' potential effects on competition (''The Commission believes that by allowing multiple SDRs to provide data collection, maintenance, and recordkeeping services, the SDR Rules should promote competition among SDRs. . . . Increased competition may lower costs for users of SDR services.''). *Accord* PFMI Report, *supra* note 50 (''Competition can be an important mechanism for promoting efficiency. Where there is effective competition and participants have meaningful choices among FMIs[, including SDRs], such competition may help to ensure that FMIs are efficient.'').

[152] Proposing Release, 75 FR at 77309, *supra* note 2.

[153] *See* DTCC 1*, *supra* note 20; Better Markets 1, *supra* note 19; *see also* FINRA SBSR, *supra* note 27 (urging the Commission to mandate the consolidation of disseminated SBS data to the public).

[154] DTCC 1*, *supra* note 20; *see also* Better Markets 1, *supra* note 19 (making similar comments); *see also* DTCC 2, *supra* note 19 (''The role of an aggregating SDR is significant in that it ensures regulators efficient, streamlined access to consolidated data, reducing the strain on limited agency resources.'').

financial market utility serving a vital function to the entire marketplace.'' [155]

The Commission does not dispute the commenter's assertion that fragmentation of data among SDRs would ''leave to regulators the time consuming, complicated and expensive task of rebuilding complex data aggregation and reporting mechanisms.'' [156] However, if the Commission were to designate one SDR as the data consolidator, such an action could be deemed as the Commission's endorsement of one regulated person over another, discourage new market entrants, and interfere with competition, resulting in a perceived government-sponsored monopoly.[157] In addition, such a requirement would likely impose an additional cost on market participants to cover the SDR's cost for acting as the data consolidator.

In addition, any consolidation required by the Commission would be limited to SBS data and may not necessarily include data not required to be reported under Title VII and Regulation SBSR, such as swap data. For example, consolidated SBS data may show that a person entered into several SBSs based on individual equity securities. If the person also entered into swaps based on a broad-based security index made up of the individual equity securities, then the consolidated data would not necessarily include that information. Therefore, commenters' suggestion to designate one SDR as the data consolidator may not fully address their data fragmentation concerns unless the same SDR also consolidates swap data, which the CFTC regulates.

Therefore, after considering the comments, the Commission is not designating, at this time, one SDR as the recipient of information from other SDRs in order to provide relevant authorities with consolidated data. The Commission may revisit this issue if there is data fragmentation among SDRs that is creating substantial difficulties for relevant authorities to get a complete and accurate view of the market.[158]

V. Implementation of the SDR Rules

A. Prior Commission Action

The Commission solicited comment in the Proposing Release on whether it should adopt an incremental, phase-in approach with respect to Exchange Act Section 13(n) and the rules thereunder.[159] The Commission further sought and received comments on similar implementation issues relating to Title VII in other rulemakings and through solicitations for comments.[160]

1. Effective Date Order

In addition, as discussed above, on June 15, 2011, the Commission issued the Effective Date Order, which provided guidance on the provisions of the Exchange Act added by Title VII with which compliance would have been required as of July 16, 2011 (*i.e.,* the effective date of the provisions of Title VII). The Effective Date Order provided exemptions to SDRs from Exchange Act Sections 13(n)(5)(D)(i), 13(n)(5)(F), 13(n)(5)(G), 13(n)(5)(H), 13(n)(7)(A), 13(n)(7)(B), and 13(n)(7)(C), each of which will expire on the earlier of (1) the date the Commission grants registration to the SDR and (2) the earliest compliance date set forth in any of the final rules regarding the registration of SDRs.[161] Absent further Commission action, these exemptions will expire as of the Compliance Date (as defined below), unless the Commission has granted an SDR's registration before the Compliance Date, in which case these exemptions will expire, with respect to that SDR, as of the date the Commission grants the SDR's registration.

In addition, the Effective Date Order also provided exemptive relief from the rescission provisions of Exchange Act Section 29(b) in connection with Exchange Act Sections 13(n)(5)(D)(i), 13(n)(5)(F), 13(n)(5)(G), 13(n)(5)(H), 13(n)(7)(A), 13(n)(7)(B), and 13(n)(7)(C).[162] That relief does not expire automatically, but rather when the Commission specifies.[163] The Commission is now specifying that this exemption from Section 29(b) will expire on the Compliance Date, or for those SDRs that are registered prior to the Compliance Date, the date that the Commission grants each SDR's registration.

2. Implementation Policy Statement

As discussed above, on June 11, 2012, the Commission issued a statement of general policy on the anticipated sequencing of compliance dates of final rules to be adopted under Title VII. The Implementation Policy Statement stated that compliance with the SDR Rules ''earlier in the implementation process should facilitate the development and utilization of SDRs in a regulated manner.'' [164] Among other things, the Implementation Policy Statement requested comment on whether the Commission should adopt a phase-in of the SDR Rules and whether SDRs should be able to secure a grace period to defer compliance with some or all of the requirements of Exchange Act Section 13(n) and the SDR Rules.[165]

B. Summary of Comments

While only two commenters on implementation referred specifically to the SDR Rules, the Commission believes that other comments, particularly those related to timing with respect to implementing rules on SBS reporting, are relevant to the implementation of the SDR Rules as well. Eight commenters suggested that a phase-in approach to the SDR Rules or SBS reporting generally may be appropriate.[166] The commenters generally indicated that a phase-in would be necessary to enable existing SDRs and other market participants to make the necessary changes to their operations to comply with the new

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[155] DTCC 1*, *supra* note 20.

[156] DTCC 3, *supra* note 19.

[157] *See* Section VIII of this release for further discussion.

[158] *See* Section VI.D.2.c.ii of this release discussing aggregation of data across multiple registered SDRs by the Commission.

[159] Proposing Release, 75 FR at 77314, *supra* note 2.

[160] *See* Sections I.C and I.D of this release discussing other comments and regulatory initiatives considered in this rulemaking.

[161] Effective Date Order, 76 FR at 36306, *supra* note 9.

[162] Effective Date Order, 76 FR at 36307, *supra* note 9.

[163] Effective Date Order, 76 FR at 36307, *supra* note 9.

[164] Implementation Policy Statement, 77 FR at 35631, *supra* note 10.

[165] Implementation Policy Statement, 77 FR at 35634, *supra* note 10.

[166] *See* Barclays*, *supra* note 21; DTCC 2, *supra* note 19 (''[T]he Commission [should] ensure that the registration process does not interrupt current operation of existing trade repositories who intend to register as SDRs. This can be achieved as a phase-in for existing SDRs where services will need to be amended to conform with the final rules given the compressed time period between the publication of the final rules and the effective date of the Dodd-Frank Act.''); FIA*, *supra* note 21 (''[P]hase-in is critical for a smooth implementation of the changes required under the Dodd-Frank Act.''); FSF*, *supra* note 21; FSR Implementation, *supra* note 23; MFA 2, *supra* note 19; Morgan Stanley*, *supra* note 20 (''[G]iven the market disruption that could result from the simultaneous application of these requirements across products and markets, and the potentially severe consequences to the markets and the larger economy, we believe that a phase in approach is both permitted and contemplated by Dodd-Frank, and desirable in order to maintain orderly, efficient, liquid and inclusive markets.''); SIFMA Implementation, *supra* note 22 (''Once SDRs are registered and [SBS dealers] and [major SBS participants] have connected to them, data reporting can begin. [SBS dealers] and [major SBS participants] will not be able to provide, and [SDRs] will not be able to accept, all data on Dodd-Frank Act-compliant timelines on the first day of operation. Instead, there should be a phased process to develop the procedures and connections needed to ultimately report all Dodd-Frank Act-required data in the appropriate time frame.''); *see also* DTCC 3, *supra* note 19; DTCC 5, *supra* note 19 (''[T]he final rules should include implementation and compliance dates that are unambiguous. . . . Appropriate time must be afforded to ensure that implementation can take place smoothly for all market participants.'').

regulatory requirements.[167] One of the commenters who advocated a phase-in approach also recognized the importance of reporting SBS data to SDRs as an early part of the Dodd-Frank Act implementation process.[168]

Six commenters supported a phase-in approach based on asset class.[169] Some commenters supported a phase-in based on other criteria.[170] Some commenters indicated that a phase-in period, which could be based on asset class or other SBS or market participant attributes, is important in order to avoid market disruption.[171] While one commenter indicated that connectivity concerns should not delay implementation because it is easy for an SDR and other market infrastructures to establish connectivity,[172] another commenter cautioned that market connectivity will take time to establish and test.[173] None of the commenters provided specific timeframes for a phase-in approach.[174]

In addition to the comments received above, participants in the Implementation Joint Roundtable provided input regarding the appropriateness of a phase-in period for Title VII rulemakings. Many of the participants in the Implementation Joint Roundtable advocated for a phase-in period for the SDR Rules or SBS reporting generally; however, the participants' specific approaches varied. While some participants at the Implementation Joint Roundtable advocated a phase-in by asset class,[175] other participants suggested that a phase-in should be based on other product attributes, such as the liquidity of the product,[176] or based on the development of other market infrastructures.[177] Another participant suggested that SDRs' obligations to provide reports of SBS transactions to regulators—which the Commission believes are relevant to the direct

[167] *See, e.g.,* Barclays*, *supra* note 21 (''Changes envisioned by Title VII require very significant investment into operational, IT and other infrastructure—infrastructure that will take time and resources to build, test and optimize. The ability to fund and execute the necessary infrastructure build, as well as put in place the risk management and operational processes needed to conduct business under the new regulatory regime, will vary significantly by asset class and type of market participant.''); DTCC 2, *supra* note 19 (stating that ''the final rules [should] be subject to a phase-in period to allow an adequate period for existing service providers . . . to make necessary changes to their service offerings,'' requesting that the Commission alternatively ''provide specific transitional arrangements for existing infrastructures,'' and noting that the continuation of counterparty reporting and the ability of SDRs to receive and maintain current trade information on an ongoing basis is ''imperative for effective oversight of systemic risk and the continuance of the operational services to market participants''); FSF*, *supra* note 21 (''New market infrastructure and technologies, including central clearing services, data reporting services and trading platforms, will be required to give effect to the new Swap regulatory regime. Unless sufficient time is allotted for these components of market infrastructure and technologies to adequately develop, all market participants (and particularly end users) will face interruptions in their ability to enter into Swaps to hedge their business risks or manage investments to meet client objectives.'').

[168] *See* MFA 2, *supra* note 19 (''[W]e believe the first two priorities should be: (i) Expanding the use of central clearing for liquid ('clearable') contracts; and (ii) having trade repositories receive data on both cleared and bilateral swaps. These changes would provide substantial benefits to the markets by enhancing price transparency and competition for the most liquid swap transactions. . . . Comprehensive reporting to SDRs and regulators . . . will allow regulators to monitor systemic risk and individual risk concentrations much more effectively, and intervene specifically as necessary.''); *see also* FSF*, *supra* note 21 (The Commission ''should prioritize implementation of data reporting, including registration of [SDRs], to regulators ahead of real-time reporting and other requirements, including public reporting. The [Commission] will learn much about the full range of Swap markets from the data collected by SDRs. This knowledge will be essential in developing rules that meet Dodd-Frank's requirements while still allowing for active and liquid Swap markets.'').

[169] *See* Barclays*, *supra* note 21 (''[W]e recommend that the [Commission] phase in the clearing, execution and reporting requirements gradually over time, staggered by asset class.''); DTCC 3, *supra* note 19 (''[P]hasing should focus first on the products with the greatest automation and then on products with less automation. The more widespread the automated processing, the higher quality the data reported to SDRs. As automated processing is most widely prevalent in credit derivatives . . . it should be the first asset class implemented. Interest rate derivatives, being the next most widely automated asset class, would be next, followed by FX derivatives, then commodity and equity derivatives last.''); FSF*, *supra* note 21 (''The [Commission] should phase in requirements based on the state of readiness of each particular asset class (including, where applicable, by specific products within an asset class) and market participant type.''); FSR Implementation, *supra* note 23 (''[I]mplementing regulations on a product-by-product basis would reduce the risk of significant market dislocation during a transition period. For example, certain credit default swaps that are already reported to a trade information warehouse, are highly standardized, and are being regularly submitted for central clearing . . . may be a natural choice with which to confirm that systems are operating appropriately before expanding regulatory requirements to other [asset] classes.''); AII Implementation, *supra* note 23 (''[C]learing and other requirements should come first for highly liquid, standardized instruments, such as credit default swaps'' and ''[l]ess liquid products, such as certain physical commodity instruments, should come afterward.''); SIFMA Implementation, *supra* note 22 (''Reporting should also be phased in by asset class, based on whether reporting infrastructure and data exist.'').

[170] *See* Morgan Stanley*, *supra* note 20 (''In addition to phase in based on asset class and reporting times, reporting could also be phased in based on how a product trades [*e.g.,* whether the SBS is cleared].''); FSR Implementation, *supra* note 23 (stating that ''it may be prudent to have different portions of a single rulemaking proposal take effect at different times and with due consideration of steps that are preconditions to other steps''; suggesting, as an example, that a requirement to designate a CCO should be implemented quickly, but that the CCO be given time to design, implement, and test the compliance system before any requirement to certify as to the compliance system becomes effective; and supporting a phase-in approach ''that recognizes the varying levels of sophistication, resources and scale of operations within a particular category of market participant''). *But see* Barclays*, *supra* note 21 (''Phasing by type of market participant would not be useful for reporting obligations, in [the commenter's] view, as the reported information needs to reflect the entirety of the market to be useful for the market participants and regulators.'').

[171] *See, e.g.,* DTCC 2, *supra* note 19 (''[A]ppropriate transitional arrangements [should] be made to avoid market disruption by the implementation of the Proposed Rule. . . . Restrictions to [the commenter's SDR] operation could introduce significant operational risks to market participants.''); Barclays*, *supra* note 21 (Phase-in by asset class would help ''ensure that both the industry and SDRs have sufficient time to build and test the needed infrastructure in order to prevent any potential market disruptions that could result from the implementation of new rules.''); *see also* FSR Implementation, *supra* note 23 (recommending that the Commission consider resource constraints in evaluating transition deadlines and stating that ''if there are a dozen rules that would each take about a month to implement in isolation under normal circumstances, it is unrealistic to expect all twelve rules to be implemented one month from passage of final rules'').

[172] DTCC 3, *supra* note 19 (''Connectivity between clearinghouses and [SB SEFs], as well as SDRs, is easy to establish (and, in many instances, already exists) and should not be the reason for delaying the implementation of real-time reporting rules.'').

[173] FSR Implementation, *supra* note 23 (''Although we recognize that central clearing, exchange trading and transparent reporting are core aspects of the new regulatory system, they require a web of interconnections that will take time to establish and test, and their use should not become obligatory until such establishment and testing is complete.'').

[174] *But see* Bank of Tokyo SBSR, *supra* note 27 (requesting ''that the [Commission] . . . defer compliance requirements under Title VII until December 31, 2012'' to ''facilitate coordination among national authorities in the United States, Japan and other relevant jurisdictions in order to avoid overlapping and inconsistent regulatory regimes''). Because the timeframe suggested by this commenter has passed, this aspect of the comment is now moot.

[175] *See, e.g.,* statement of Ronald Levi, GFI Group, Inc., at Implementation Joint Roundtable (''[D]epending on which asset classes go first or which asset classes are amongst the first phase will determine how long it takes us.''); statement of Larry Thompson, The Depository Trust & Clearing Corporation, at Implementation Joint Roundtable (''And right now, at least for a couple of classes, they're in a much better position to be able to see transparent into the marketplace, especially the credit default swap [marketplace] . . . .''); statement of Jamie Cawley, Javelin Capital Markets, LLC, at Implementation Joint Roundtable (''Certainly from where we sit . . . interest rate swaps, vanilla swaps clearly qualify for a day one [implementation and] index [swaps] right behind that or on the same day. And the constituents of the indices certainly as well. And then it trails off from there over time. . . .'').

[176] *See, e.g.,* statement of Chris Edmonds, ICE Trust, at Implementation Joint Roundtable (''[I]nstead of looking at it necessarily by asset class, the commissions may want to look at it by the instruments that have the greatest amount of liquidity.'').

[177] *See, e.g.,* statement of Sunil Cutinho, CME Group, at Implementation Joint Roundtable (''[W]e don't believe that . . . data should be in an SDR before clearing has to be done.'').

electronic access requirement in Rule 13n–4(b)(5) [178]—should be implemented in a prioritized manner, with daily batch snapshots provided until more real-time solutions are developed.[179] None of the Implementation Joint Roundtable participants provided specific timeframes for a phase-in approach.

C. Sequenced Effective Date and Compliance Date for the SDR Rules

After considering the issues raised by the commenters and Implementation Joint Roundtable participants, the Commission has determined to adopt, in lieu of a phase-in approach, a sequenced effective date and compliance date for the SDR Rules [180] that recognizes the practical constraints arising from the time necessary for persons to analyze and understand the final rules adopted by the Commission, to develop and test new systems required as a result of the Dodd-Frank Act's regulation of SDRs and the SDR Rules, to prepare and file a completed Form SDR, to be in a position to demonstrate their ability to meet the criteria for registration set forth in Rule 13n–1(c)(3),[181] and to register with the Commission. The Commission agrees with commenters who have suggested that the Commission require the reporting of SBS transaction information to registered SDRs early in the implementation process because the Commission will then be able to utilize the information reported to registered SDRs to inform other aspects of its Title VII rulemaking.[182] Adopting and implementing a regulatory framework for SDRs will facilitate access by the Commission and market participants to SBS information collected by SDRs.[183]

All of the SDR Rules will become effective 60 days following publication of the rules in the **Federal Register** (''Effective Date''). However, the exemptions to provisions in Exchange Act Section 13(n) that the Commission provided in the Effective Date Order will continue to be in effect following the adoption of the SDR Rules. Consistent with the Effective Date Order, the exemptive relief remains in place and will expire: (1) Upon the compliance date for the SDR Rules, or (2) for those SDRs that are registered prior to such compliance date, the date that the Commission grants each SDR's registration.[184]

SDRs must be in compliance with the SDR Rules by 365 days after publication of the rules in the **Federal Register** (''Compliance Date'').[185] Absent an exemption, SDRs must be registered with the Commission and in compliance with the federal securities laws and the rules and regulations thereunder (including the applicable Dodd-Frank Act provisions and all of the SDR Rules) by the Compliance Date, and all exemptions that the Commission provided in the Effective Date Order will expire on the Compliance Date.[186] After the Compliance Date, pursuant to Exchange Act Section 13(n)(1), it will be unlawful, absent exemptive relief,[187] (1) for a person, unless registered with the Commission as an SDR, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of an SDR or (2) for an SDR to fail to comply with all applicable statutory provisions and the SDR Rules.

The Commission believes that setting the Compliance Date for the SDR Rules at 365 days after publication of the rules in the **Federal Register** adequately addresses commenters' concerns [188] by providing SDRs with sufficient time to become compliant with the Dodd-Frank Act and the SDR Rules and for the Commission to act on SDRs' applications for registration, while also allowing SDRs to continue performing the functions of an SDR without interruption.

The Commission notes that if an SDR files its Form SDR close to the Compliance Date, it is possible that the Commission will not have sufficient time to consider the Form SDR and the SDR may not be registered with the Commission by the Compliance Date. In this case, the SDR must cease any operations that cause it to meet the statutory definition of an SDR as of the Compliance Date and not begin or resume such operations until (and unless) the Commission grants the SDR's registration or provides the SDR with an exemption. As discussed below, Rule 13n–1(c), as adopted, provides that the Commission will grant registration to an SDR or institute proceedings to determine whether registration should be granted or denied within 90 days of the date of the publication of notice of the filing of an application for registration. Accordingly, SDRs should consider that the Commission may take several months following the publication of notice of the filing of an application for registration [189] to review

[178] *See* Section VI.D.2.c.ii of this release discussing direct electronic access.

[179] Statement of Raf Pritchard, TriOptima—triResolve, at Implementation Joint Roundtable (''[W]e would observe obviously that building real-time solutions is a lot more critical and sensitive than building daily batch solutions. And so in terms of getting that first cut, it might make sense to prioritize a daily batch snapshot of the market. . . . [T]hen you could sequence the real-time—the more real-time sensitive parts of the reporting requirements subsequent to that.'').

[180] Title VII provides the Commission with the flexibility to establish effective dates beyond the minimum 60 days specified therein for Title VII provisions that require a rulemaking. *See* Dodd-Frank Act Section 774 (specifying that the effective date for a provision requiring a rulemaking is ''not less than 60 days after publication of the final rule or regulation implementing such provision''). Furthermore, as with other rulemakings under the Exchange Act, the Commission may set compliance dates (which may be later than the effective dates) for rulemakings under the Title VII amendments to the Exchange Act. Together, this provides the Commission with the ability to sequence the implementation of the various Title VII requirements in a way that effectuates the policy goals of Title VII while minimizing unnecessary disruption or costs. *See* Effective Date Order, 76 FR at 36289, *supra* note 9.

[181] *See* Section VI.A.2.c of this release discussing Rule 13n–1(c), which requires that the Commission make a finding that a ''security-based swap data repository is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as a security-based swap data repository, comply with any applicable provision of the federal securities laws and the rules and regulations thereunder, and carry out its functions in a manner consistent with the purposes of section 13(n) of the [Exchange] Act . . . and the rules and regulations thereunder.''

[182] *See, e.g.,* FSF*, *supra* note 21 (noting that the Commission ''will be in a better position to adopt rules that achieve Dodd-Frank's goals while maintaining active and viable [SBS] markets'' if SDRs are required to register and data reporting is enabled).

[183] *See, e.g.,* FSF*, *supra* note 21 (''The [Commission] should prioritize implementation of data reporting, including registration of Swap data repositories ('SDRs'), to regulators ahead of real-time reporting and other requirements, including public reporting. The [Commission] will learn much about the full range of Swap markets from the data collected by SDRs. This knowledge will be essential in developing rules that meet Dodd-Frank's requirements while still allowing for active and liquid Swap markets.'').

[184] *See* Effective Date Order, 76 FR at 36306, *supra* note 9.

[185] In a separate release, the Commission is proposing a compliance schedule for portions of Regulation SBSR in which the timeframes for compliance with the reporting and public dissemination requirements would key off of the registration of SDRs. *See* Regulation SBSR Proposed Amendments Release, *supra* note 13.

[186] Any SDR that is registered with the Commission before the Compliance Date will be required, absent an exemption, to comply with Exchange Act Section 13(n); the SDR Rules; and Regulation SBSR, as applicable to registered SDRs, as of the date the Commission grants registration to the SDR. *See* Effective Date Order, 76 FR at 36306, *supra* note 9 (granting exemptions to certain provisions in Exchange Act Section 13(n) and indicated that the exemptions will expire on the earlier of (1) the date the Commission grants registration to an SDR and (2) the earliest compliance date set forth in any of the final rules regarding the registration of SDRs).

[187] *See* Section VI.K of this release discussing Rule 13n–12, which provides an exemption for certain non-U.S. persons from the SDR requirements.

[188] *See, e.g.,* DTCC 2, *supra* note 19.

[189] The Commission's review of the application for registration could extend beyond 90 days. Rule 13n–1(c) provides that the Commission will grant registration or institute proceedings to determine whether registration should be granted or denied within 90 days of the publication of notice of the

an SDR's application for registration and assess whether the SDR meets the criteria for registration set forth in Rule 13n–1(c)(3).[190]

After weighing the practical considerations with respect to SDRs' preparations for compliance with the Dodd-Frank Act and the SDR Rules, as well as the benefits to investors and regulators of adopting the SDR Rules in order to facilitate the establishment and utilization of registered SDRs, the Commission has determined not to adopt a phase-in approach, as suggested by some commenters and Implementation Joint Roundtable participants.[191] Specifically, the Commission does not believe that it is necessary or appropriate to tailor a phase-in period for the SDR Rules based on specific asset classes, type of market participant, or other SBS attributes. While a phase-in approach based on asset class, type of market participant, or other attributes may have been appropriate had the Commission adopted rules prior to the July 16, 2011 effective date of the Dodd-Frank Act,[192] the Commission believes that the passage of time has afforded ample time for the development of SDR infrastructure. This belief is based, in part, on the existence of four swap data repositories already provisionally registered with the CFTC.[193] These swap data repositories, most of which will likely register as SDRs with the Commission, have had approximately three years to implement the final swap data repository rules adopted by the CFTC on August 4, 2011 (Part 49 swap data repository rules)[194] and December 20, 2011 (Part 45 swap data recordkeeping and reporting rules).[195] The Commission believes that the CFTC's Part 49 rules [196] and Part 45 rules [197] applicable to swap data repositories are substantially similar to the final SDR Rules. Because of the substantial similarity between the Commissions' rules, to the extent that the SDRs are in compliance with the CFTC's rules, they are likely already in substantial compliance with the Commission's SDR Rules.

VI. Discussion of Rules Governing SDRs

Exchange Act Section 13(n), enacted in Dodd-Frank Act Section 763(i), makes it ''unlawful for any person, unless registered with the Commission, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a security-based swap data repository.'' [198] To be registered and maintain such registration, each SDR is required (absent an exemption) to comply with the requirements and core principles described in Exchange Act Section 13(n), as well as with any requirements that the Commission adopts by rule or regulation.[199] The Exchange Act also requires each SDR to designate an individual to serve as a CCO and specifies the CCO's duties.[200] In addition, the Exchange Act grants the Commission authority to inspect and examine any registered SDR and to prescribe data standards for SDRs.[201]

A. Registration of SDRs (Rule 13n–1 and Form SDR)

Proposed Rule 13n–1 and proposed Form SDR would establish the procedures by which a person may apply to the Commission for registration as an SDR. After considering the comments, the Commission is adopting Rule 13n–1 and Form SDR substantially as proposed, with certain modifications.[202]

1. New Form SDR; Electronic Filing

a. Proposed Form SDR

As proposed, Form SDR would require an applicant seeking to register as an SDR and a registered SDR filing an amendment (including an annual amendment) to indicate the purpose for which it is filing the form and then to provide several categories of information. As part of the application process, each SDR would be required to provide additional information to the Commission upon request. Applicants would be required to file Form SDR electronically in a tagged data format. As proposed, Form SDR would require all SDRs to provide the same information, with two related limited exceptions applicable to non-resident SDRs. First, if the applicant is a non-resident SDR, then Form SDR would require the applicant to attach as an exhibit to the form an opinion of counsel stating that the SDR can, as a matter of law, provide the Commission with prompt access to the SDR's books and records and that the SDR can, as a matter of law, submit to onsite inspection and examination by the Commission. Second, Form SDR would

filing of an application for registration ''or within such longer period as to which the applicant consents.''

[190] As provided in Rule 13n–1(c)(3), in order to grant the registration of an SDR, the Commission must make a finding that ''such security-based swap data repository is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as a security-based swap data repository, comply with any applicable provision of the federal securities laws and the rules and regulations thereunder, and carry out its functions in a manner consistent with the purposes of section 13(n) of the [Exchange] Act . . . and the rules and regulations thereunder.'' In addition to the application for registration on Form SDR, Rule 13n–1(b) provides that, ''[a]s part of the application process, each [SDR] shall provide additional information to any representative of the Commission upon request.'' In determining whether an applicant meets the criteria set forth in Rule 13n–1(c), the Commission will consider the application and any additional information obtained from the SDR, which may include information obtained in connection with an inspection or examination of the SDR. If the Commission is unable to determine that the applicant meets the criteria for registration set forth in Rule 13n–1(c)(3), then the Commission may not grant registration to the applicant. *See also* Section VI.A.1 of this release discussing Form SDR and information required for registration as an SDR.

[191] *See* Section V.B of this release discussing commenters' and Implementation Joint Roundtable participants' views with respect to phase-in approaches.

[192] *See* Section V.A.1 of this release discussing the Effective Date Order.

[193] CFTC Rule 49.3(b) provides for provisional registration of a swap data repository. 17 CFR 49.3(b).

[194] *See* CFTC Part 49 Adopting Release, *supra* note 36.

[195] *See* CFTC Part 45 Adopting Release, *supra* note 37.

[196] *See* CFTC Part 49 Adopting Release, *supra* note 36.

[197] *See* CFTC Part 45 Adopting Release, *supra* note 37.

[198] 15 U.S.C. 78m(n)(1); *see also* Section III.A of this release discussing definition of ''security-based swap data repository.'' Any person that is required to be registered as an SDR under Exchange Act Section 13(n) must register with the Commission (absent an exemption), regardless of whether that person is also registered under the Commodity Exchange Act (''CEA'') as a swap data repository. Exchange Act Section 13(n)(8), 15 U.S.C. 78m(n)(8); *see also* CEA Section 21, 7 U.S.C. 24a (regarding swap data repositories). Under the Exchange Act, a clearing agency may register as an SDR. Exchange Act Section 13(m)(1)(H), 15 U.S.C. 78m(m)(1)(H). In addition, any person that is required to register as an SDR pursuant to this section must register with the Commission (absent an exemption) regardless of whether that person is also registered as an SB SEF. *See* SB SEF Proposing Release, *supra* note 29.

[199] *See* Exchange Act Section 13(n)(3), 15 U.S.C. 78m(n)(3).

[200] *See* Exchange Act Section 13(n)(6), 15 U.S.C. 78m(n)(6).

[201] *See* Exchange Act Sections 13(n)(2) and 13(n)(4), 15 U.S.C. 78m(n)(2) and 78m(n)(4). In a separate release, the Commission proposed rules prescribing the data elements that an SDR would be required to accept for each SBS in association with requirements under Dodd-Frank Act Section 763(i), adding Exchange Act Section 13(n)(4)(A) relating to standard setting and data identification. *See* Regulation SBSR Proposing Release, 75 FR at 75284–5, *supra* note 8 (proposed Rule 901); *see also* Cross-Border Proposing Release, 78 FR at 31212–3, *supra* note 3 (re-proposing Rule 901). The Commission is concurrently adopting Regulation SBSR, including rules prescribing the data elements that an SDR is required to accept. *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 901).

[202] The Commission did not receive any comments on the definitions in proposed Rule 13n–1(a) and is adopting each of them as proposed, other than revising the definition of ''tag'' to have the same meaning as set forth in Rule 11 of Regulation S–T and deleting the definition of ''EDGAR Filer Manual,'' which is no longer referenced in the revised definition of ''tag.'' *See* Rule 13n–1(a)(2). The Commission is also revising the heading of paragraph (a) of the rule by changing ''Definition'' to ''Definitions'' to reflect that there is more than one definition in the paragraph.

require an applicant that is a non-resident SDR to certify to this (*i.e.,* the SDR can, as a matter of law, provide the Commission with prompt access to the SDR's books and records and the SDR can, as a matter of law, submit to onsite inspection and examination by the Commission).[203]

b. Comments on Proposed Form SDR

Two commenters submitted comments relating to this proposal.[204] One commenter urged the Commission to ensure that the registration process does not interfere with the ongoing operation of existing SDRs.[205] This commenter also addressed the items to be provided on Form SDR and stressed the importance of gathering information regarding an applicant's information technology systems, including its ability to provide direct electronic access to the Commission.[206] In addition, the commenter supported combining new Form SDR with Form SIP and further suggested that the Commission and the CFTC publish a joint form for registration with the Commission as an SDR and SIP and with the CFTC as a swap data repository.[207] The commenter also suggested that the Commission require applicants to submit their rulebooks as part of the registration process on Form SDR.[208]

One commenter expressed concern that non-resident SDRs would be subject to a stricter regulatory regime than that applicable to resident SDRs due to the proposed opinion of counsel requirement, which is applicable only to non-resident SDRs.[209]

c. Final Form SDR

After considering the comments, the Commission is adopting Form SDR substantially as proposed with certain modifications. Form SDR includes a set of instructions for its completion and submission. These instructions are included in this release, together with Form SDR. The instructions require an SDR to indicate the purpose for which it is filing the form (*i.e.,* application for registration, interim or annual amendment to an application or to an effective registration,[210] or withdrawal from registration [211]) and to provide information in seven categories: (1) General information, (2) business organization, (3) financial information, (4) operational capability, (5) access to services and data, (6) other policies and procedures, and (7) legal opinion. As part of the application process, each SDR will be required to provide additional information to any representative of the Commission upon request.[212]

As noted in the Proposing Release, the Commission believes that permitting an SDR to provide information in narrative form in Form SDR will allow the SDR greater flexibility and opportunity for meaningful disclosure of relevant information.[213] The Commission believes that it is necessary to obtain the information requested in Form SDR to enable the Commission to determine whether to grant or deny an application for registration. Specifically, the information will assist the Commission in understanding the basis for registration as well as an SDR's overall business structure, financial condition, track record in providing access to its services and data, technological reliability, and policies and procedures to comply with its statutory and regulatory obligations. The information will also be useful to the Commission in tailoring any requests for additional information that it may ask an SDR to provide. Furthermore, the required information will assist Commission representatives in the preparation of their inspection and examination of an SDR.[214]

Form SIP.[215] In the Proposing Release, the Commission noted that proposed Regulation SBSR would require each registered SDR to register with the Commission as a SIP on Form SIP, and requested comment on whether the Commission should combine Form SDR and Form SIP, such that an SDR would register as an SDR and SIP using only one form.[216] One commenter supported combining Form SDR with Form SIP.[217] Taking into consideration this commenter's view and in an effort to minimize the burden of filing multiple registration forms, the Commission has decided to amend proposed Form SDR to accommodate SIP registration; thus, an SDR will register and amend such registration as an SDR and as a SIP using one combined form.[218] An

[203] *See* Items 12 and 46 of proposed Form SDR; *see also* Sections VI.A.1 and VI.A.5 of this release discussing legal opinion of counsel and certification by non-resident SDRs on Form SDR.

[204] *See* DTCC 2, *supra* note 19; ESMA, *supra* note 19; *see also* DTCC 3, *supra* note 19. Five commenters submitted comments to the Commission regarding registration of non-resident SDRs. *See* ESMA, *supra* note 19; DTCC 2, *supra* note 19; Foreign Banks SBSR, *supra* note 27; BofA SBSR, *supra* note 27; US & Foreign Banks, *supra* note 24. With the exception of the certification and legal opinion requirements discussed later in this section, the Commission discussed cross-border issues applicable to SDRs that were raised by Title VII in the Cross-Border Proposing Release, and is adopting an exemption from the SDR requirements for certain non-U.S. persons, as discussed in Section VI.K of this release.

[205] DTCC 2, *supra* note 19.

[206] DTCC 2, *supra* note 19 (''[I]t is essential that proposed Form SDR request information related to the SDR's operating schedule, real-time processing, existence of multiple redundant infrastructures for continuity, strong information security controls, and robust reporting operations (including direct electronic access by the Commission). Because an SDR provides important utility services to regulators and market participants, such resiliency and redundancy should be evaluated in light of the significant policies and procedures for establishing such redundancy, including several backup locations in different geographic regions.'').

[207] DTCC 2, *supra* note 19; DTCC 3, *supra* note 19 (''Harmonization in the registration process for SDRs is necessary. Requiring one SDR to complete three sets of registration forms—an SDR application to the CFTC, an SDR application to the SEC and Form SIP to the SEC—demonstrates a specific instance where the regulatory agencies should come together, determine the information necessary for registration and jointly publish a common registration application.'').

[208] DTCC 3, *supra* note 19 (''The [Commission] should require rulebooks for SDRs prior to operation and as part of the registration process. SDRs will need to complete legal agreements with clearing-houses and among the users of an SDR. These agreements generally constitute the agreement of the user to abide by published rules and/or procedures of the SDR and generally have a notice of change to permit amendments without having to re-execute with all users. These agreements should be in place before SDRs operate under the new regulatory regime.'').

[209] ESMA, *supra* note 19 (''[N]on-resident SDRs are actually subject to a stricter regime than the resident ones, as they need to provide a legal opinion certifying that they can provide the SEC with prompt access to their books and records and that they can be subject to onsite inspections and examinations by the SEC.'').

[210] *See* Section VI.A.4 of this release discussing amendments on Form SDR.

[211] *See* Section VI.B of this release discussing withdrawal from registration as an SDR.

[212] *See* Rule 13n–1(b). The Commission is revising the last sentence of proposed Rule 13n–1(b) to use the statutorily defined term ''security-based swap data repository'' rather than ''SDR'' to be consistent with the rest of the SDR Rules. The Commission is also revising the last sentence of proposed Rule 13n–1(b) to require SDRs to provide additional information upon request to ''any representative of the Commission,'' rather than ''the Commission.'' This revision is intended to clarify that such requests will be made by Commission staff.

[213] Proposing Release, 75 FR at 77310, *supra* note 2.

[214] The Commission is revising Form SDR from proposed Form SDR to include disclosure relating to the Paperwork Reduction Act. *See* Section VII of this release regarding the Paperwork Reduction Act.

[215] Today, the Commission is adopting Regulation SBSR, which includes a requirement for each registered SDR to register as a SIP, as defined in Exchange Act Section 3(a)(22), 15 U.S.C. 78c(a)(22). *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 909).

[216] Proposing Release, 75 FR at 77313, *supra* note 2. *See also* Regulation SBSR Proposing Release, 75 FR at 75287, *supra* note 8 (proposed Rule 909); Cross-Border Proposing Release, 78 FR at 31215–6, *supra* note 3 (re-proposing Rule 909).

[217] DTCC 2, *supra* note 19; *see also* DTCC 3, *supra* note 19.

[218] Form SDR will be used only by SIPs that also register as SDRs; Form SIP will continue to be used by applicants for registration as SIPs not seeking to become dually-registered as an SDR and SIP, and for interim amendments or annual amendments by registered SIPs that are not dually-registered as an SDR and SIP. In discussing Form SDR as adopted

amendment or withdrawal on Form SDR will also constitute an amendment or withdrawal of SIP registration pursuant to Exchange Act Section 11A and the rules and regulations thereunder.[219] The Commission has made certain changes to proposed Form SDR to incorporate the additional information requested on Form SIP of applicants for registration as a SIP.[220] However, there are some disclosures required in Form SIP that have not been incorporated into Form SDR because they do not appear to be relevant to SDRs.[221] The Commission notes that by requiring a registered SDR to register as a SIP, the requirements of SIP registration provided in Exchange Act Section 11A, including publication of notice of the filing of an application for registration, will apply to applications filed on Form SDR [222] and, accordingly, the Commission will publish notice of the filing of applications for registration on Form SDR in the **Federal Register**.[223] In addition, the Commission expects that it will make the filed applications available on its Web site, except for information where confidential treatment is requested by the applicant [224] and granted by the Commission.[225]

The Commission has determined not to adopt a joint form for registration with the Commission as an SDR and SIP and with the CFTC as a swap data repository, as suggested by one commenter.[226] First, the CFTC has already adopted the final registration rules and form for swap data repositories to use.[227] Adopting a joint form for registration would require the CFTC to amend its adopted Form SDR while the industry is still in the implementation phase and swap data repositories are already provisionally registered with the CFTC.[228] Second, the CFTC's registration form for swap data repositories is substantially similar to the Commission's Form SDR. Thus, the Commission does not anticipate that filing with each Commission separately will entail a significant cost for dual registrants even though the Commission and the CFTC have tailored their respective forms in order to meet the specific needs of each agency and their respective statutory mandates. For example, the Commission is revising proposed Form SDR to require an SDR to provide certain information to address Exchange Act requirements applicable to SIPs. The CFTC's Form SDR does not require information to address some of these requirements.

General Information.[229] Form SDR requires an applicant to provide contact information, information concerning any predecessor SDR (if applicable), a list of asset classes of SBSs for which the applicant is collecting and maintaining data or for which it proposes to collect and maintain data,[230] a description of the functions that it performs or proposes to perform, and general information regarding its business organization.[231] This information will assist the Commission and its staff in evaluating applications for registration and overseeing registered SDRs for purposes of determining whether the SDRs are able to comply with the federal securities laws and the rules and regulations thereunder.

An applicant is required to acknowledge and consent that any notice or service of process, pleadings, or other documents in connection with any action or proceeding against the applicant may be effectuated by certified mail to an officer or person specified by the SDR at a given U.S. address.[232] The Commission believes that such consent is important to minimize any logistical obstacles (*e.g.,* locating defendants or respondents abroad) that the Commission may encounter when attempting to provide notice to an applicant or to effect service, including service overseas.

Form SDR must be signed by a person who is duly authorized to act on behalf of the applicant.[233] The signer is

in this release, references to SDRs may, where applicable, refer to SDRs and SIPs, collectively.

[219] *See* General Instruction 2 to Form SDR.

[220] *See* Item 32(a)(1) (adding ''(or disseminate for display or other use)'' and ''(*e.g.,* number of inquiries from remote terminals)''), Item 32(a)(2) (adding ''(or disseminate for display or other use)''), new Item 33(c) (With respect to each of an applicant's ''services that involves the supply of information to a quotation board, ticker device, electronic information terminal, or other such device, [the applicant must] state the total number of devices to which information is, or will be supplied ('serviced') and any minimum and or maximum number of devices required or permitted by agreement or otherwise to be serviced by the applicant. In addition, [an applicant must] define the data elements for each service.''); and Item 36 of Form SDR (adding ''processing, preparing for distribution, and publication''); *see also* new General Instructions 2 and 3 and conforming revisions to General Instructions 7 and 9 to Form SDR and Items 16, 19, 20, 23, 25–35, and 39 of Form SDR.

[221] *See, e.g.,* Item 31 of Form SIP, 17 CFR 249.1001 (requiring applicant to state whether certain specifications or qualifications are imposed at the direction of a national securities exchange or a registered securities association).

[222] 15 U.S.C. 78k–1(b).

[223] As discussed below, the Commission is revising Rule 13n–1(c) from the proposal to reflect this publication requirement with respect to the registration process for Form SDR. *See* Section VI.A.2.c of this release discussing revision to Rule 13n–1(c) to provide that: (1) Within 90 days of the date of the publication of notice of the filing of an application for registration (or within such longer period as to which the SDR consents), the Commission shall either grant the registration by order or institute proceedings to determine whether registration should be granted or denied and (2) proceedings instituted pursuant to Rule 13n–1(c) shall be concluded not later than 180 days after the date of the publication of notice of the filing of the application for registration, absent an extension.

[224] As discussed below, the Commission is adopting technical amendments to Exchange Act Rule 24b–2 to clarify that the confidential portion of electronic filings by SDRs must be filed electronically and to require SDRs to request confidential treatment electronically. The Commission is also adopting technical amendments to Rule 101 of Regulation S–T to provide that, except as otherwise provided, all filings by SDRs, including any information with respect to which confidential treatment is requested, must be filed electronically.

[225] The instructions to Form SDR have been modified from the proposal to clarify that information supplied on the form may be made available on the Commission's Web site. *See* General Instruction 7 to Form SDR (stating that ''[e]xcept in cases where confidential treatment is requested by the applicant and granted by the Commission pursuant to the Freedom of Information Act and the rules of the Commission thereunder, information supplied on this form may be made available on the Commission's Web site, will be included routinely in the public files of the Commission, and will be available for inspection by any interested person''). The Commission expects that non-confidential information supplied on an SDR's completed application for registration will be made available on the Commission's Web site; other filings on Form SDR may be made available on the Commission's Web site.

[226] *See* DTCC 3, *supra* note 19.

[227] *See* CFTC Part 49 Adopting Release, *supra* note 36.

[228] As noted above, CFTC Rule 49.3(b) provides for provisional registration of a swap data repository. 17 CFR 49.3(b).

[229] In the General Information section of Form SDR, the Commission is adding a new item (Item 12) to implement the requirement in Rule 13n–2(b) for a registered SDR seeking to withdraw from registration to identify a custodian of its books and records, and the address(es) where the books and records will be located. *See* Section VI.B of this release discussing Rule 13n–2(b).

[230] As proposed, Item 6 of Form SDR implicitly pertained to the data that an applicant is collecting and maintaining or proposes to collect and maintain. The Commission is revising Item 6 of Form SDR from the proposal to make this explicit by adding references to ''data.''

[231] *See* Items 1–10 of Form SDR. The Commission is revising Form SDR from the proposal to remove the heading ''Business Organization'' in the ''General Information'' section because the heading is superfluous and may lead to confusion with another section entitled ''Exhibits—Business Organization.'' General information regarding business organization is requested in the ''General Information'' section, whereas detailed information regarding business organization is requested in the ''Exhibits—Business Organization'' section. As proposed, Item 10 of Form SDR requested information regarding the filing date of ''partnership articles'' and ''place where partnership agreement was filed.'' For consistency, the Commission is revising Item 10 of Form SDR from the proposal to request the filing date of the ''partnership agreement'' rather than ''partnership articles.''

[232] *See* Item 11 of Form SDR.

[233] *See* Item 13 of Form SDR.

required to certify that all information contained in the application, including the required items and exhibits, is true, current, and complete.[234] The Commission believes that this certification requirement will serve as an effective means to assure that the information filed on Form SDR with the Commission is reliable.[235] The Commission notes that this certification is consistent with the certification provisions in the registration forms for SIPs, broker-dealers, and investment advisers (*i.e.,* Forms SIP, BD, and ADV).[236]

If an applicant is a non-resident SDR, then the signer of Form SDR is also required to certify that the applicant can, as a matter of law, and will provide the Commission with prompt access to the applicant's books and records and that the applicant can, as a matter of law, and will submit to onsite inspection and examination by the Commission.[237] For purposes of the certification, Form SDR defines ''non-resident security-based swap data repository'' as (i) in the case of an individual, one who resides in or has his principal place of business in any place not in the United States; (ii) in the case of a corporation, one incorporated in or having its principal place of business in any place not in the United States; or (iii) in the case of a partnership or other unincorporated organization or association, one having its principal place of business in any place not in the United States.[238] Certain foreign jurisdictions may have laws that complicate the ability of regulated persons such as SDRs located in their jurisdictions from sharing certain information, including personal information of individuals that the regulated persons come to possess from third persons (*e.g.,* personal data relating to the identity of market participants or their customers), with the Commission.[239] In order for the Commission to fulfill its oversight responsibilities with respect to registered SDRs, it is important that Commission representatives have prompt access to the SDRs' books and records and have the ability to conduct onsite inspections and examinations.[240] As noted above, one commenter was concerned that non-resident SDRs are subject to a stricter regime than resident SDRs.[241] To the extent that the commenter's concerns pertain to the certification requirement, the Commission notes that it continues to believe that if a non-resident SDR is registered with the Commission, the SDR's certification is important to confirm that it has taken the necessary steps to be in the position to provide the Commission with prompt access to the SDR's books and records and to be subject to onsite inspection and examination by the Commission. Failure to make this certification may be a basis for the Commission to institute proceedings to consider denying an application for registration. If a registered non-resident SDR becomes unable to provide this certification, then this may be a basis for the Commission to institute proceedings to consider revoking the SDR's registration.

Business Organization. Form SDR requires each applicant to provide as exhibits detailed information regarding its business organization, including information about (1) any person that owns 10 percent or more of the applicant's stock or that, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the applicant's management or policies;[242] (2) the business experience, qualifications, and disciplinary history of its designated CCO, officers, directors, governors, and persons performing functions similar to any of the foregoing, and the members of all standing committees;[243] (3) its

[234] *See* Item 13 of Form SDR. The Commission is revising the signature block from the proposal to be consistent with an SDR's filing requirements for interim amendments on Form SDR. *See* note *infra* 356 (discussing amendment of signature block). The Commission is also revising the signature block to state that ''[i]ntentional misstatements or omissions of fact constitute federal criminal violations (*see* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a)).'' This statement was included in Instruction 5 of proposed Form SDR, and is included in Instruction 7 of Form SDR, as adopted. This statement has been added to the signature block to remind the signer of the consequences of intentional misstatements or omissions of fact. *See* 18 U.S.C. 1001 (applying to ''whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully — (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry''); 15 U.S.C. 78ff(a) (applying to, among other persons, ''any person who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under [the Exchange Act] or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 78*o* of [Title 15 of the U.S. Code], or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof, which statement was false or misleading with respect to any material fact'').

[235] *Accord* Registration of Municipal Advisors, Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67468, 67568 (Nov. 12, 2013) (stating that the certification requirement in Form MA–W pertaining to the accuracy and completeness of information previously submitted in Form MA should serve as an effective means to assure that the information supplied is correct).

[236] *See* Form SIP, 17 CFR 249.1001, *available at http://www.sec.gov/about/forms/formsip.pdf;* Form BD, 17 CFR 249.501, *available at http://www.sec.gov/about/forms/formbd.pdf;* Form ADV, 17 CFR 279.1, *available at http://www.sec.gov/about/forms/formadv.pdf.*

[237] *See* Item 13 of Form SDR. Under Exchange Act Section 13(n)(2), an SDR is subject to inspection and examination by any representative of the Commission. *See* 15 U.S.C. 78m(n)(2); *see also* Section VI.D.2 of this release discussing Rule 13n–4(b)(1). The Commission is revising ''can, as a matter of law'' (referring to the certification regarding access to the SDR's books and records) and ''can'' (referring to the certification regarding inspection and examination) in the signature block of proposed Form SDR to ''can, as a matter of law, and will'' to track the language of Rule 13n–1(f), as discussed in Section VI.A.5 of this release.

[238] *See* Item 13 of Form SDR; *see also* Rule 13n–1(a)(1) (defining ''non-resident security-based swap data repository''). This definition is substantially similar to the definition of ''non-resident broker or dealer'' in Exchange Act Rule 17a–7(d)(3). *See* 17 CFR 240.17a–7(d)(3). Although there may be instances in which a non-resident SDR can fall within the definition of a ''U.S. person,'' the Commission believes that, as a practical matter, all non-resident SDRs would likely be non-U.S. persons given the similar distinguishing factors in the definitions of ''non-resident security-based swap data repository'' and ''non-U.S. person.'' *See supra* note 99 (discussing definition of ''U.S. person'') and Section VI.A.5 of this release discussing non-resident SDRs.

[239] *See, e.g.,* Dagong Global Credit Rating Agency, Exchange Act Release No. 62968 (Sept. 22, 2010) (denying application as an NRSRO due to applicant's inability to comply with U.S. securities laws, in part because records requests would have to be approved by a Chinese regulator); *Dominick & Dominick, Inc.,* Exchange Act Release No. 29243 (May 29, 1991) (settled administrative proceeding involving a broker-dealer's failure to furnish promptly to the Commission copies of certain records required to be kept pursuant to Exchange Act Section 17(a)(1) and Rule 17a–3 thereunder where the broker-dealer initially asserted that Swiss law prevented it from producing the required records).

[240] *See* Section VI.D.2 of this release discussing inspection and examination by Commission representatives.

[241] ESMA, *supra* note 19.

[242] *See* Item 14 of Form SDR.

[243] *See* Items 15 and 16 of Form SDR. More specifically, Form SDR requires an applicant to disclose the following information regarding its designated CCO, officers, directors, governors, and persons performing functions similar to any of the foregoing, and the members of all standing committees: (a) name; (b) title; (c) date of commencement and, if appropriate, termination of present term of position; (d) length of time such person has held the same position; (e) brief account of the business experience of such person over the last five years; (f) any other business affiliations in the securities industry or derivatives industry; and (g) details of: (1) any order of the Commission with respect to such person pursuant to Sections 15(b)(4), 15(b)(6), 19(h)(2), or 19(h)(3) of the Exchange Act, (2) any conviction or injunction of a type described in Sections l5(b)(4)(B) or (C) of the Exchange Act within the past ten years, (3) any action of an SRO with respect to such person imposing a final disciplinary sanction pursuant to Exchange Act Sections 6(b)(6), l5A(b)(7), or 17A(b)(3)(G), (4) any final action by an SRO with respect to such person constituting a denial, bar, prohibition, or limitation of membership, participation, or association with a member, or of access to services offered by such organization or a member thereof, and (5) any final action by another federal regulatory agency, including the CFTC, any state regulatory agency, or any foreign

governance arrangements;[244] (4) the applicant's constitution, articles of incorporation or association with all amendments to them, existing by-laws, rules, procedures, and instruments corresponding to them;[245] (5) the applicant's organizational structure;[246] (6) its affiliates;[247] (7) any material pending legal proceedings to which the applicant or its affiliate(s) is a party or to which any of its property is the subject;[248] (8) the applicant's material contracts with any SB SEF, clearing agency, central counterparty, and third party service provider; [249] and (9) the applicant's policies and procedures to minimize conflicts of interest in its decision-making process and to resolve any such conflicts of interest.[250] Obtaining this information will assist the Commission in, among other things, understanding an SDR's overall business structure, governance arrangements, and operations, all of which will assist the Commission in its inspection and examination of the SDR and the Commission's decision on whether to grant the SDR's registration.

The Commission is revising Form SDR from the proposal requiring disclosure of business affiliations in the ''derivatives industry'' rather than the ''OTC derivatives industry'' for an applicant's designated CCO, officers, directors, governors, and persons performing functions similar to any of the foregoing, and the members of all standing committees [251] The Commission is making this revision to clarify that the disclosure covers derivatives traded on exchanges and SB SEFs as well as those traded over-the-counter.

Financial Information. Each applicant is required to disclose as exhibits to Form SDR certain financial and related information, including (1) its statement of financial position, results of operations, statement of sources and application of revenues, and all notes or schedules thereto, as of the most recent fiscal year of the applicant, or, alternatively, a financial report, as discussed further in Section VI.J.5 of this release; [252] (2) a statement of financial position and results of operations for each affiliate of the applicant as of the end of the most recent fiscal year of each such affiliate, or, alternatively, identification of the most recently filed annual report on Form 10–K of the applicant's affiliate, if available; [253] (3) a list of all dues, fees, and other charges imposed, or to be imposed, for the applicant's services, as well as all discounts and rebates offered, or to be offered; [254] (4) a description of the basis and methods used in determining the level and structure of the applicant's services as well as its dues, fees, other charges, discounts, or rebates; [255] and (5) a description of any differentiations in such dues, fees, other charges, discounts, and rebates.[256] This information will assist the Commission in, among other things, its decision of whether to grant the SDR's registration and in its evaluation of the financial resources available to the SDR to support its operations.

Operational Capability. Form SDR requires each applicant to provide as exhibits information on its operational capability, including (1) its SDR and SIP functions and services;[257] (2) the computer hardware that it uses to perform its SDR or SIP functions;[258] (3) personnel qualifications for each category of professional, non-professional, and supervisory employees employed by the applicant or the division, subdivision, or other segregable entity within the applicant;[259] (4) the applicant's measures or procedures to provide for the security of any system employed to perform its SDR or SIP functions, including any physical and operational safeguards designed to prevent unauthorized access to the system;[260] (5) any circumstances within the past year in which such security measures or safeguards failed to prevent any such unauthorized access to the system and

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financial regulatory authority resulting in: (i) a finding that such person has made a false statement or omission, or has been dishonest, unfair, or unethical; (ii) a finding that such person has been involved in a violation of any securities-related regulations or statutes; (iii) a finding that such person has been a cause of a business having its authorization to do business denied, suspended, revoked, or restricted; (iv) an order entered, in the past ten years, against such person in connection with a securities-related activity; or (v) any disciplinary sanction, including a denial, suspension, or revocation of such person's registration or license or otherwise, by order, a prevention from associating with a securities-related or a restriction of such person's activities. The Commission is correcting a typographical error in proposed Items 14(g)(4) and 15(g)(4). As proposed, the items stated ''. . . such organization of a member thereof.'' As adopted, Items 15(g)(4) and 16(g)(4) state ''. . . such organization or a member thereof.''

[244] *See* Item 17 of Form SDR. The Commission has made minor revisions to Form SDR from the proposal with regard to the disclosure of governance arrangements for the sake of clarity. *Compare* Item 16 of Form SDR, as proposed (requiring disclosure of the responsibilities ''of each of the board and such committee'' and the composition ''of each board and such committee''), *with* Item 17 of Form SDR, as adopted (requiring disclosure of the responsibilities and composition ''of the board and each such committee'').

[245] *See* Item 18 of Form SDR.

[246] *See* Item 19 of Form SDR.

[247] *See* Item 20 of Form SDR. For purposes of Form SDR, an ''affiliate'' of an SDR is defined as a person that, directly or indirectly, controls, is controlled by, or is under common control with the SDR. *See also* Rule 13n–4(a)(1); Rule 13n–9(a)(1). This definition of ''affiliate'' is designed to allow the Commission to collect comprehensive identifying information relating to an SDR. This definition is substantially similar to the definition of ''affiliate'' in Exchange Act Rule 12b–2. *See* 17 CFR 240.12b–2. *See also infra* note 621 (defining ''control'' (including the terms ''controlled by'' and ''under common control with'')). The Commission notes that it received a comment letter after the Proposing Release through the Commission's general solicitation for comments that addressed the definition of ''affiliate'' for all of Title VII. *See* letter from ABA Securities Association, American Council of Life Insurers, Financial Services Roundtable, Futures Industry Association, Institute of International Bankers, International Swaps and Derivatives Association and the Securities Industry and Financial Markets Association, available on the Commission's Web site at *http://www.sec.gov/comments/df-title-vii/swap-data-repositories/swap-data-repositories.shtml* (suggesting defining ''affiliate'' for the purposes of Title VII rulemaking generally as ''any group of entities that is under common control and that reports information or prepares its financial statements on a consolidated basis''). The commenter focused on the effect of the definition in the context of inter-affiliate transactions, such as whether inter-affiliate transactions should be counted when determining if a person is required to register as an SBS dealer. Among other things, the commenter addressed the reporting of inter-affiliate transactions to SDRs. Because Form SDR and the SDR Rules do not pertain to what transactions must be reported to an SDR, the Commission believes that the letter is not relevant to Form SDR or the SDR Rules. Additionally, the Commission believes that it is important that an applicant for registration as an SDR provide information regarding all of its affiliates, regardless of whether the SDR's and affiliates' financial statements are prepared on a consolidated basis. Among other reasons, the Commission needs to know the identity of an SDR's affiliates before it can determine whether the SDR has any material conflicts of interest based on the services provided by those affiliates or is providing favorable treatment to affiliates in accessing the SDR's services or whether the SDR is complying with other rules and core principles, such as the core principle related to access to services and data.

[248] *See* Item 21 of Form SDR.

[249] *See* Item 22 of Form SDR.

[250] *See* Item 23 of Form SDR.

[251] *Compare* Items 14(f) and 15(f) of proposed Form SDR *with* Items 15(f) and 16(f) of Form SDR, as adopted.

[252] *See* Item 24 of Form SDR. As proposed, this item referred to a ''balance sheet'' and a ''statement of income and expenses'' rather than a ''statement of financial position'' and ''results of operations.'' The Commission is making this change from the proposal for consistency with Rule 13n–11(f)(4). *See* Section VI.J.5 of this release discussing Rule 13n–11(f). This revision is not intended to substantively change the requirements of this item.

[253] *See* Item 25 of Form SDR. As proposed, this item referred to a ''balance sheet'' and a ''statement of income and expenses'' rather than a ''statement of financial position'' and ''results of operations.'' The Commission is making this change from the proposal for consistency with Rule 13n–11(f)(4). *See* Section VI.J.5 of this release discussing Rule 13n–11(f). This revision is not intended to substantively change the requirements of this item.

[254] *See* Item 26.a of Form SDR.

[255] *See* Item 26.b of Form SDR.

[256] *See* Item 26.c of Form SDR.

[257] *See* Item 27 of Form SDR.

[258] *See* Item 28 of Form SDR.

[259] *See* Item 29 of Form SDR.

[260] *See* Item 30 of Form SDR.

any measures taken to prevent a reoccurrence;[261] (6) any measures used by the applicant to satisfy itself that the information received or disseminated by the system is accurate;[262] (7) the applicant's backup systems or subsystems that are designed to prevent interruptions in the performance of any SDR or SIP functions;[263] (8) limitations on the applicant's capacity to receive (or collect), process, store, or display (or disseminate for display or other use) its data and factors that account for such limitations;[264] and (9) the priorities of assignment of capacity between functions of an SDR or SIP and any other uses and methods used or able to be used to divert capacity between such functions and other uses.[265] As stated in the Cross-Border Proposing Release, SDRs themselves are subject to certain operational risks that may impede their ability to fulfill their roles.[266] Obtaining information regarding an SDR's operational capability will assist the Commission in determining, among other things, whether an SDR's automated systems provide adequate levels of capacity, integrity, resiliency, availability, and security.

As highlighted by one commenter, it is imperative that Form SDR includes ''information related to the SDR's operating schedule, real-time processing, existence of multiple redundant infrastructures for continuity, strong information security controls, and robust reporting operations.'' [267] The Commission believes that the operational capability information requested on Form SDR sufficiently addresses the commenter's concern. In addition, Commission representatives may conduct inspections or examinations to assess a registered SDR's ongoing operational capability and compliance with the federal securities laws and the rules and regulations thereunder.[268]

Access to Services and Data. Form SDR requires an applicant to provide as exhibits information regarding access to its services and data, including (1) the number of persons who presently subscribe, or who have notified the applicant of their intention to subscribe, to its services; [269] (2) instances in which the applicant has prohibited or limited any person with respect to access to services offered or data maintained by the applicant; [270] (3) for each service that involves the supply of information to a quotation board, ticker device, electronic information terminal, or other such device, the total number of devices to which information is, or will be supplied and any minimum and or maximum number of devices required or permitted by agreement or otherwise to be serviced by the applicant; [271] (4) the storage media of any service furnished in machine-readable form and the data elements of such service; [272] (5) copies of all contracts governing the terms by which persons may subscribe to the SDR services, SIP services, and any ancillary services provided by the applicant; [273] (6) any specifications, qualifications, or other criteria that limit, are interpreted to limit, or have the effect of limiting access to or use of any SDR or SIP services offered or data maintained by the applicant; [274] (7) any specifications, qualifications, or other criteria required of persons who supply SBS information to the applicant for collection, maintenance, processing, preparing for distribution, and publication by the applicant or of persons who seek to connect to or link with the applicant; [275] (8) any specifications, qualifications, or other criteria required of any person who requests access to data maintained by the applicant; [276] and (9) the applicant's policies and procedures to review any prohibition or limitation of any person with respect to access to services offered or data maintained by the applicant and to grant such person access to such services or data if such person has been discriminated against unfairly.[277]

The information regarding access to services and data will assist the Commission in determining, among other things, whether an SDR can comply with Rule 13n–4(c)(1), which relates to the core principle for market access to services and data, as discussed further in Section VI.D.3.a of this release. With respect to Item 33 of Form SDR (requiring an SDR to provide information regarding access to services and data, including any denials of such access), the Commission further believes that, due to an SDR's role as a central recordkeeping facility for SBSs, upon which the Commission and the public will rely for market-wide SBS data, the Commission should be informed of persons who have been granted access to an SDR's services and data, as well as instances in which an SDR prohibits or limits access to its services.[278] As part of the process to amend Form SDR from the proposal to accommodate SIP registration, discussed above, the Commission is adding Item 33(c) to Form SDR so that the Commission can obtain specific information regarding an SDR's supply of information for public dissemination purposes.

Other Policies and Procedures. Form SDR requires each applicant to attach as exhibits: (1) The applicant's policies and procedures to protect the privacy of any and all SBS transaction information that the applicant receives from a market participant or any registered entity; [279] (2) a description of the applicant's safeguards, policies, and procedures to prevent the misappropriation or misuse of (a) any confidential information received by the applicant, including, but not limited to,

[261] *See* Item 30 of Form SDR.

[262] *See* Item 30 of Form SDR.

[263] *See* Item 31 of Form SDR.

[264] *See* Item 32.a of Form SDR.

[265] *See* Item 32.b of Form SDR.

[266] Cross-Border Proposing Release, 78 FR at 31042 n.719, *supra* note 3 (citing the Proposing Release, 75 FR at 77307 (''The inability of an SDR to protect the accuracy and integrity of the data that it maintains or the inability of an SDR to make such data available to regulators, market participants, and others in a timely manner could have a significant negative impact on the [security-based swap] market. Failure to maintain privacy of such data could lead to market abuse and subsequent loss of liquidity.'')).

[267] DTCC 2, *supra* note 19.

[268] *See* Section VI.A.2 of this release discussing Rule 13n–1(c) (reviews by Commission staff of the SDR's operational capacity and ability are important to determine whether the Commission should grant an SDR's application for registration or revoke the registration of a registered SDR pursuant to Rule 13n–2(e)).

[269] *See* Item 33.a of Form SDR.

[270] *See* Item 33.b of Form SDR; *see also infra* note 278 (discussing denials of access to services offered by SDRs).

[271] *See* Item 33.c of Form SDR. The Commission is including this item from Form SIP to Form SDR for purposes of combining the two forms. *See* Section VI.A.1 of this release discussing Form SIP.

[272] *See* Item 33.d of Form SDR.

[273] *See* Item 34 of Form SDR.

[274] *See* Item 35 of Form SDR.

[275] *See* Item 36 of Form SDR.

[276] *See* Item 37 of Form SDR. The Commission is correcting a typographical error in proposed Item 36 of Form SDR. As proposed, the item stated ''any person, including, but not limited to . . . third party service providers who request access. . . .'' As adopted, Item 37 states ''any person, including, but not limited to . . . third party service providers, who requests access. . . .''

[277] *See* Item 38 of Form SDR.

[278] *See* Regulation SBSR Adopting Release, *supra* note 13 (discussing Rule 909, which requires a registered SDR to also register as a SIP); Proposing Release, 75 FR at 77311 n.33, *supra* note 2 (noting that if the Commission adopts proposed Rule 909 of Regulation SBSR, then Exchange Act Section 11A(b)(5) would govern denials of access to all SDRs' services); *see also* 15 U.S.C. 78k–1(b)(5) (A registered SIP must promptly file notice with the Commission if it, directly or indirectly, prohibits or limits any person in respect of access to its services, which may be subject to review by the Commission. If the Commission finds that (a) such limitation or prohibition is not consistent with Exchange Act Section 11A and the rules and regulations thereunder and that such person has been discriminated against unfairly or (b) the prohibition or limitation imposes any burden on competition not necessary or appropriate, it may set aside the prohibition or limitation and require the SIP to permit such person access to its services.). The Commission has made certain changes to Form SDR from the proposal to accommodate SIP registration. *See supra* note 220.

[279] *See* Item 39 of Form SDR.

trade data, position data, and any nonpublic personal information about a market participant or any of its customers; (b) material, nonpublic information; and/or (c) intellectual property by the applicant or any person associated with the applicant for their personal benefit or for the benefit of others;[280] (3) the applicant's policies and procedures regarding its use of the SBS transaction information that it receives from a market participant, any registered entity, or any other person for non-commercial and/or commercial purposes;[281] (4) the applicant's procedures and a description of its facilities for resolving disputes over the accuracy of the transaction data and positions that are recorded in the SDR;[282] (5) the applicant's policies and procedures relating to its calculation of positions;[283] (6) the applicant's policies and procedures to prevent any provision in a valid SBS from being invalidated or modified through the procedures or operations of the applicant;[284] and (7) a plan to ensure that the transaction data and position data that are recorded in the SDR continue to be maintained after the applicant withdraws from registration, which shall include procedures for transferring transaction data and position data to the Commission or its designee (including another registered SDR).[285] This information will assist the Commission in determining, among other things, whether an SDR can comply with the requirements to establish, maintain, and enforce these seven policies and procedures, as discussed further in Sections VI.D, VI.E, VI.G, and VI.I of this release. In addition, Form SDR requires an applicant to attach as exhibits all of the policies and procedures set forth in Regulation SBSR.[286]

One commenter suggested that the Commission require an applicant to submit its ''rulebook.''[287] The Commission does not believe that such a requirement is necessary, but is revising Form SDR from the proposal to provide that if an applicant has a rulebook, then it may attach its rulebook as an exhibit to the form,[288] as a supplement to the policies and procedures required by Form SDR. The Commission believes that if an applicant has a rulebook, much of the information that would be contained in the rulebook likely would be filed as part of an SDR's policies and procedures.[289] To the extent that an applicant's rulebook is broader, an applicant may submit its rulebook to the Commission if, for example, the applicant believes that it would be useful for the Commission to better understand the context of the applicant's policies and procedures or how the policies and procedures relate to one another.

Legal Opinion. Form SDR requires each non-resident SDR to attach as an exhibit an opinion of counsel that the SDR can, as a matter of law, provide the Commission with prompt access to the SDR's books and records and that the SDR can, as a matter of law, submit to onsite inspection and examination by the Commission.[290]

As discussed above, one commenter suggested that the legal opinion requirement would subject non-resident SDRs to a stricter regulatory regime than resident SDRs.[291] The Commission, however, continues to believe that non-resident SDRs that are registered, or seek to register, with the Commission should be required to provide the opinion of counsel. Each jurisdiction may have a different legal framework (*e.g.,* privacy laws) that may limit or restrict the Commission's ability to access information from an SDR. Rather than create unequal regulatory obligations, the legal opinion requirement equalizes the regulatory landscape for SDRs by addressing whether a non-resident SDR is able to comply with the requirements for it to provide the Commission with prompt access to the SDR's books and records,[292] and to submit to onsite inspection and examination by the Commission,[293] similar to SDRs that reside in the United States. Failure to provide an opinion of counsel may be a basis for the Commission to institute proceedings to consider denying an application for registration.

Electronic Filing. The Commission is revising Rule 13n–1(b) from the proposal to conform the rule with General Instruction 1 to Form SDR. As revised, Rule 13n–1(b) provides that in addition to an application for registration as an SDR, all amendments thereto must be filed electronically in a tagged[294] data format on Form SDR with the Commission in accordance with the instructions contained in the form.[295] This modification to also require all amendments on Form SDR be filed electronically in a tagged data format is intended to conform with General Instruction 1 to Form SDR, which requires the form and exhibits thereto to be filed electronically in a tagged data format by an applicant for registration as an SDR and by an SDR amending its application for registration.

The Commission anticipates developing an electronic filing system through which an SDR will be able to file and update Form SDR on or about the effective date of Rule 13n–1.[296] If

[280] *See* Item 40 of Form SDR.

[281] *See* Item 41 of Form SDR.

[282] *See* Item 42 of Form SDR.

[283] *See* Item 43 of Form SDR.

[284] *See* Item 44 of Form SDR.

[285] *See* Item 45 of Form SDR.

[286] *See* Item 46 of Form SDR; Regulation SBSR Adopting Release, *supra* note 13 (Rule 907 requiring SDRs to establish and maintain certain written policies and procedures).

[287] DTCC 3, *supra* note 19.

[288] *See* Item 47 of Form SDR.

[289] The Commission notes that an SDR that is also registered with the CFTC as a swap data repository is required under CFTC Rule 49.8 to either submit its rules and amendments thereto for approval by the CFTC or self-certify that the rulebook complies with the CFTC's swap data repository rules and the CEA. *See* 17 CFR 49.8. The Dodd-Frank Act did not establish SDRs as self-regulatory organizations (''SROs'') (which, under the Exchange Act, are required to file their rules with the Commission) or create an express obligation for SDRs to file their rules with the Commission. As noted above, SDRs must provide certain policies and procedures on Form SDR. The Commission believes that this disclosure is sufficient to enable the Commission to determine whether an SDR's policies and procedures are in compliance with the Exchange Act, including Section 13(n), and the rules and regulations thereunder. The Commission recognizes, however, that reviewing a rulebook that is voluntarily submitted to the Commission may assist the Commission in understanding other items in an applicant's Form SDR.

[290] *See* Item 48 of Form SDR.

[291] ESMA, *supra* note 19.

[292] *See* Rule 13n–7(b)(3) (requiring every SDR to, upon request of any representative of the Commission, promptly furnish requested documents to the representative).

[293] *See* Exchange Act Section 13(n)(2), 15 U.S.C. 78m(n)(2) (subjecting registered SDRs to inspection and examination by any representative of the Commission)).

[294] The term ''tag'' (including the term ''tagged'') is being revised from the proposal to have the same meaning as set forth in Rule 11 of Regulation S–T (defining ''tag'' as ''an identifier that highlights specific information to EDGAR that is in the format required by the EDGAR Filer Manual''). *See* Rules 13n–1(a)(2), 13n–2(a), and 13n–11(b)(9); *see also* 17 CFR 232.11. The Commission is revising this term from the proposal to be consistent with all the other terms in the SDR Rules that cross-reference to the definitions set forth in Regulation S–T, where applicable. For example, the term ''EDGAR Filer Manual'' has the same meaning as set forth in Rule 11 of Regulation S–T (defining ''EDGAR Filer Manual'' as ''the current version of the manual prepared by the Commission setting out the technical format requirements for an electronic submission''). *See* Rule 13n–11(b)(3); *see also* 17 CFR 232.11.

[295] *See* Rule 13n–1(b).

[296] This electronic filing system for Form SDR will be through EDGAR, and thus, the electronic filing requirements of Regulation S–T will apply. *See generally* 17 CFR 232 (governing the electronic submission of documents filed with the Commission). The Commission is amending General Instruction 1 to Form SDR to clarify the applicability of Regulation S–T to Form SDR. To conform with how filings are presently made through EDGAR, the Commission has made several minor edits to Form SDR from the proposal. *See,*

Continued

the Commission's electronic filing system is unavailable at the time an applicant seeks to file its application for registration on Form SDR, the applicant may file the form, including any amendments thereto, in paper format with the Commission's Division of Trading and Markets at the Commission's principal office in Washington, DC. However, doing so does not relieve the SDR from compliance with the requirement in Rule 13n–1(b) to file Form SDR ''electronically in a tagged data format.'' Therefore, when the Commission's electronic filing system is available, the applicant should file electronically any initial and amended Form SDRs that had been filed previously in paper format.[297] The Commission expects that the information filed will be made available on the Commission's Web site, except in cases where confidential treatment is requested by an SDR and granted by the Commission.[298] The Commission acknowledges that SDRs will likely incur additional costs and burdens, particularly in initial compliance, with the data tagging requirement, when compared with filing Form SDR in paper format. However, the Commission believes that such costs will be minimal and that this requirement will facilitate review and analysis of registration materials by Commission staff and, to the extent such materials are made public, the public. The Commission believes that the costs of completing Form SDR in tagged data format are justified by the benefits derived from the ability of investors, analysts, and Commission staff to be able to more effectively capture, review, and analyze the SDR registration materials if they are in tagged data format.[299]

Technical Amendments to Electronic Filing Requirements. The Commission is adopting technical amendments to Exchange Act Rule 24b–2 [300] and Rule 101 of Regulation S–T [301] to clarify that SDRs' electronic filings pursuant to Exchange Act Section 13(n) and the rules and regulations thereunder [302] must include any information with respect to which confidential treatment is requested (''confidential portion''). Generally speaking, Exchange Act Rule 24b–2 and Rule 101 of Regulation S–T require confidential treatment requests and the confidential portion to be submitted in paper format only. The Commission's technical amendments provide an exception from Rule 24b–2's and Rule 101's paper-only filing requirements for all SDR filings. Under this exception, the confidential portion of all SDR filings must be filed in electronic format.

The Commission is revising Rule 24b–2 in two ways. First, the Commission is revising Rule 24b–2(b) to provide an exception for persons providing materials pursuant to Rule 24b–2(h) from the general requirement to omit the confidential portion from ''the material filed.'' [303] Second, the Commission is adding Rule 24b–2(h) to provide that an SDR must not omit the confidential portion from the material filed in electronic format pursuant to Exchange Act Section 13(n) and the rules and regulations thereunder, and must request confidential treatment electronically in lieu of the procedures described in Rule 24b–2(b).

The Commission is also revising Rule 101 to add paragraph (a)(1)(xvii) to the list of mandated electronic submissions. Specifically, paragraph (a)(1)(xvii) adds to this list documents filed with the Commission pursuant to Exchange Act Section 13(n) and the rules and regulations thereunder, including Form SDR and reports filed pursuant to Exchange Act Rules 13n–11(d) and (f).[304] The Commission is also revising Rule 101(c) to provide that except as otherwise specified in Rule 101(d), confidential treatment requests and the information with respect to which confidential treatment is requested must not be submitted in electronic format. The Commission is further adding Rule 101(d) to provide as an exception to Rule 101(c)'s paper-only filing requirement all documents, including any information with respect to which confidential treatment is requested, filed pursuant to Exchange Act Section 13(n) and the rules and regulations thereunder.

Electronic filing of all materials filed by SDRs, including the confidential portion, will reduce the burden on SDRs by not requiring a separate paper submission and facilitate the Commission's review and analysis of the filings.[305]

2. Factors for Approval of Registration and Procedural Process for Review (Rule 13n–1(c))

a. Proposed Rule

Proposed Rule 13n–1(c) would establish the timeframe for Commission action on applications for registration as an SDR, as well as the Commission's procedures for reviewing applications for registration. In particular, proposed Rule 13n–1(c) provided that, within 90 days of the date of the filing of an application for registration on Form SDR (or within such longer period as to which the SDR consents), the

e.g., Instruction 10 of Form SDR (providing guidance on filing Form SDR as an amendment, other than an annual amendment); Item 3 of Form SDR (requesting mailing address, which includes state/country and mailing zip/postal code); Item 9 of Form SDR (requesting information regarding an entity's incorporation or organization); Item 13 of Form SDR (requesting date of signature in different format).

[297] *See* Proposing Release, 75 FR at 77309 n.25, *supra* note 2 (noting that SDRs might be required to file Form SDR in paper until such time as an electronic filing system is operational and capable of receiving the form and the Commission may require each SDR to promptly re-file electronically Form SDR and any amendments to the form).

[298] As discussed below, the Commission is adopting technical amendments to Exchange Act Rule 24b–2 to clarify that the confidential portion of electronic filings by SDRs must be filed electronically and to require SDRs to request confidential treatment electronically. The Commission is also adopting technical amendments to Rule 101 of Regulation S–T to provide that, except as otherwise provided, all filings by SDRs, including any information with respect to which confidential treatment is requested, must be filed electronically.

[299] As part of the Commission's longstanding efforts to increase transparency and the usefulness of information, the Commission has been implementing data tagging of information contained in electronic filings to improve the accuracy of financial information and facilitate its analysis. *See* Regulation S–T, 17 CFR 232; *see also* Securities Act Release No. 8891 (Feb. 6, 2008), 73 FR 10592 (Feb. 27, 2008); Securities Act Release No. 9002 (Jan. 30, 2009), 74 FR 6776 (Feb. 10, 2009); Securities Act Release No. 9006 (Feb. 11, 2009), 74 FR 7748 (Feb. 19, 2009); Exchange Act Release No. 61050 (Nov. 23, 2009), 74 FR 63832 (Dec. 4, 2009); Investment Company Release No. 29132 (Feb. 23, 2010), 75 FR 10060 (Mar. 4, 2010); What is Interactive Data and Who's Using It?, *http://www.sec.gov/spotlight/xbrl/what-is-idata.shtml* (last updated March 15, 2010) (link to the Commission's Office of Interactive Disclosure's discussion of the benefits of interactive data). Data becomes machine-readable when it is labeled, or tagged, using a computer markup language that can be processed by software programs for analysis. Such computer markup languages use standard sets of definitions, or ''taxonomies,'' that translate text-based information in Commission filings into structured data that can be retrieved, searched, and analyzed through automated means. Requiring the information to be tagged in a machine-readable format using a data standard that is freely available, consistent, and compatible with the tagged data formats already in use for Commission filings will enable the Commission to review and analyze more effectively Form SDR submissions.

[300] 17 CFR 240.24b–2.

[301] 17 CFR 232.101.

[302] *See, e.g.,* Rule 13n–2(b) (relating to withdrawal on Form SDR) and Rule 13n–11(d)(2) (relating to compliance reports); *see also* Rule 13n–11(f)(5) (relating to financial reports); General Instruction 1 to Form SDR (requiring Form SDR and exhibits to be filed electronically in a tagged data format, including amendments filed under Rule 13n–1(d)).

[303] Rule 24b–2(a) refers to ''any registration statement, report, application, statement, correspondence, notice or other document'' as ''the material filed.''

[304] *See* Sections VI.J.4 and VI.J.5 of this release discussing compliance reports and financial reports filed pursuant to Rules 13n–11(d) and (f).

[305] *See* Rules 13–1(b); 13n–2(b); 13n–11(d)(2); *see also* Rule 13n–11(f)(5); General Instruction 1 to Form SDR.

Commission will either grant the registration by order or institute proceedings to determine whether registration should be denied. The proposed rule set forth the time period for such proceedings. The proposed rule also set forth the standard applicable to an application for registration as an SDR.

b. Comments on the Proposed Rule

Although the Commission did not receive any comments directly relating to this proposed rule, two commenters expressed their views on the SDR registration process generally.[306]

The first commenter recommended sufficient time for an appropriate level of due diligence with respect to applications for registration.[307] While the commenter expressly referenced the proposed temporary registration rule, the Commission believes that the commenter's concern regarding the operational capability of SDRs is applicable to any applicant for registration as an SDR.[308] Additionally, the same commenter supported combining new Form SDR with Form SIP,[309] which would necessitate a revision to Rule 13n–1(c), as described below.[310]

The second commenter requested the Commission's expedited review of SDR registration.[311]

c. Final Rule

After considering the comments, the Commission is adopting Rule 13n–1(c) as proposed, with minor modifications. First, the Commission is making minor revisions from the proposal relating to the event that begins the 90-day period for Commission review and action on the application for registration as an SDR. The final rule provides that within 90 days of the date of the publication of notice of the filing of an application for registration (or within such longer period as to which the applicant consents), the Commission will either grant the registration by order or institute proceedings to determine whether registration should be granted or denied.[312] The 90-day period will not begin to run until an SDR files a complete Form SDR with the Commission,[313] and the Commission publishes notice of the filing of Form SDR to afford interested persons an opportunity to submit written comments concerning such application.[314] As discussed above, in light of the Commission's adoption of the requirement for a registered SDR to also register as a SIP in Regulation SBSR,[315] the Commission has decided to consolidate Form SIP and Form SDR in order to make the registration process for SDRs more efficient; this approach has been endorsed by one commenter.[316] The Commission's revision of Rule 13n–1(c) relating to the publication of notice makes it procedurally consistent with the registration process applicable to SIPs under Exchange Act Section 11A(b)[317] and stems from the Commission's requirement that a registered SDR register as a SIP[318] and the Commission's revision of Form SDR to accommodate SIP registration. Exchange Act Section 11A(b)(3) provides that the Commission will, upon the filing of an application for registration as a SIP, publish notice of the filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application; within 90 days of the date of the publication of such notice (or within such longer period as to which the applicant consents), the Commission will by order grant such registration or institute proceedings to determine whether registration should be denied.[319] The Commission has determined to adopt Rule 13n–1(c) with revised text from the proposal that conforms the event preceding the period for Commission action, with respect to applications for registration as an SDR, to the event set forth in Section 11A(b)(3), with respect to applications for registration as a SIP.[320]

Second, the Commission is revising Rule 13n–1(c) from the proposal to clarify that the purpose of proceedings instituted pursuant to the rule is to determine whether an applicant's registration as an SDR should be granted or denied, rather than only denied (as proposed).[321] The Commission is further revising Rule 13n–1(c) from the proposal to provide that proceedings instituted pursuant to the rule will include notice of the issues under consideration (rather than grounds for denial under consideration, as proposed) and opportunity for hearing on the record and will be concluded within 180 days after the date of the publication of notice of the filing of the application for registration.[322] These

[306] *See* DTCC 2, *supra* note 19; ICE CB, *supra* note 26.

[307] DTCC 2, *supra* note 19 (''DTCC is concerned that the SEC's proposed implementation schedule for reporting to SDRs is heavily compressed and, when coupled with the temporary registration regime, may lead to compromised solutions, including operational and security compromises. . . . [P]otential SDRs are unlikely to be able to offer fully robust or efficient solutions for early registration, given that the final rules will be available relatively shortly before the effective date. DTCC recommends that appropriate due diligence is conducted with respect to the temporary registration process and that those diligence findings are either used to support transition of existing infrastructure or used for new entrants who can demonstrate that their infrastructure supports key operational capabilities, including 24/6 operation, real-time processing, multiple redundancy, and robust information security controls.''); *see also* DTCC 3, *supra* note 19 (''SDRs must be able to demonstrate an infrastructure which supports critical operational capabilities. . . . Assessment of these core capabilities is a critical component of any registration process, including a temporary registration.'').

[308] *See* Section VI.A.3.c of this release discussing the Commission's decision not to adopt the proposed temporary registration rule.

[309] DTCC 2, *supra* note 19 (requesting that the Commission combine Form SDR and Form SIP such that an SDR would register as an SDR and a SIP using only one form or permit either Form SDR or Form SIP to be the application for registration as both an SDR and an SIP); DTCC 3, *supra* note 19.

[310] *See* Section VI.A.1 of this release discussing combining Form SDR and Form SIP.

[311] ICE CB, *supra* note 26 (suggesting that the Commission take into consideration the SDR's provisional registration with the CFTC).

[312] Rule 13n–1(c).

[313] *See* Proposing Release, 75 FR at 77313, *supra* note 2. If a Form SDR is incomplete, then it may be deemed as not acceptable for filing. General Instruction 7 to Form SDR, as adopted, provides that ''[a] form that is not prepared and executed in compliance with applicable requirements may be deemed as not acceptable for filing.'' Further, the application must include information sufficient to allow the Commission to assess the applicant's ability to comply with the federal securities laws and the rules and regulations thereunder. Form SDR consists of instructions, a list of questions, a signature page, and a list of exhibits that the Commission requires in order to be able to determine whether an applicant is able to comply with the federal securities laws and the rules and regulations thereunder. An application on Form SDR may not be considered complete unless the applicant has filed, at a minimum, responses to all the questions listed, the signature page, and exhibits as required in Form SDR, and any other materials the Commission may require, upon request, in order to assess whether an applicant is able to comply with the federal securities laws and the rules and regulations thereunder. If the application is not complete, then the application will not be deemed to have been filed for the Commission's review.

[314] If, however, an SDR files an amendment to its application for registration after the Commission has already published notice of the filing of Form SDR and the Commission finds that the amendment renders the prior filing materially incomplete, then the 90-day period will reset from the time that the Commission deems the amended application to be complete for the Commission's review.

[315] *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 909).

[316] *See* DTCC 2, *supra* note 19; DTCC 3, *supra* note 19.

[317] *See* 15 U.S.C. 78k–1(b).

[318] *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 909).

[319] *See* 15 U.S.C. 78k–1(b)(3).

[320] A publication of notice of the filing of an application for registration is required in the SIP context.

[321] *See* Rule 13n–1(c)(2).

[322] *See* Rule 13n–1(c)(2). For the reasons provided above, in conjunction with the revision from the proposal to the event that precedes the 90-day period, and for consistency within the rule, the Commission is also revising from the proposal the event that precedes the 180-day period for

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revisions from the proposal are intended to make the rule internally consistent.[323]

The Commission is adopting Rule 13n–1(c) as proposed in all other respects. Rule 13n–1(c) provides that at the conclusion of proceedings instituted pursuant to the rule, the Commission, by order, will grant or deny such registration.[324] The Commission may extend the time for conclusion of such proceedings for up to 90 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the SDR consents.[325]

As noted in the Proposing Release, the Commission believes that the timeframes for reviewing applications for registration as an SDR are appropriate to allow Commission staff sufficient time to ask questions and, as needed, to request amendments or changes by SDRs to address legal or regulatory concerns before the Commission takes final action on an application for registration.[326] In addition, the registration process provides a mechanism for an SDR to demonstrate that it can comply with the federal securities laws and the rules and regulations thereunder.[327] One commenter requested that the Commission provide for expedited review of the commenter's application for registration as an SDR, in part because of its provisional registration with the CFTC as a swap data repository.[328] It is unclear what the commenter means by ''expedited review,'' but the Commission believes that the procedures for reviewing applications for registration as an SDR that the Commission is adopting in this release provide reasonable timeframes for the Commission's review of the applications and the Compliance Date for the SDR Rules will address the concerns of existing SDRs operating during the registration period.[329] Moreover, these procedures are consistent with the procedures for reviewing applications of other registrants by the Commission (*e.g.,* SIPs, broker-dealers, nationally recognized statistical ratings organizations, national securities exchanges, registered securities associations, and registered clearing agencies) although the timeframes for review vary.[330] Additionally, the Commission notes that its review of an SDR's application for registration is independent of the CFTC's review of a swap data repository's application for registration.[331]

The Commission will grant the registration of an SDR if the Commission finds that the SDR is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as an SDR, comply with any applicable provision of the federal securities laws and the rules and regulations thereunder, and carry out its functions in a manner consistent with the purposes of Exchange Act Section 13(n) and the rules and regulations thereunder.[332] The Commission will deny the registration of an SDR if the Commission does not make such a finding.[333]

One commenter indicated that applicants for registration as an SDR should be able to ''demonstrate that their infrastructure supports key operational capabilities, including 24/6 operation, real-time processing, multiple redundancy, and robust information security controls.'' [334] Similarly, the same commenter stated that ''SDRs must be able to demonstrate an infrastructure which supports critical operational capabilities'' and ''[a]ssessment of these core capabilities is a critical component of any registration process.'' [335] The Commission generally agrees with this commenter and believes that an SDR's infrastructure and operational capabilities are important factors in determining whether to grant an SDR's application for registration.[336]

In the Proposing Release, the Commission asked whether, in order to form a more complete and informed basis on which to determine whether to grant, deny, or revoke an SDR's registration, it should adopt a requirement that an SDR file with the Commission, as a condition of registration or continued registration, a review relating to the SDR's operational capacity and ability to meet its regulatory obligations.[337] The Commission did not receive any comments directly on this issue, but upon further consideration, the Commission has determined not to require an SDR to file with the Commission a review of the SDR's operational capacity and ability to meet its regulatory obligations because it is not clear that the benefits of such a requirement would justify the costs. However, in determining whether an applicant meets the criteria set forth in Rule 13n–1(c), the Commission will consider the application and any additional information obtained from the SDR, which may include information obtained in connection with an inspection or examination of the SDR. Additionally, in connection therewith, the Commission may consider, among other things, whether an applicant can demonstrate its operational capabilities and conduct its operations in compliance with its statutory and regulatory obligations. If an applicant (rather than its affiliate) is already registered with the Commission as, for example, a clearing agency, then Commission representatives may also take into account any recent examinations in its determination pursuant to Rule 13n–1(c)(3).

The Commission will consider a registered SDR's operational capacity and ability to meet its statutory and regulatory obligations to determine

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conclusion of Commission action on the application for registration as an SDR. In making this revision, the Commission is changing ''not later than 180 days'' to ''within 180 days'' for consistency within the rule.

[323] Proposed Rule 13n–1(c)(2) stated that the Commission may institute proceedings to determine whether registration should be ''denied,'' and that such proceedings include notice of the ''grounds for denial,'' but that at the conclusion of such proceedings, the Commission shall ''grant or deny'' registration. As adopted, the rule clarifies that the Commission may institute proceedings to determine whether registration should be ''granted or denied'' and that proceedings instituted pursuant to this rule must include notice of the ''issues under consideration.''

[324] Rule 13n–1(c)(2).

[325] Rule 13n–1(c)(2).

[326] Proposing Release, 75 FR at 77313, *supra* note 2. In addition to the applicant's registration on Form SDR, ''[a]s part of the application process, each SDR shall provide additional information to any representative of the Commission upon request.'' *See* Rule 13n–1(b).

[327] *See* Proposing Release, 75 FR at 77313, *supra* note 2 (discussing Rule 13n–1(c) and noting that ''the registration provides a mechanism for an SDR to demonstrate that it can comply with the federal securities laws and the rules and regulations thereunder'').

[328] *See* ICE CB, *supra* note 26.

[329] *See* Section V.C of this release discussing the Commission's efforts designed to minimize interference with ongoing operations of existing SDRs during the implementation of the SDR Rules.

[330] *See* Exchange Act Sections 11A(b)(3), 15(b), 15E(a)(2), and 19(a), 15 U.S.C. 78k–1(b)(3), 78o(b), 78o–7(a)(2), and 78s(a).

[331] *But see* ICE CB, *supra* note 26 (suggesting that the Commission take into consideration the SDR's provisional registration with the CFTC).

[332] Rule 13n–1(c)(3).

[333] *Id.*

[334] DTCC 2, *supra* note 19.

[335] DTCC 3, *supra* note 19.

[336] *See* Rule 13n–6 (requiring SDRs to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its systems provide adequate levels of capacity, integrity, resiliency, availability, and security); Rule 13n–1(c)(3) (discussing the standards for the Commission to grant registration of an SDR, including having the capacity to be able to assure the prompt, accurate, and reliable performance of its functions as an SDR, and comply with any applicable provision of the federal securities laws and the rules and regulations thereunder).

[337] Proposing Release, 75 FR at 77313, *supra* note 2.

whether the SDR should continue to operate as such or whether the Commission should take steps to revoke the SDR's registration. As provided in Exchange Act Section 13(n)(2), ''[e]ach registered security-based swap data repository shall be subject to inspection and examination by any representative of the Commission.'' [338] The results of such inspection and examination will be used to inform the Commission whether the SDR is complying with the federal securities laws and the rules and regulations thereunder. As discussed further below, under Rule 13n–2(e), if the Commission finds, on the record after notice and opportunity for hearing, that any registered SDR has, among other things, failed to comply with any provision of the federal securities laws and the rules and regulations thereunder, the Commission, by order, may revoke the SDR's registration.[339]

In considering initial applications for registration on Form SDR filed contemporaneously with the Commission, the Commission intends to process such applications for multiple SDRs accepting SBS transaction data from the same asset classes within the same period of time so as to address competition concerns that could arise if such SDRs were granted registration at different times.[340] Further, in light of the Commission's adoption of the requirement in Regulation SBSR for a registered SDR to register as a SIP,[341] the Commission is adopting Form SDR, which incorporates the requirements of Form SIP, as discussed in Section VI.A.1.c above. The Commission's review of an applicant's registration as an SDR on Form SDR will encompass review with respect to both SDR and SIP registration. The Commission contemplates that it will grant registrations to an applicant both as an SDR and as a SIP simultaneously.

3. Temporary Registration (Rule 13n–1(d))

a. Proposed Rule

As proposed, Rule 13n–1(d) provided a method for SDRs to register temporarily with the Commission. The proposed rule provided that, upon the request of an SDR, the Commission may grant temporary registration of the SDR that would expire on the earlier of: (1) The date that the Commission grants or denies (permanent) registration of the SDR, or (2) the date that the Commission rescinds the temporary registration of the SDR.[342]

b. Comments on the Proposed Rule

Two commenters submitted comments relating to this proposed rule.[343] One commenter recommended that the Commission establish clear standards and requirements for temporary registration.[344] Similarly, another commenter recommended that ''the Commission establish clearly articulated standards and requirements for temporary registration so that existing trade repositories may quickly begin to provide similar transparency to the [SBS] markets that is currently provided to the rest of the swaps market, thus facilitating the Commission's oversight of these markets.'' [345] That same commenter also expressed concern about the temporary registration provision, particularly the cumulative effect of the short time frame afforded for registration and the possibility that a temporary registration regime ''may lead to compromised solutions [at SDRs], including operational and security compromises.'' [346] Additionally, the commenter urged the Commission to ensure that the registration process does not interfere with the ongoing operation of existing SDRs.[347]

c. Final Rule

After considering the comments, the Commission has determined not to adopt proposed Rule 13n–1(d). As stated in the Proposing Release, the temporary registration provision would have enabled an SDR to comply with the Dodd-Frank Act upon its effective date (*i.e.,* the later of 360 days after the date of its enactment or 60 days after publication of the final rule implementing Exchange Act Section 13(n)) [348] regardless of any unexpected contingencies that may arise in connection with the filing of Form SDR. The proposed temporary registration would also have allowed the Commission to implement the registration requirements of the Dodd-Frank Act for SDRs while still giving the Commission sufficient time to review fully the application of an SDR after it becomes operational, but before granting a registration that is not limited in duration.

These concerns were motivated primarily by the short timeframe between when the SDR Rules were first proposed and when registration would have been required (*i.e.,* as of July 16, 2011). However, the exemptive relief provided by the Commission, which was effective on June 15, 2011,[349] addressed this primary purpose for temporary registration. Further, the Compliance Date for the SDR Rules [350] should provide sufficient time for SDRs to analyze and understand the final SDR Rules, to develop and test new systems required to comply with the Dodd-Frank Act's provisions governing SDRs and the SDR Rules, to prepare and file Form SDR, to demonstrate their ability to meet the criteria for registration set forth in Rule 13n–1(c)(3), and to obtain registration with the Commission. Therefore, the Commission believes that it has addressed commenters' concerns relating to interference with the ongoing

[338] Exchange Act Section 13(n)(2), 15 U.S.C. 78m(n)(2). *See also* Section VI.D.2 of this release discussing Rule 13n–4(b)(1), which implements Exchange Act Section 13(n)(2).

[339] *See* Section VI.B of this release discussing Rule 13n–2(e).

[340] Certain unexpected events that raise compliance concerns with respect to one applicant but not another, such as deficiencies identified in connection with the Commission's consideration of whether an applicant meets the criteria set forth in Rule 13n–1(c), may interfere with the Commission's ability to process initial applications for registration within the same period of time.

[341] *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 909).

[342] Proposed Rule 13n–1(d).

[343] *See* DTCC 2, *supra* note 19; ICE CB, *supra* note 26; *see also* DTCC 5, *supra* note 19.

[344] ICE CB, *supra* note 26.

[345] DTCC 5, *supra* note 19 (''Further clarity on the standards and process that will be utilized to grant temporary registration will also provide applicants to register as [SDRs] with a better understanding of the Commission's expectations with respect to their obligations and requirements prior to being granted full registration.'').

[346] DTCC 2, *supra* note 19 (''DTCC is concerned that the SEC's proposed implementation schedule for reporting to SDRs is heavily compressed and, when coupled with the temporary registration regime, may lead to compromised solutions, including operational and security compromises . . . . [P]otential SDRs are unlikely to be able to offer fully robust or efficient solutions for early registration, given that the final rules will be available relatively shortly before the effective date. DTCC recommends that appropriate due diligence is conducted with respect to the temporary registration process and that those diligence findings are either used to support transition of existing infrastructure or used for new entrants who can demonstrate that their infrastructure supports key operational capabilities, including 24/6 operation, real-time processing, multiple redundancy, and robust information security controls.''); *see also* DTCC 3, *supra* note 19 (''SDRs must be able to demonstrate an infrastructure which supports critical operational capabilities . . . . Assessment of these core capabilities is a critical component of any registration process, including a temporary registration.'').

[347] DTCC 2, *supra* note 19; *see also* DTCC 5, *supra* note 19 (stating the same and ''[w]hether done through a phasing-in of final [SDR] rules or the Commission's prompt issuance of temporary registration conditioned on implementation of enhancements to comply more fully with specified provisions, the Commission should ensure the continuation of counterparty reporting and the ability of the entities currently performing the functions of an [SDR] to receive and maintain current trade information on an ongoing basis'').

[348] Proposing Release, 75 FR at 77314, *supra* note 2; *see also* Dodd-Frank Act Section 774.

[349] *See* Effective Date Order, 76 FR at 36306, *supra* note 9.

[350] *See* Section V.C of this release discussing the Compliance Date.

operation of existing SDRs.[351] For these reasons, the Commission no longer believes that a temporary registration regime for SDRs is necessary or appropriate.

4. Amendment on Form SDR (Proposed Rule 13n–1(e)/Final Rule 13n–1(d))

a. Proposed Rule

As proposed, Rule 13n-1(e) would require an SDR to file promptly an amendment on Form SDR (''interim amendment'') if any information reported in Items 1 through 16, 25, and 46 [352] of Form SDR or in any amendment thereto is or becomes inaccurate for any reason. The Proposing Release indicated that an SDR would generally be required to file such an amendment within 30 days from the time such information becomes inaccurate.[353] In addition, an SDR would be required to file an annual amendment on Form SDR within 60 days after the end of its fiscal year.

b. Comments on the Proposed Rule

The Commission did not receive any comments relating to this proposed rule.

c. Final Rule

The Commission is adopting Rule 13n–1(e) as proposed, redesignated as Rule 13n–1(d). Under Rule 13n–1(d), if any information reported in Items 1 through 17, 26, and 48 of Form SDR (designated as Items 1 through 16, 25, and 46 in proposed Rule 13n–1(e)) or in any amendment thereto is or becomes inaccurate for any reason, whether before or after the registration has been granted, an SDR shall promptly file an amendment on Form SDR updating the information. An SDR should file an interim amendment as soon as practicable, and generally no later than 30 days from the time such information becomes inaccurate in order for the filing to be viewed as ''promptly'' filed. For example, an SDR should file an amendment promptly after any change in the identity of its CCO or if the biographical information provided about its CCO changes (*e.g.,* if the CCO becomes the subject of certain specified SRO actions).[354]

In addition to interim amendments, an SDR is required to file a comprehensive annual amendment on Form SDR, including all items subject to interim amendments, within 60 days after the end of its fiscal year.[355] This annual amendment must be fully restated and complete, including all pages, answers to all items, together with exhibits.[356] This annual amendment must also indicate which items have been amended since the last annual amendment, or if the SDR has not yet filed an annual amendment, since the SDR's application for registration. Rule 13n–1(d) is consistent with the Commission's requirements for other registrants (*e.g.,* national securities exchanges, broker-dealers, transfer agents, SIPs) to file updated and annual amendments to registration forms with the Commission.[357] The Commission believes that such amendments are important to obtain updated information on each SDR, which will assist the Commission in determining whether each SDR continues to be in compliance with the federal securities laws and the rules and regulations thereunder. Obtaining updated information will also assist Commission representatives in their inspection and examination of an SDR. The Commission may make filed amendments available on its Web site, except for information where confidential treatment is requested by the SDR [358] and granted by the Commission.

5. Service of Process and Non-Resident SDRs (Proposed Rules 13n–1(f) and 13n–1(g)/Final Rules 13n–1(e) and 13n–1(f))

a. Proposed Rule

As proposed, Rule 13n–1(f) would require each SDR to designate and authorize on Form SDR an agent in the United States, other than a Commission member, official, or employee, to accept any notice or service of process, pleadings, or other documents in any action or proceedings brought against the SDR to enforce the federal securities laws and the rules and regulations thereunder. Proposed Rule 13n–1(g) would require any non-resident SDR applying for registration to certify on Form SDR and provide an opinion of counsel that the SDR can, as a matter of law, provide the Commission with prompt access to the SDR's books and records and that the SDR can, as a matter of law, submit to onsite inspection and examination by the Commission.

b. Comments on the Proposed Rule

The Commission did not receive any comments relating to proposed Rule 13n–1(f). One commenter submitted a comment relating to proposed Rule 13n–1(g).[359] The commenter expressed concern that proposed Rule 13n–1(g) would subject non-resident SDRs to a stricter regime than that applicable to resident SDRs.[360]

c. Final Rule

The Commission is adopting Rule 13n–1(f) as proposed, redesignated as Rule 13n–1(e). Rule 13n–1(e) requires each SDR to designate and authorize on Form SDR an agent in the United States,

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[351] *See, e.g.,* DTCC 2, *supra* note 19; DTCC 5, *supra* note 19.

[352] The Commission notes that the Proposing Release, proposed Rule 13n–1(e), and General Instruction 6 to proposed Form SDR inadvertently referred to Item 44 instead of Item 46. *See* Proposing Release, 75 FR at 77314, 77315, and 77374, *supra* note 2. However, the discussion in the Proposing Release made clear that the Commission expected a non-resident SDR to promptly amend its Form SDR after any changes in the legal and regulatory framework that would impact the SDR's ability to provide the Commission with prompt access to the SDR's books and records, and such amendment should include a revised opinion of counsel. *See* Proposing Release, 75 FR at 77314, *supra* note 2. This discussion was clearly referring to the requirements in proposed Item 46 (requiring opinion of counsel by non-resident SDRs), and not proposed Item 44 (requiring plan to ensure data is maintained after the applicant withdraws from registration).

[353] Proposing Release, 75 FR at 77314, *supra* note 2.

[354] *See* Section VI.J of this release discussing the CCO requirements in Rule 13n–11.

[355] *See* Rule 13n–1(d).

[356] The General Instructions to Form SDR have been amended from the proposal to clarify what items and exhibits need to be included when filing an amendment. Additionally, the Commission is revising Form SDR from the proposal to include separate designations on the form for an annual amendment and an amendment other than an annual amendment, rather than a single designation that covers any amendment. The signature block to Form SDR has also been amended from the proposal to clarify that an SDR that files an amendment (other than an annual amendment) need only represent that all unamended information contained in Items 1 through 17, 26, and 48 remains true, current, and complete as filed, rather than all unamended items and exhibits to Form SDR.

[357] *See* Exchange Act Rule 6a–2, 17 CFR 240.6a–2 (requiring national securities exchanges to amend some information on Form 1 within 10 days, and other information annually); Exchange Act Rule 15b3–1, 17 CFR 240.15b3–1 (requiring broker-dealers to promptly amend applications for registration); Exchange Act Rules 17Ac2–1 and 17Ac2–2, 17 CFR 240.17Ac2–1 and 240.17Ac2–2 (requiring transfer agents to amend information on Form TA–1 within 60 days, and to file an annual report); Rule 609 of Regulation NMS, 17 CFR 242.609, and Form SIP, 17 CFR 249.1001 (requiring SIPs to amend certain items on Form SIP promptly and also requiring an annual amendment).

[358] As discussed above, the Commission is adopting technical amendments to Exchange Act Rule 24b–2 to clarify that the confidential portion of electronic filings by SDRs must be filed electronically and to require SDRs to request confidential treatment electronically. The Commission is also adopting technical amendments to Rule 101 of Regulation S–T to provide that, except as otherwise provided, all filings by SDRs, including any information with respect to which confidential treatment is requested, must be filed electronically.

[359] *See* ESMA, *supra* note 19.

[360] ESMA, *supra* note 19 (''According to our reading, non-resident SDRs are actually subject to a stricter regime than the resident ones, as they need to provide a legal opinion certifying that they can provide the SEC with prompt access to their books and records and that they can be subject to onsite inspections and examinations by the SEC.'').

other than a Commission member, official, or employee, to accept any notice or service of process, pleadings, or other documents in any action or proceedings brought against the SDR to enforce the federal securities laws and the rules and regulations thereunder. If an SDR appoints a different agent to accept such notice or service of process, then the SDR will be required to file promptly an amendment on Form SDR updating this information.[361] The requirement applies equally to both SDRs within the United States and non-resident SDRs that are required to register with the Commission. Rule 13n–1(e) is intended to conserve the Commission's resources and to minimize any logistical obstacles (*e.g.,* locating defendants or respondents within the United States or abroad) that the Commission may encounter when attempting to effect service. For instance, by requiring an SDR to designate an agent for service of process in the United States, and by prohibiting an SDR from designating a Commission member, official, or employee as its agent for service of process, the rule will reduce a significant resource burden on the Commission, including resources to locate agents of registrants overseas and keep track of their whereabouts.

After considering the comment to proposed Rule 13n–1(g), the Commission is adopting Rule 13n–1(g) as proposed, redesignated as Rule 13n–1(f), with one modification. Rule 13n–1(f) requires any non-resident SDR applying for registration pursuant to this rule to certify on Form SDR that the SDR can, as a matter of law, and will provide the Commission with prompt access to the SDR's books and records and can, as a matter of law, and will submit to onsite inspection and examination by the Commission. Rule 13n–1(f) also requires any non-resident SDR applying for registration to provide an opinion of counsel that the SDR can, as a matter of law, provide the Commission with prompt access to the SDR's books and records and can, as a matter of law, submit to onsite inspection and examination by the Commission. The final rule differs from the proposed rule in that, as proposed, a non-resident SDR would be required to certify that it ''can, as a matter of law'' provide prompt access to the SDR's books and records and submit to onsite inspection and examination. As adopted, the rule requires the non-resident SDR to certify that it ''can, as a matter of law, and will'' do those things. This change from the proposal is intended to make clear to a non-resident SDR that it is making an affirmative commitment to comply with its obligation to provide the Commission with prompt access to the SDR's books and records and submit to onsite inspection and examination.[362]

While the Commission acknowledges that the rule will impose an additional requirement on non-resident SDRs, for the reasons stated in Section VI.A.1.c above relating to Form SDR's certification and legal opinion requirements, the Commission continues to believe that before granting registration to a non-resident SDR, it is appropriate to obtain a certification and opinion of counsel that such person is in a position to provide legally the Commission with prompt access to the SDR's books and records and to be subject to onsite inspection and examination by the Commission.[363]

6. Definition of ''Report'' (Proposed Rule 13n–1(h)/Final Rule 13n–1(g))

a. Proposed Rule

Proposed Rule 13n–1(h) provided that ''[a]n application for registration or any amendment thereto that is filed pursuant to this [rule] shall be considered a 'report' filed with the Commission for purposes of [Exchange Act Sections 18(a) and 32(a)] and the rules and regulations thereunder and other applicable provisions of the United States Code and the rules and regulations thereunder.''

b. Comments on the Proposed Rule

The Commission did not receive any comments relating to this proposed rule.

c. Final Rule

The Commission is adopting Rule 13n–1(h) as proposed, redesignated as Rule 13n–1(g). Rule 13n–1(g) provides that ''[a]n application for registration or any amendment thereto that is filed pursuant to this [rule] shall be considered a 'report' filed with the Commission for purposes of [Exchange Act Sections 18(a) and 32(a)] and the rules and regulations thereunder and other applicable provisions of the United States Code and the rules and regulations thereunder.'' Exchange Act Sections 18(a) and 32(a) set forth the potential liability for a person who makes, or causes to be made, any false or misleading statement in any ''report'' filed with the Commission (*e.g.,* Form SDR).[364] The Commission believes that subjecting a person to this potential liability will enhance the reliability and credibility of any ''report'' that is filed with the Commission pursuant to Rule 13n–1 because the person will have incentive to take steps to verify the accuracy of the report in order to avoid liability.

B. Withdrawal From Registration; Revocation and Cancellation (Rule 13n–2)

1. Proposed Rule

Proposed Rule 13n–2 set forth a process for a person to withdraw its registration as an SDR and for the Commission to revoke, suspend, or cancel an SDR's registration. With respect to proposed Rule 13n–2(b), a registered SDR would be required to withdraw from registration by filing a notice of withdrawal with the Commission. The proposed rule would require the SDR to designate on its notice of withdrawal a person associated with the SDR to serve as the custodian of the SDR's books and records.[365] Prior to filing a notice of withdrawal, an SDR would be required to file an amended Form SDR to update any inaccurate information.[366] If there is no inaccurate information to update, then an SDR would include a confirmation to that effect in its notice of withdrawal.

[361] *See* Rule 13n–1(d) (requiring an SDR to promptly file an amendment on Form SDR updating information in Item 11 of Form SDR).

[362] *See* Proposing Release, 75 FR at 77312, *supra* note 2 (asking whether ''the representations that would be required to be made by the person who signs Form SDR [are] appropriate and sufficiently clear,'' and whether ''the Commission [should] require any additional or alternative representations''). *See also* Exchange Act Section 13(n)(2) and Rule 13n–4(b)(1) (both requiring registered SDRs to be subject to inspection and examination by any representative of the Commission) and Rule 13n–7(b) (requiring SDRs to keep and preserve books and records and promptly furnish them to any representative of the Commission upon request).

[363] *See also* Section VI.D.2 of this release discussing inspection and examination by Commission representatives.

[364] Exchange Act Section 18(a) provides, in part, that ''[a]ny person who shall make or cause to be made any statement in any . . . report . . . which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, shall be liable to any person (not knowing that such statement was false or misleading) who, in reliance upon such statement, shall have purchased or sold a security at a price which was affected by such statement, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading.'' 15 U.S.C. 78r(a). Exchange Act Section 32(a) provides, in part, that ''[a]ny person who willfully and knowingly makes, or causes to be made, any statement in any . . . report . . . which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than $5,000,000, or imprisoned not more than 20 years, or both, except that when such person is a person other than a natural person, a fine not exceeding $25,000,000 may be imposed.'' 15 U.S.C. 78ff(a).

[365] Proposed Rule 13n–2(b).

[366] Proposed Rule 13n–2(b).

Proposed Rule 13n–2(c) set forth the effective date of a notice of withdrawal from registration. Proposed Rule 13n–2(d) provided that a notice of withdrawal from registration that is filed pursuant to this section shall be considered a ''report'' filed with the Commission for purposes of Exchange Act Sections 18(a) and 32(a) and the rules and regulations thereunder and other applicable provisions of the United States Code and the rules and regulations thereunder.[367] Proposed Rule 13n–2(e) set forth the basis for the Commission, by order, to revoke the registration of an SDR. Finally, proposed Rule 13n–2(f) provided that the Commission, by order, may cancel the registration of an SDR if it finds that the SDR is no longer in existence or has ceased to do business in the capacity specified in its application for registration.

2. Comments on the Proposed Rule

The Commission did not receive any comments relating to this proposed rule.

3. Final Rule

The Commission is adopting Rule 13n–2 as proposed with a few modifications.[368] The Commission is revising the proposed rule to eliminate the requirement for a registered SDR to file a separate notice of withdrawal with the Commission in order to streamline the withdrawal process and make it more efficient for SDRs and Commission staff. Instead, Rule 13n–2(b) permits a registered SDR to withdraw from registration by filing Form SDR electronically in a tagged data format; [369] when making such a filing, the SDR must indicate on Form SDR that it is filed for the purpose of withdrawing from registration.[370] The Commission is also revising the proposed rule to give an SDR more flexibility in designating the custodian of the SDR's books and records by requiring the SDR to designate a person to serve as the custodian of the SDR's books and records; [371] the person does not necessarily need to be associated with an SDR, as proposed, and thus, the SDR has the option to designate an unaffiliated entity, such as another registered SDR, as the custodian. The purpose of this requirement is to ensure that an SDR's books and records are maintained and available to the Commission and other regulators after the SDR withdraws from registration, and to assist the Commission in enforcing Rules 13n–5(b)(7) [372] and 13n–7(c).[373]

When filing a Form SDR as a withdrawal from registration, the SDR should update any inaccurate information contained in its most recently filed Form SDR.[374] This requirement is substantively the same as the proposal, which would require an SDR, prior to filing a notice of withdrawal, to file an amended Form SDR to update any inaccurate information.[375] If there is no inaccurate information to update, then an SDR should include a confirmation to that effect when filing Form SDR. The Commission may make filed withdrawals available on its Web site, except for information where confidential treatment is requested by the SDR [376] and granted by the Commission.

Rule 13n–2(c) provides that a withdrawal from registration filed by an SDR on Form SDR shall become effective for all matters (except as provided in Rule 13n–2(c)) on the 60th day after the filing thereof with the Commission, within such longer period of time as to which such SDR consents or which the Commission, by order, may determine as necessary or appropriate in the public interest or for the protection of investors, or within such shorter period of time as the Commission may determine. A withdrawal from registration filed on Form SDR that is not prepared and executed in compliance with applicable requirements may be deemed as not acceptable for filing.[377] Rule 13n–2(d) provides that a withdrawal from registration filed on Form SDR that is filed pursuant to this rule shall be considered a ''report'' filed with the Commission for purposes of Exchange Act Sections 18(a) and 32(a) and the rules and regulations thereunder and other applicable provisions of the United States Code and the rules and regulations thereunder.[378]

Under Rule 13n–2(e), if the Commission finds, on the record after notice and opportunity for hearing, that any registered SDR has obtained its registration by making any false and misleading statements with respect to any material fact or has violated or failed to comply with any provision of the federal securities laws and the rules and regulations thereunder, the Commission, by order, may revoke the registration. The rule further provides that pending final determination of whether any registration be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing on the record, to be necessary or appropriate in the public interest or for the protection of investors.[379] Finally, Rule 13n–2(f) provides that if the Commission finds

[367] 15 U.S.C. 78r(a), 78ff(a).

[368] The Commission did not receive any comments on the definitions of ''control'' and ''person associated with a security-based swap data repository'' in proposed Rule 13n–2(a), but is omitting these definitions in Rule 13n–2 because the Commission's revision of the rule, as discussed in this section, no longer uses these terms.

[369] The Commission is revising proposed Rule 13n–2(a) to add the definition of ''tag'' (including the term tagged) to have the same meaning as set forth in Rule 11 of Regulation S–T (17 CFR 232.11). This definition is added in order to conform the requirements for filing Form SDR to withdraw registration with the requirements for filing Form SDR to register or amend registration pursuant to Rule 13n–1.

[370] Exchange Act Section 11A(b)(4) states that ''[a] registered securities information processor may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission.'' 15 U.S.C. 78k–1(b)(4). A SIP that is dually-registered as an SDR may withdraw from registration by filing Form SDR, which the Commission would deem as a written notice of withdrawal under Exchange Act Section 11A(b)(4). In addition, the Commission has modified the heading of this rule. As proposed, the heading of this rule was ''Withdrawal from registration.'' As adopted, the heading is ''Withdrawal from registration; revocation and cancellation.'' This change in the heading provides a more accurate description of the subject of the rule.

[371] Rule 13n–2(b). The Commission is amending Form SDR from the proposal to add new Item 12 to implement the requirement in Rule 13n–2(b) for an SDR to designate a custodian of its books and records if it withdraws from registration. *See* new Item 12 to Form SDR and Section VI.A.1 of this release discussing Form SDR. The Commission has also made some conforming changes to proposed Form SDR and the General Instructions to make clear that the form may be used for withdrawal of registration. For example, General Instruction 1 now indicates that Form SDR and exhibits thereto are to be filed electronically in a tagged data format in connection with withdrawing an SDR's registration. *See* General Instruction 1 to Form SDR.

[372] *See* Section VI.E.7 of this release discussing requirement that an SDR that ceases to do business preserve, maintain, and make accessible transaction data and historical positions.

[373] *See* Section VI.G.3 of this release discussing requirement that an SDR that ceases to do business preserve, maintain, and make accessible certain records relating to its business.

[374] *See* Rule 13n–2(b). The General Instructions to Form SDR have been amended from the proposal to clarify what items and exhibits need to be included when filing a withdrawal. *See* General Instruction 11 to Form SDR.

[375] Proposed Rule 13n–2(b).

[376] As discussed in Section VI.A.1.c of this release, the Commission is adopting technical amendments to Exchange Act Rule 24b–2 to clarify that the confidential portion of electronic filings by SDRs must be filed electronically and to require SDRs to request confidential treatment electronically. The Commission is also adopting technical amendments to Rule 101 of Regulation S–T to provide that, except as otherwise provided, all filings by SDRs, including any information with respect to which confidential treatment is requested, must be filed electronically.

[377] *See* General Instruction 7 to Form SDR.

[378] *See* Section VI.A.6 of this release discussing definition of ''report.''

[379] Rule 13n–2(e).

that a registered SDR is no longer in existence or has ceased to do business in the capacity specified in its application for registration, the Commission, by order, may cancel the registration.[380]

The Commission believes that it is important to set forth a process for a person to withdraw its registration as an SDR and for the Commission to be able to revoke, suspend, or cancel an SDR's registration, similar to the approach that it takes with some of its other registrants.[381]

C. Registration of Successor to Registered SDR (Rule 13n–3)

1. Proposed Rule

Proposed Rule 13n–3 would govern the registration of a successor to a registered SDR. Successor registration would be accomplished either by filing a new application on Form SDR or, in certain circumstances, by filing an amendment on Form SDR.

2. Comments on the Proposed Rule

The Commission did not receive any comments relating to this proposed rule.

3. Final Rule

The Commission is adopting Rule 13n–3 as proposed, with minor revisions to track the language of Rules 13n–1 and 13n–2 as adopted. Rule 13n–3 governs the registration of a successor to a registered SDR. Because this rule is substantially similar to Exchange Act Rule 15b1–3,[382] which governs the registration of a successor to a registered broker-dealer, the same concepts that the Commission explained when it adopted amendments to Rule 15b1–3 are applicable here.[383]

a. Succession by Application

Rule 13n–3(a) provides that in the event that an SDR succeeds to and continues the business of an SDR registered pursuant to Exchange Act Section 13(n), the registration of the predecessor shall be deemed to remain effective as the registration of the successor if, within 30 days after such succession, the successor files an application for registration on Form SDR, and the predecessor files a withdrawal from registration on Form SDR with the Commission.[384] A successor will not be permitted to ''lock in'' the 30-day window period by filing an application for registration that is incomplete in material respects.

Rule 13n–3(a) further provides that the registration of the predecessor SDR shall cease to be effective 90 days after the date of the publication of notice of the filing of an application for registration on Form SDR by the successor SDR.[385] In other words, the 90-day period will not begin to run until a complete Form SDR has been filed by the successor with the Commission and the Commission publishes notice of the filing of Form SDR to afford interested persons an opportunity to submit written comments concerning such application. This 90-day period is consistent with the time period set forth in final Rule 13n–1, pursuant to which the Commission would have 90 days to grant registration or institute proceedings to determine if registration should be granted or denied.

The following are examples of the types of successions that would be required to be completed by filing an application: (1) An acquisition, through which an unregistered person purchases or assumes substantially all of the assets and liabilities of an SDR and then operates the business of the SDR, (2) a consolidation of two or more registered SDRs, resulting in their conducting business through a new unregistered SDR, which assumes substantially all of the assets and liabilities of the predecessor SDRs, and (3) dual successions, through which one registered SDR subdivides its business into two or more new unregistered SDRs.

b. Succession by Amendment

Rule 13n–3(b) provides that notwithstanding Rule 13n–3(a), if an SDR succeeds to and continues the business of a registered predecessor SDR, and the succession is based solely on (1) a change in the predecessor's date or state of incorporation, (2) form of organization, or (3) composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor SDR on Form SDR to reflect these changes. Such amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor. In all three types of successions, the predecessor must cease operating as an SDR. The Commission believes that it is appropriate to allow a successor to file an amendment to the predecessor's Form SDR in these three types of successions.

c. Scope and Applicability of Rule 13n–3

The purpose of Rule 13n–3 is to enable a successor SDR to operate without an interruption of business by relying for a limited period of time on the registration of the predecessor SDR until the successor's own registration becomes effective. The rule is intended to facilitate the legitimate transfer of business between two or more SDRs and to be used only if there is a direct and substantial business nexus between the predecessor and the successor SDR. The rule cannot be used when a registered SDR sells its registration, eliminates substantial liabilities, spins off personnel, or facilitates the transfer of the registration of a ''shell'' organization that does not conduct any business. No person will be permitted to rely on Rule 13n–3 unless it is acquiring or assuming substantially all of the assets and liabilities of the predecessor's SDR business.

Rule 13n–3 does not apply to reorganizations that involve only registered SDRs. In those situations, the registered SDRs need not use the rule because they can continue to rely on their existing registrations. The rule also does not apply to situations in which the predecessor intends to continue to engage in SDR activities. Otherwise, confusion may result as to the identities and registration statuses of the parties. If a person acquires some or all of the shares of a registered SDR, or if one

[380] Where an SDR anticipates that it will cease to exist or cease to do business as an SDR, the SDR may withdraw from registration by filing a withdrawal on Form SDR pursuant to Rule 13n–2(b). Regardless of whether the SDR withdraws from registration pursuant to Rule 13n–2(b), the Commission revokes the SDR's registration pursuant to Rule 13n–2(e), or the Commission cancels the SDR's registration pursuant to Rule 13n–2(f), the SDR is obligated to comply with Rules 13n–5(b)(7) and 13n–7(c), which are discussed in Sections VI.E.7 and VI.G.3 of this release, respectively.

[381] Rule 13n–2 is similar to Exchange Act Rule 15b6–1, 17 CFR 240.15b6–1, which relates to withdrawal from registration as a broker-dealer, and includes a provision similar to a provision in Exchange Act Section 15(b)(5), 15 U.S.C. 78o(b)(5) (stating that ''[i]f the Commission finds that any registered broker or dealer is no longer in existence or has ceased to do business as a broker or dealer, the Commission, by order, shall cancel the registration of such broker or dealer'').

[382] *See* 17 CFR 240.15b1–3.

[383] *See* Registration of Successors to Broker-Dealers and Investment Advisers, Exchange Act Release No. 31661 (Dec. 28, 1992), 58 FR 7 (Jan. 4, 1993).

[384] As adopted, Rule 13n–2 differs from the proposal by requiring a ''filing a withdrawal from registration on Form SDR'' rather than ''filing a notice of withdrawal.'' The Commission is revising Rule 13n–3(a) from the proposal to track the language of Rule 13n–2.

[385] As adopted, Rule 13n–1(c) differs from the proposal by starting the 90-day period from the publication of notice of the filing of Form SDR rather than from the filing of Form SDR. The Commission is revising Rule 13n–3(a) from the proposal to track more closely the language of Rule 13n–1(c). As discussed in Section VI.A.2.c of this release, the Commission is revising Rule 13n–1(c) from the proposal to make it procedurally consistent with the registration process applicable to SIPs and the rule stems from the Commission's requirement that a registered SDR register as a SIP and the Commission's revision of Form SDR to accommodate SIP registration.

registered SDR purchases part or all of the business assets or assumes personnel of another registered SDR, then reliance on this rule would not be necessary.[386]

D. Enumerated Duties and Core Principles (Rule 13n–4)

Dodd-Frank Act Section 763(i) requires an SDR to comply with the requirements and core principles described in Exchange Act Section 13(n) as well as any requirement that the Commission prescribes by rule or regulation in order to be registered and maintain registration as an SDR with the Commission.[387] After considering comments, the Commission is adopting Rule 13n–4 as proposed, with modifications.

The Commission is not adopting proposed Rules 13n–4(b)(9) and (10), which address relevant authorities' access to SBS data maintained by SDRs. As discussed below, the Commission anticipates soliciting additional public comment regarding relevant authorities' access to SBS data maintained by SDRs.

1. Definitions (Rule 13n–4(a))

a. Proposed Rule

Proposed Rule 13n–4(a) defined the following terms: ''affiliate,'' ''board,'' ''control,'' ''director,'' ''direct electronic access,'' ''end-user,'' ''market participant,'' ''nonaffiliated third party,'' and ''person associated with a security-based swap data repository.''

b. Comments on the Proposed Rule

The Commission received one comment on the proposed definitions in the context of the SDR Rules.[388] Specifically, one commenter believed that the Commission's requirement in the definition of ''direct electronic access'' that data is ''updated at the same time as the [SDR's] data is updated'' may pose ''operational difficulties that do not outweigh the marginal benefits to the Commission.'' [389] The commenter also believed that ''[t]he Commission's proposed definition provides for no latency between the moment when an [SDR's] records are updated and when the systems used by the Commission (or its designee with direct electronic access) are updated.'' [390] For these reasons, the commenter suggested that the Commission ''allow time for an [SDR] to validate, process, and store the data received prior to populating the data to the environment that will be utilized to provide such direct electronic access to the Commission.'' [391]

c. Final Rule

After considering the comment, the Commission is adopting Rule 13n–4(a) as proposed, with modifications related to the definition of ''end-user.'' [392] Specifically, the Commission is adopting Rule 13n–4(a) without the definition of ''end-user.'' As discussed above, the Commission proposed rules that would require SDRs to collect data related to monitoring the compliance and frequency of end-user clearing exemption claims.[393] In anticipation that the Commission will consider final rules relating to end-users in a separate rulemaking, the Commission has decided not to adopt the proposed definition of ''end-user'' in this release. The Commission believes that it is better to address the issue of end-users more fully in that release than in this release.

The Commission is adopting the definition of ''direct electronic access'' as proposed to mean ''access, which shall be in a form and manner acceptable to the Commission, to data stored by [an SDR] in an electronic format and updated at the same time as the [SDR]'s data is updated so as to provide the Commission or any of its designees with the ability to query or analyze the data in the same manner that the [SDR] can query or analyze the data.'' This includes access to all transaction data and positions, as defined in Rule 13n–5(a),[394] and related identifying information, such as transaction IDs and time stamps.[395] With respect to one commenter's view that requiring SBS data to be updated at the same time as the data is updated at an SDR may pose ''operational difficulties that do not outweigh the marginal benefits to the Commission,'' [396] the Commission believes that its definition of ''direct electronic access'' is necessary for the Commission's adequate oversight of the SBS market. The commenter asserted that the Commission's definition of ''direct electronic access'' ''provides for no latency between the moment when an [SDR's] records are updated and when the systems used by the Commission (or its designee with direct electronic access) are updated.'' [397] The Commission understands that latency is inherent when updating systems, and that there may be some time lag between when the SDR receives and updates the data and when the updated data is available for the Commission to access. The Commission also understands that an SDR needs to check the data for errors and omissions and process the data before providing the data to the Commission or its designees. Otherwise, the Commission or its designees will not be able to query or analyze the data. Thus, by referencing to the Commission's or its designees' ability to query or analyze the data in the definition of ''direct electronic access,'' the Commission anticipates that there may be a lag time for SDRs to check and process the data before providing the data to the Commission or its designees. The Commission notes, however, that once an SDR checks and processes the data, the SDR is required to provide the Commission or its designees with the ability to access the checked and processed data at the same time as the checked and processed data is updated in the SDR's records.

2. Enumerated Duties (Rule 13n–4(b))

a. Proposed Rule

Proposed Rule 13n–4(b) would incorporate an SDR's duties that are enumerated in Exchange Act Sections 13(n)(2), 13(n)(5), and 13(n)(6),[398] which require each SDR to: (1) Subject itself to

[386] In the case of the purchase of the business assets or assumption of the personnel of one registered SDR by another SDR, the purchasing SDR would file an amendment on Form SDR to reflect any changes in its operations, while the other SDR would either file a Form SDR to withdraw its registration or file an interim amendment on the form, depending on whether the SDR remains in the SDR business.

[387] *See* Exchange Act Section 13(n)(3), 15 U.S.C. 78m(n)(3), as added by Dodd-Frank Act Section 763(i). The Dodd-Frank Act authorizes the Commission to establish additional requirements for SDRs by rule or regulation. Exchange Act Sections 13(n)(4)(B), 13(n)(7)(D), and 13(n)(9), 15 U.S.C. 78m(n)(4)(B), 78m(n)(7)(D), and 78m(n)(9), as added by Dodd-Frank Act Section 763(i).

[388] *See* DTCC 5, *supra* note 19. *See also supra* note 247 (discussing a general comment regarding the term ''affiliate'').

[389] DTCC 5, *supra* note 19.

[390] DTCC 5, *supra* note 19.

[391] DTCC 5, *supra* note 19.

[392] The Commission is also correcting a typographical error in the proposed rule. Proposed Rule 13n–4(a)(3)(ii) referred to the right to vote 25 percent ''of'' more of a class of securities. *See* Proposing Release, 75 FR at 77367, *supra* note 2. As adopted, Rule 13n–4(a)(3)(ii) refers to the right to vote 25 percent ''or'' more of a class of securities. In addition, certain definitions are being renumbered due to the removal of the definition of ''end-user.''

[393] *See* End-User Exception Proposing Release, *supra* note 15.

[394] *See* Section VI.E.1 of this release discussing the definition of ''transaction data'' and Section VI.E.2 of this release discussing the definition of ''position.''

[395] *See* Regulation SBSR Adopting Release, *supra* note 13 (Rules 901(f) and (g)).

[396] *See* DTCC 5, *supra* note 19.

[397] *See* DTCC 5, *supra* note 19 (suggesting that the Commission ''allow time for an [SDR] to validate, process, and store the data received prior to populating the data to the environment that will be utilized to provide such direct electronic access to the Commission'').

[398] Exchange Act Section 13(n), 15 U.S.C. 78m(n).

inspection and examination by the Commission; (2) accept SBS data as prescribed by Regulation SBSR; [399] (3) confirm with both counterparties to the SBS the accuracy of the data that was submitted; (4) maintain the data as prescribed by the Commission; (5) provide direct electronic access to the Commission or any of its designees; (6) provide certain information as the Commission may require to comply with Exchange Act Section 13(m); [400] (7) at such time and in such manner as may be directed by the Commission, establish automated systems for monitoring, screening, and analyzing SBS data; (8) maintain the privacy of any and all SBS transaction information that the SDR receives from an SBS dealer, counterparty, or any registered entity; (9) on a confidential basis pursuant to Exchange Act Section 24 and the rules and regulations thereunder, upon request, and after notifying the Commission of the request, make available all data obtained by the SDR to certain relevant authorities; (10) before sharing information with a relevant authority, obtain a written confidentiality agreement and obtain an agreement from the relevant authority to indemnify the SDR and the Commission; and (11) designate a CCO who must comply with specified duties.

b. Comments on the Proposed Rule

Six commenters submitted comments relating to various aspects of proposed Rule 13n–4(b).[401] These comment letters are described in more detail below, other than those that relate solely to relevant authorities' access to SBS data maintained by SDRs, which the Commission anticipates will be addressed separately. Generally speaking, one commenter believed that ''all of the substantive rule provisions proposed [as of July 22, 2013] must remain as strong as possible, irrespective of the Commission's approach to its very limited jurisdiction over cross-border transactions or the CFTC's approach to the implementation of Title VII.'' [402]

i. Inspection and Examination

One commenter expressed concern regarding the potential cost to non-resident SDRs of complying with multiple regulatory regimes, including inspections and examinations by multiple regulators.[403]

ii. Direct Electronic Access

As discussed in Section IV above, two commenters suggested that the Commission designate one SDR to receive SBS data from other SDRs, through direct electronic access, in order to provide the Commission and other regulators a consolidated location from which to access SBS data.[404] Both commenters believed that such designation would ensure efficient consolidation of data.[405]

iii. Monitoring, Screening, and Analysis

In the Proposing Release, the Commission proposed taking a measured approach and not requiring SDRs to establish automated systems for monitoring, screening, and analyzing SBS data at that time.[406] One commenter disagreed with this proposal.[407] Another commenter supported ''the broad concept that an SDR should monitor, screen and analyze SBS data as input for the [Commission] to facilitate its oversight and monitoring responsibilities,'' but believed that the proposed rule is too broad and ''not clear enough on the level of detail required and on the level of responsibility imposed on SDRs.'' [408] A third commenter suggested that monitoring, screening, and analysis should be performed centrally by an SDR for efficiency and that the data maintained by the SDR should then be made available to relevant authorities.[409]

iv. Other Enumerated Duties

Comments on the other enumerated duties either are discussed later in this release or addressed in the Regulation SBSR Adopting Release or the Regulation SBSR Proposed Amendments Release.[410] The Commission anticipates addressing comments regarding relevant authorities' access to SBS data maintained by SDRs in a separate release when it solicits additional public comment regarding the issue.

c. Final Rule

After considering the comments, the Commission is adopting Rule 13n–4(b) as proposed, with modifications. Specifically, each SDR is required to:

(1) subject itself to inspection and examination by any representative of the Commission; [411]

(2) accept data as prescribed in Regulation SBSR [412] for each SBS;

(3) confirm, as prescribed in Rule 13n–5, with both counterparties to the SBS the accuracy of the data that was submitted, as discussed further in Section VI.E.1 of this release;

(4) maintain, as prescribed in Rule 13n–5, the data described in Regulation SBSR in such form, in such manner, and

[399] *See supra* note 201 (discussing Regulation SBSR, which prescribes the data elements that an SDR will be required to accept for each SBS in association with requirements under Dodd-Frank Act Section 763(i)).

[400] Exchange Act Section 13(m) pertains to the public availability of SBS data. *See* 15 U.S.C. 78m(m). In a separate release relating to implementation of Dodd-Frank Act Section 763(i) (adding Exchange Act Section 13(m)), the Commission proposed rules that impose various duties on SDRs in connection with the reporting and public dissemination of SBS information. *See* Regulation SBSR Proposing Release, *supra* note 8; *see also* Cross-Border Proposing Release, 78 FR at 31210–6, *supra* note 3 (re-proposing Regulation SBSR). The Commission is adopting those rules as part of Regulation SBSR. *See* Regulation SBSR Adopting Release, *supra* note 13.

[401] *See* Barnard, *supra* note 19; Better Markets 1, *supra* note 19; DTCC 2, *supra* note 19; ESMA, *supra* note 19; MFA 1, *supra* note 19; US & Foreign Banks, *supra* note 24; *see also* DTCC 1*, *supra* note 20; DTCC 3, *supra* note 19; DTCC 5, *supra* note 19. In addition to these commenters, one commenter to the Temporary Rule Release suggested that the Commission affirmatively state that it intends to keep information furnished pursuant to the rules in that release confidential under the Freedom of Information Act (''FOIA'') or to seek a legislative solution. Deutsche Temp Rule, *supra* note 28. Although this comment does not explicitly reference to the SDR Rules, the Commission addresses this point in Section VI.D.2 of this release to the extent that the SDR Rules require SDRs to submit information to the Commission.

[402] Better Markets 2, *supra* note 19 (urging the Commission to not dilute or weaken the [p]roposed [r]ules to accommodate concerns about international regulation of the SBS markets).

[403] ESMA, *supra* note 19.

[404] DTCC 1*, *supra* note 20; Better Markets 1, *supra* note 19. Comments regarding direct electronic access in the context of substituted compliance are addressed in a separate release. *See* Regulation SBSR Adopting Release, *supra* note 13.

[405] DTCC 1*, *supra* note 20; Better Markets 1, *supra* note 19; *see also* DTCC 2, *supra* note 19 (''The role of an aggregating SDR is significant in that it ensures regulators efficient, streamlined access to consolidated data, reducing the strain on limited agency resources.''); DTCC 3, *supra* note 19 (''When there are multiple SDRs in any particular asset class, the [Commission] should take such action as is necessary to eliminate any overstatements of open interest or other inaccuracies that may result from having broader market data published from separate SDRs.'').

[406] Proposing Release, 75 FR at 77318, *supra* note 2.

[407] Better Markets 1, *supra* note 19 (''The fact that this market is in its 'infancy' is a unique opportunity for the Commission to guide its development in a way that protects the public interest, promotes competition, and prevents what has been the routine development of conflicts and predatory conduct.'').

[408] Barnard, *supra* note 19 (recommending that the Commission ''provide additional details on the anticipated requirements in order to better manage the expectations of SDRs and wider market participants concerning their duties in this area'').

[409] DTCC 2, *supra* note 19.

[410] *See* Regulation SBSR Adopting Release, *supra* note 13; Regulation SBSR Proposed Amendments Release, *supra* note 13.

[411] The Commission is revising its proposed rule by adding ''any representative of'' before ''the Commission'' to track more closely Exchange Act Section 13(n)(2), 15 U.S.C. 78m(n)(2) (''Each registered security-based swap data repository shall be subject to inspection and examination by any representative of the Commission.'').

[412] The Commission addresses this enumerated duty in further detail in Regulation SBSR. *See* Regulation SBSR Adopting Release, *supra* note 13.

for such period as provided therein and in the Exchange Act and the rules and regulations thereunder, as discussed further in Section VI.E of this release;

(5) provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity);

(6) provide the information described in Regulation SBSR in such form and at such frequency as prescribed in Regulation SBSR to comply with requirements set forth in Exchange Act Section 13(m) and the rules and regulations thereunder;[413]

(7) at such time and in such manner as may be directed by the Commission, establish automated systems for monitoring, screening, and analyzing SBS data;

(8) maintain the privacy of any and all SBS transaction information that the SDR receives from an SBS dealer, counterparty, or any registered entity, as prescribed in Rule 13n–9 and as discussed further in Section VI.I.1 of this release; and

(9) [Reserved]

(10) [Reserved]

(11) designate an individual to serve as a CCO, as discussed further in Section VI.J of this release.[414]

With respect to one commenter's general recommendation that all of the Commission's substantive rules ''remain as strong as possible, irrespective of the Commission's approach to its very limited jurisdiction over cross-border transactions or the CFTC's approach to the implementation of Title VII,'' [415] the Commission believes that the final SDR Rules are robust and reflect an appropriate approach to furthering the goals of the Dodd-Frank Act and minimizing an SDR's cost of compliance.[416]

Because the Commission anticipates soliciting additional public comment regarding relevant authorities' access to SBS data maintained by SDRs in a separate release, the Commission is not adopting proposed Rules 13n–4(b)(9) and (10) at this time and is marking those sections as ''Reserved.'' [417] However, SDRs will have to comply with all statutory requirements, including Exchange Act Sections 13(n)(5)(G) and (H),[418] when the current exemptive relief from the statutory requirements expires.[419]

i. Inspection and Examination

Each registered SDR is statutorily required to be subject to inspection and examination by any representative of the Commission.[420] With respect to one commenter's concern regarding the potential cost to non-resident SDRs of complying with multiple regulatory regimes, including inspections and examinations by multiple regulators,[421] the Commission appreciates this concern and has discussed this concern in the Cross-Border Proposing Release.[422] To address the commenter's broader concern of duplicative regulatory regimes, the Commission is adopting Rule 13n-12 to provide an exemption from specific SDR requirements in certain circumstances, as discussed in Section VI.K of this release.[423]

ii. Direct Electronic Access

Each SDR should coordinate with the Commission to provide direct electronic access to the Commission or any of its designees. The form and manner that will be acceptable to the Commission for an SDR to provide direct electronic access may vary on a case-by-case basis and may change over time, depending on a number of factors. These factors could include the development of new types of SBSs or variations of existing SBSs that require additional data to accurately describe them. Additionally, the extent to which the Commission encounters difficulty in normalizing and aggregating SBS data across multiple registered SDRs would be a factor in considering the nature of the direct access provided by an SDR to the Commission.

As contemplated in the Proposing Release, the Commission anticipates that an SDR may be able to satisfy its duty to provide direct electronic access to the Commission by providing, for example, (1) a direct streaming of the data maintained by the SDR to the Commission or any of its designees, (2) a user interface that provides the Commission or any of its designees with direct access to the data maintained by the SDR and that provides the Commission or any of its designees with the ability to query or analyze the data in the same manner that is available to the SDR, or (3) another mechanism that provides a mirror copy of the data maintained by the SDR, which is in an electronic form that is downloadable by the Commission or any of its designees and is in a format that provides the Commission or any of its designees with the ability to query or analyze the data in the same manner that is available to the SDR.[424] The alternative ways to provide direct electronic access to the Commission are not intended to be mutually exclusive.

Additionally, the rule provides that the data must be in a form and manner acceptable to the Commission.[425] Since one of the primary purposes of an SDR is to facilitate regulatory oversight of the SBS market, a significant portion of the benefits of an SDR will not be realized if data stored at an SDR is provided to the Commission in a form or manner that cannot be easily utilized by the Commission. Furthermore, the form and manner with which an SDR provides the data to the Commission should not only permit the Commission to accurately analyze the data maintained by a single SDR, but also allow the Commission to aggregate and analyze data received from multiple SDRs.

The Commission continues to consider whether it should require the data to be provided to the Commission

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[413] The Commission addresses this enumerated duty in further detail in Regulation SBSR. *See* Regulation SBSR Adopting Release, *supra* note 13.

[414] The Commission is revising proposed Rule 13n–4(b)(11) by not including the phrase ''who shall comply with the duties set forth in Exchange Act Rule 13n–11.'' This revision is being made to clarify that an SDR is only required to designate a CCO.

[415] Better Markets 2, *supra* note 19 (urging the Commission to not dilute or weaken the [p]roposed [r]ules to accommodate concerns about international regulation of the SBS markets).

[416] *See* Section VIII of this release discussing economic analysis.

[417] In the Cross-Border Proposing Release, the Commission proposed interpretive guidance to specify how SDRs may comply with the notification requirement set forth in Exchange Act Section 13(n)(5)(G) and proposed Rule 13n–4(b)(9). Cross-Border Proposing Release, 78 FR at 31046–31047, *supra* note 3. The Commission also specified how the Commission proposed to determine whether a relevant authority is appropriate for purposes of receiving SBS data from an SDR. *Id.* at 31047–31048. The Commission is not taking any action on these proposals at this time and anticipates addressing these issues in a separate release.

[418] *See* 15 U.S.C. 78m(n)(5)(G) and 78m(n)(5)(H).

[419] *See* Section V of this release discussing implementation of the SDR Rules.

[420] *See* Exchange Act Section 13(n)(2), 15 U.S.C. 78m(n)(2).

[421] *See* ESMA, *supra* note 19.

[422] *See* Cross-Border Proposing Release, 78 FR at 31043, *supra* note 3 (discussing duplicative regulatory regimes for non-U.S. persons performing the functions of an SDR, which may include non-resident SDRs).

[423] *See also* Regulation SBSR Adopting Release, *supra* note 13 (discussing substituted compliance); Exchange Act Rule 0–13, 17 CFR 240.0–13 (relating to procedures for filing applications for substituted compliance).

[424] Proposing Release, 75 FR at 77318, *supra* note 2.

[425] *See* Rule 13n–4(a)(5) (defining ''direct electronic access'' to mean ''access, which shall be in a form and manner acceptable to the Commission, to data stored by a security-based swap data repository in an electronic format and updated at the same time as the security-based swap data repository's data is updated so as to provide the Commission or any of its designees with the ability to query or analyze the data in the same manner that the security-based swap data repository can query or analyze the data''); *see also* Section VI.E.4 of this release discussing the requirement to maintain transaction data and positions in a place and format that is readily accessible to the Commission.

in a particular format.[426] The Commission anticipates that it will propose for public comment detailed specifications of acceptable formats and taxonomies that would facilitate an accurate interpretation, aggregation, and analysis of SBS data by the Commission. The Commission intends to maximize the use of any applicable current industry standards for the description of SBS data, build upon such standards to accommodate any additional data fields as may be required, and develop such formats and taxonomies in a timeframe consistent with the implementation of SBS data reporting by SDRs. The Commission recognizes that as the SBS market develops, new or different data fields may be needed to accurately represent new types of SBSs, in which case the Commission may provide updated specifications of formats and taxonomies to reflect these new developments. Until such time as the Commission adopts specific formats and taxonomies, SDRs may provide direct electronic access to the Commission to data in the form in which the SDRs maintain such data.

As stated in Section IV of this release with respect to commenters' suggestions regarding consolidation of SBS data,[427] the Commission does not believe that it is necessary to designate, at this time, an SDR or any registered entity to receive, through direct electronic access, SBS data maintained by other SDRs in order to aggregate the data. At this time, the Commission believes that it—rather than any particular registered entity—is in the best position to aggregate data across multiple registered SDRs. The Commission anticipates that its proposal on the formats and taxonomies for SBS data provided to the Commission pursuant to Rule 13n–4(b)(5) will facilitate its ability to carry out this function. The Commission may revisit this issue as the SBS market evolves.

A commenter to the Temporary Rule Release suggested that the Commission affirmatively state that it intends to keep information furnished pursuant to the rules in that release confidential under FOIA or to seek a legislative solution.[428] The Commission anticipates that it will keep reported data that it obtains from an SDR (via direct electronic access or any other means) confidential, subject to the provisions of applicable law.[429]

After considering the comments, the Commission is adopting Rule 13n-4(b)(5) as proposed.

iii. Monitoring, Screening, and Analysis

Although the Commission is adopting Rule 13n–4(b)(7) as proposed, it is not, at this time, directing SDRs to establish any automated systems for monitoring, screening, and analyzing SBS data. One commenter urged the Commission to adopt a rule to require an SDR to establish automated systems for monitoring, screening, and analyzing SBS data,[430] but the Commission continues to believe that it is better to take a measured approach in addressing this statutory requirement to minimize imposing costs on SDRs until the Commission is in a better position to determine what information it needs in addition to the information that it can obtain from SDRs through other rules applicable to SDRs, such as Rule 13n–4(b)(5).[431] For the same reasons, the Commission is not, as another commenter suggested,[432] providing additional details on what may be expected of SDRs in this area. The Commission, however, expects to consider further steps to implement this requirement as the SBS market develops and the Commission gains experience in regulating this market.[433] Because the Commission is not requiring an SDR to monitor, screen, and analyze SBS data maintained by the SDR at this time, the Commission is also not taking one commenter's suggestion to designate, at this time, an SDR to centrally monitor, screen, and analyze SBS data maintained by all SDRs.[434] The Commission believes that it is premature to do so without better understanding what additional information would be useful to the Commission. After considering the comments, the Commission is adopting Rule 13n–4(b)(7) as proposed.

3. Implementation of Core Principles (Rule 13n–4(c))

Each SDR is required, under Exchange Act Section 13(n)(7), to comply with core principles relating to (1) market access to services and data, (2) governance arrangements, and (3) conflicts of interest.[435] Specifically, unless necessary or appropriate to achieve the purposes of the Exchange Act, an SDR[436] is prohibited from adopting any rules[437] or taking any action that results in any unreasonable restraint of trade or imposing any material anticompetitive burden on the trading, clearing, or reporting of transactions.[438] In addition, each SDR must establish governance arrangements that are transparent to fulfill public interest requirements and to support the objectives of the Federal Government, owners, and participants.[439] Moreover, each SDR must establish and enforce rules to minimize conflicts of interest in the decision-making process of the SDR

[426] *Cf.* Proposing Release, 75 FR at 77319 and 77331, *supra* note 2 (asking questions about how direct electronic access could be provided, and asking whether the Commission should require information be kept in a particular format, such as FpML or another standard).

[427] *See* DTCC 1*, *supra* note 20 (recommending that the Commission designate one SDR to receive, through direct electronic access, information from other SDRs to ensure efficient consolidation of data); Better Markets 1, *supra* note 19 (recommending that ''the Commission designate one SDR as the recipient of information of other SDRs, through direct electronic access to the SBS data at the other SDRs, in order to provide the Commission and relevant authorities with a consolidated location for SBS data'').

[428] *See* Deutsche Temp Rule, *supra* note 28. It is unclear what the commenter contemplates by its suggestion that the Commission seek a ''legislative solution,'' but the Commission notes that it does not intend to affirmatively seek any legislative action to protect further such information. The commenter is not precluded from doing so on its own initiative.

[429] Pursuant to Commission rules, confidential treatment can be sought for information submitted to the Commission. *See* 17 CFR 200.83 (regarding confidential treatment procedures under FOIA).

[430] *See* Better Markets 1, *supra* note 19.

[431] *See* Proposing Release, 75 FR at 77318, *supra* note 2 (discussing reasons to take a measured approach with respect to requiring an SDR to establish automated systems for monitoring, screening, and analyzing SBS data). In a separate release, the Commission is adopting a rule requiring an SDR to provide the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to the SDR. *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 907(e)). In addition, the Commission proposed a rule that would require a counterparty to an SBS that invokes the end-user clearing exemption to deliver or cause to deliver certain information to a registered SDR, and, if adopted, then an SDR would be required to maintain this information in accordance with Rule 13n–5(b)(4). *See* End-User Exception Proposing Release, *supra* note 15.

[432] *See* Barnard, *supra* note 19 (stating that the proposed rule regarding monitoring, screening, and analysis is too broad and ''not clear enough on the level of detail required and on the level of responsibility imposed on SDRs'').

[433] The Commission may revisit these issues as the Commission becomes more familiar with the SBS market and consider requiring SDRs to monitor, screen, and analyze SBS data if, for example, it is difficult for the Commission to aggregate and analyze the data because SBS data is too fragmented among multiple SDRs or the data is maintained by multiple SDRs in different formats.

[434] *See* DTCC 2, *supra* note 19.

[435] *See* Exchange Act Section 13(n)(7), 15 U.S.C. 78m(n)(7).

[436] Although Exchange Act Section 13(n)(7)(A) refers to ''swap data repository,'' the Commission believes that the Congress intended it to refer to ''security-based swap data repository.'' *See generally Am. Petroleum Institute* v. *SEC,* 714 F.3d 1329, 1336–37 (D.C. Cir. 2013) (explaining that ''[t]he Dodd-Frank Act is an enormous and complex statute, and it contains'' a number of ''scrivener's errors'').

[437] *See* Section VI.A.1.c of this release discussing the likelihood that most of the information that would be contained in a ''rulebook'' would be filed as part of an SDR's policies and procedures that are attached to Form SDR.

[438] *See* Exchange Act Section 13(n)(7)(A), 15 U.S.C. 78m(n)(7)(A).

[439] *See* Exchange Act Section 13(n)(7)(B), 15 U.S.C. 78m(n)(7)(B).

and to establish a process for resolving any such conflicts of interest.[440] Rule 13n–4(c) incorporates and implements these three core principles.

a. First Core Principle: Market Access to Services and Data (Rule 13n–4(c)(1))

i. Proposed Rule

Proposed Rule 13n–4(c)(1) would incorporate and implement the first core principle [441] by requiring SDRs, unless necessary or appropriate to achieve the purposes of the Exchange Act and the rules and regulations thereunder, to not (i) adopt any policies and procedures or take any action that results in an unreasonable restraint of trade; or (ii) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.[442] Proposed Rule 13n–4(c)(1) would include four specific requirements. First, each SDR would be required to ensure that any dues, fees, or other charges it imposes, and any discounts or rebates it offers, are fair and reasonable and not unreasonably discriminatory; such dues, fees, other charges, discounts, or rebates would be required to apply consistently across all similarly-situated users of the SDR's services.[443] Second, each SDR would be required to permit market participants to access specific services offered by the SDR separately.[444] Third, each SDR would be required to establish, monitor on an ongoing basis, and enforce clearly stated objective criteria that would permit fair, open, and not unreasonably discriminatory access to services offered and data maintained by the SDR as well as fair, open, and not unreasonably discriminatory participation by market participants, market infrastructures, venues from which data can be submitted to the SDR, and third party service providers that seek to connect to or link with the SDR.[445] Finally, each SDR would be required to establish, maintain, and enforce written policies and procedures reasonably designed to review any prohibition or limitation of any person with respect to access to services offered, directly or indirectly, or data maintained by the SDR and to grant such person access to such services or data if such person has been discriminated against unfairly.[446]

ii. Comments on the Proposed Rule

As discussed below, eight commenters submitted comments relating to this proposed rule,[447] which were mixed.[448] Generally speaking, one commenter supported ''the Commission's stated goals of protecting market participants and maintaining a fair, orderly, and efficient [SBS] market through the promotion of competition'' and urged ''the Commission to adopt rules that preserve a competitive marketplace and forbid [ ] anti-competitive practices by all [SBS] market participants.''[449] The commenter stated that ''[i]n a global SB swap market, the anti-competitive practices of even a single market participant have potential ramifications for the entire marketplace.'' [450]

In suggesting that the Commission rely on CPSS–IOSCO's recommendations such as the PFMI Report, the commenter cited, as an example, to the Commission's concurrence, in the Proposing Release, with the CPSS–IOSCO Trade Repository Report's recommendation that ''[m]arket infrastructures and service providers that may or may not offer potentially competing services should not be subject to anticompetitive practices such as product tying, contracts with non-compete and/or exclusivity clauses, overly restrictive terms of use and anti-competitive price discrimination.'' [451]

(1) *Rule 13n–4(c)(1)(i): Fair, Reasonable, and Not Unreasonably Discriminatory Dues, Fees, Other Charges, Discounts, and Rebates*

One commenter supported the requirements in proposed Rule 13n–4(c)(1)(i) because ''they should encourage market participants to use SDRs' services.'' [452] The commenter believed that an SDR should charge different fee structures only if it relates to the SDR's ''differing costs of providing access or service to particular categories'' and that ''[a]nything else would be discrimination.'' [453] The commenter suggested that ''any preferential pricing such as volume discounts or reductions should be generally viewed as discriminatory'' and believed that ''[s]uch volume discounts or reductions tend to discriminate in favour of the large players.'' [454]

Two commenters believed that SDRs should be permitted to continue using the current ''dealer pays'' or ''sell-side pays'' model,[455] or at least to continue using that model if it is acceptable by the SDRs' market participants.[456] One of the commenters expressed particular concern about the effect that the Commission's proposed rule requiring nondiscriminatory pricing would have on the current ''dealer pays'' or ''sell-side pays'' model.[457] The commenter suggested that alternatively, the Commission's proposed rule could be amended to permit: (a) Different fee structures for different classes of participants (*e.g.,* sell-side and buy-side) to reflect the different cost of their usage of the SDR, or (b) payment of fees by only the reporting party.[458] The commenter believed that this approach would be consistent with the Commission's proposed ''not unreasonably discriminatory'' requirement because ''SDRs would be prohibited from discriminating within each class, while participants in different classes may be charged different fees.'' [459] The commenter

[440] *See* Exchange Act Section 13(n)(7)(C), 15 U.S.C. 78m(n)(7)(C).

[441] *See* Exchange Act Section 13(n)(7)(A), 15 U.S.C. 78m(n)(7)(A).

[442] Proposed Rule 13n–4(c)(1).

[443] Proposed Rule 13n–4(c)(1)(i).

[444] Proposed Rule 13n–4(c)(1)(ii).

[445] Proposed Rule 13n–4(c)(1)(iii).

[446] Proposed Rule 13n–4(c)(1)(iv).

[447] *See* Barnard, *supra* note 19; Better Markets 1, *supra* note 19; DTCC 2, *supra* note 19; MarkitServ, *supra* note 19; Tradeweb SBSR, *supra* note 27; Benchmark*, *supra* note 20; CDEU*, *supra* note 20; McLeish*, *supra* note 20; *see also* Better Markets 2, *supra* note 19; DTCC 5, *supra* note 19; DTCC CB, *supra* note 26.

[448] Three comments submitted prior to the Proposing Release agreed with the Commission on the importance of market transparency. *See* McLeish*, *supra* note 20; CDEU*, *supra* note 20 (supporting ''efforts by Congress to improve transparency, accountability and stability''); Benchmark*, *supra* note 20 (''fully support[ing] regulatory efforts to increase transparency in the OTC markets''); *see also* SIFMA*, *supra* note 20 (indicating that increased price transparency will improve the application of models used in the computation of capital requirements for purposes of complying with Exchange Act Rule 15c3–1). For example, one commenter stressed the importance of requiring market transparency for all market participants without any exceptions. McLeish*, *supra* note 20 (believing that ''there should be transparency for everyone'' and there should be ''no exceptions''). Another commenter believed that market transparency will improve liquidity in the SBS market. Benchmark*, *supra* note 20. To the extent that these commenters are broadly supporting transparency, the Commission believes that Rule 13n–4(c)(1) reflects this broad support.

[449] DTCC 5, *supra* note 19 (stating that ''the Commission correctly emphasizes that market participants offering potentially competing services should not be subject to anti-competitive practices, including product tying, overly restrictive terms of use, and anti-competitive price discrimination''). With respect to this comment, the Commission notes that the rules adopted in this release apply to only SDRs. To the extent that the Commission adopts rules prohibiting other market participants from engaging in anti-competitive practices, those rules will be addressed in separate releases.

[450] DTCC CB, *supra* note 26.

[451] DTCC CB, *supra* note 26; *see also* Proposing Release, 75 FR at 77321, *supra* note 2; CPSS–IOSCO Trade Repository Report, *supra* note 48.

[452] Barnard, *supra* note 19.

[453] Barnard, *supra* note 19.

[454] Barnard, *supra* note 19.

[455] DTCC 2, *supra* note 19 (noting the success of a model that charges dealers for services on an at-cost basis and that operates at no cost to the buy-side and end-users); MarkitSERV, *supra* note 19.

[456] MarkitSERV, *supra* note 19.

[457] MarkitSERV, *supra* note 19.

[458] MarkitSERV, *supra* note 19.

[459] MarkitSERV, *supra* note 19.

further believed that ''any other literal interpretation of 'non-discriminatory access' would have the unintended consequence of significantly increasing the costs for buy-side participants and, by doing so, generally discouraging their use of [SDRs].'' [460]

The same two commenters further believed that an SDR's fees for certain services should reflect the SDR's costs of providing related services.[461] One of these commenters believed, for example, that ''if a reporting party uses a third party service provider for trade submission, which fulfils the SDR's requirement to confirm the trade with both parties, this report would potentially be charged at a lower cost than a direct report to the SDR, requiring the SDR itself to confirm with the other party.'' [462] The commenter further noted that since small ''non-reporting counterparties will legitimately want to interact with SDRs, if only to verify what has been reported, SDRs should have the flexibility to facilitate such access by not charging, or charging only nominal amounts, for such interaction.'' [463] In addition, the commenter suggested that the Commission clarify its rules to ''prevent predatory or coercive pricing by providers engaged in any two or more trading, clearing or repository services'' and to prohibit cross-subsidies between services.[464] The other commenter suggested that SDRs should be permitted to charge different (*i.e.,* higher) fees in order to recoup costs associated with ''processing any highly non-standard, albeit eligible [(*i.e.,* within the asset class for which the SDR accepts data)], SBS transactions.'' [465]

Another commenter believed that the Commission's proposed rule, which refers to a standard of ''fair and reasonable'' and ''not unreasonably discriminatory'' and which requires consistent application across all similarly-situated users, is vague and suggested that the Commission ''establish fees, rates, or even formulas for determining rates.'' [466] The commenter suggested that in order to prevent SDRs from taking ''unfair advantage of the mandated use of their services,'' particularly ''in SBS markets where there is no effective competition, SDRs [should] be required to justify the reasonableness of price levels charged to both suppliers of data and recipients of data.'' [467]

One commenter to proposed Regulation SBSR suggested that SDRs should not be permitted to charge fees to third parties acting on behalf of counterparties for accepting SBS transaction information because such fees would increase the cost of using an SB SEF or other third party.[468] The commenter believed that SDRs would likely charge the same third parties for subsequent use of SBS data maintained by the SDRs.[469] In submitting comments to the Commission's rulemaking regarding SB SEFs, the same commenter suggested that the Commission require SDRs to (i) make available any data they collect and may properly use for commercial purposes to all market participants, including SB SEFs and clearing agencies, on reasonable terms and pricing and on a non-discriminatory basis, and (ii) share, on commercially reasonable terms, revenue that SDRs generate from redistributing such data with parties providing the data to the SDRs (*e.g.,* SB SEFs).[470] The commenter believed that without these requirements, the Commission would be effectively taking away from market participants, including SB SEFs and clearing agencies, a potentially significant and valuable component of their potential market data revenue streams.[471]

(2) Rule 13n–4(c)(1)(ii): Offering Services Separately

Three commenters supported the Commission's proposed rule requiring SDRs to permit market participants to access services offered by SDRs separately.[472] Specifically, one commenter agreed that SDRs' fees should be transparent.[473] As a corollary to this, one of the commenters suggested that third party service providers should be barred from bundling their services with an SDR's services.[474] Additionally, the same commenter believed that ''[a]ny provider offering trading[,] clearing or repository services for one asset class should not be permitted [to] bundl[e] or t[ie] when providing services for other asset classes.'' [475] The commenter suggested, however, that SDRs should be permitted to offer two or more service options, including one that fulfills the minimum regulatory reporting requirements and a suite of other services to complement the mandatory reporting function.[476]

One commenter believed that SDRs should be able to offer ancillary services, whether bundled or not.[477] The commenter, however, did not support the bundling of ancillary services with mandatory or regulatory services.[478]

Another commenter stated that the proposed rule went ''a long way to address a third party's (such as a service provider's) non-discriminatory access rights to granular [SDR] Information,'' and that such access is important so as to ''not stifle innovation and the competition in the provision of post-trade processing services'' and to ''uphold a fair, secure and efficient post-trade market.'' [479] In the context of discussing proposed Rule 13n–4(c)(1)(ii), the commenter suggested that, to further these goals, the Commission should clarify that all ''users'' of an SDR's services, including unaffiliated third party service providers, and not only market participants that submit trade data, should be permitted to access each of the SDR's services separately.[480]

[460] MarkitSERV, *supra* note 19.

[461] DTCC 2, *supra* note 19; MarkitSERV, *supra* note 19; *see also* DTCC CB, *supra* note 26 (not supporting anti-competitive price discrimination).

[462] DTCC 2, *supra* note 19.

[463] DTCC 2, *supra* note 19.

[464] DTCC 4, *supra* note 19 (''While market participants should be able to enjoy the economies of shared platforms . . . the allocations of platform operating costs between services cannot be arbitrary.'').

[465] MarkitSERV, *supra* note 19.

[466] Better Markets 1, *supra* note 19.

[467] Better Markets 1, *supra* note 19.

[468] Tradeweb SBSR, *supra* note 27.

[469] Tradeweb SBSR, *supra* note 27.

[470] Tradeweb SB SEF, *supra* note 29.

[471] Tradeweb SB SEF, *supra* note 29.

[472] DTCC 2, *supra* note 19; MarkitSERV, *supra* note 19 (''[M]arket participants' decisions to use or not use a given [SDR] or its affiliates' [a]ncillary [s]ervices should rest entirely with the market participant[s]. These decisions should not be tied to any other service provided by a regulated entity or its affiliate . . . or [an SDR] and any related [third party service provider].''); TriOptima, *supra* note 19 (''[I]t is important that market participants have the ability to access specific services offered by the [SDR] separately.''); *see also* DTCC 3, *supra* note 19 (noting that the Commission's proposed rule requiring ''each SDR to permit market participants to access specific services offered by the SDR separately'' is consistent with the CPSS–IOSCO Trade Repository Report); DTCC CB, *supra* note 26 (not supporting anti-competitive practices such as product tying).

[473] MarkitSERV, *supra* note 19.

[474] DTCC 2, *supra* note 19 (''Allowing bundling of obligations undertaken by third party service providers with an SDR will detract from the SDR's utility function and jeopardize the value of SDRs to regulators and the market.''); *see also* DTCC 4, *supra* note 19 (''[N]o provider of trading or clearing services should be permitted to simply declare itself the SDR for trades it facilitates. . . . [A]side from being anti-competitive, this type of vertical bundling would also (a) reverse the principal-agent relationship . . . and (b) add a layer of unnecessary risk to the control processes that market participants may determine are needed.'').

[475] DTCC 4, *supra* note 19.

[476] DTCC 2, *supra* note 19.

[477] Barnard, *supra* note 19.

[478] Barnard, *supra* note 19.

[479] TriOptima, *supra* note 19.

[480] TriOptima, *supra* note 19 (''[W]e would encourage the SEC to clarify that [proposed Rule 13n–4(c)(1)(ii)] should apply to all users of an [SDR], including third party service providers with Written Client Disclosure Consents seeking to access the [SDR] Information, and not just market

Continued

(3) Rule 13n–4(c)(1)(iii): Fair, Open, and Not Unreasonably Discriminatory Access

Four commenters generally supported the Commission's proposed rule regarding fair, open, and not unreasonably discriminatory access to services offered and data maintained by SDRs, but a few of these commenters also recommended additional requirements.[481] One of these commenters noted that ''all counterparties to trades reported to an SDR should, as a matter of principle, have access to all data relating to trades to which they are [counterparties]'' and that ''[t]his access should be made available to smaller, lower volume market participants, as necessary, through the reduction or waiver of certain fees.'' [482] The same commenter also noted that ''clearinghouses and [SB SEFs] should have the ability to report trades to SDRs . . . to satisfy their customers' reporting preferences.'' [483] In addition, the commenter supported ''open access to data by other service providers (based on the consent of the parties for that provider to receive the data) [because it] is critical to preserve the trading parties' control over their own data.'' [484]

Another commenter who supported the rule indicated that SDRs should be able to condition access by specifying the methods and channels that must be used in order to connect to the SDR and setting certain minimum standards.[485] This commenter also recommended that SDRs should be permitted to provide connectivity to third party service providers, without requiring any specific services from them as a condition to their gaining access to the SBS data.[486]

One commenter urged the Commission to ''clarify in the final rule that [SDRs] shall provide third party service providers, who have been authorized to access information by the counterparties to the relevant trades under Written Client Disclosure Consents, with access to [SDR] Information.'' [487] The commenter further stressed the importance of providing ''full and unrestricted'' access to SBS data to third party service providers, particularly those acting on behalf of SBS counterparties.[488] The commenter objected to the lack of an ''obligation on the [SDR] to provide full and unrestricted access to [granular trade data] to a third party service provider'' and suggested that ''this obligation should apply where the counterparties to the relevant trades have provided [written consents and authorizations] to the [SDR] to disclose granular trading data to the third party service provider.'' [489] The commenter noted that, when such third party service provider is acting pursuant to a written consent by an SBS counterparty, it is exercising that counterparty's right to access its own trade information.[490] The commenter ''stress[ed] the importance that data access rights and requirements imposed on a third party (service provider) seeking to access [SDR] Information [ ] are applied equally to the [SDR] itself when providing ancillary services and to affiliated service providers within the same group as the [SDR].'' [491] In this regard, the commenter believed that ''the [SDR] should not have discretion to offer advantages in respect of its own ancillary services or services offered by affiliated service providers vis-à-vis other third party service providers.'' [492]

One commenter recommended that the Commission require that each SDR establish and maintain effective interoperability and interconnectivity with other SDRs, market infrastructures, and venues from which data can be submitted to the SDR.[493] Additionally, the commenter suggested that market participants should have ''equal and fair access to data on SBS transactions,'' [494] and that the Commission's rules ''establish stronger and more detailed standards against discriminatory access, and they should also establish regulatory oversight of access denials.'' [495] The commenter further suggested that the Commission's proposed rules set forth the ''clearly stated objective criteria'' and permit denial of access only on risk-based grounds, *i.e.,* risks related to the security or functioning of the market.[496]

(4) Rule 13n–4(c)(1)(iv): Prohibited or Limited Access

One commenter recommended that the Commission require an SDR ''to promptly file a notice with the Commission if the SDR . . . prohibits or limits any person's access to services offered or data maintained by the SDR.'' [497]

iii. Final Rule

After considering the comments, the Commission is adopting Rule 13n–4(c)(1) as proposed, with one minor modification.[498] Rule 13n–4(c)(1), which tracks the statutory language,[499] provides that ''[u]nless necessary or appropriate to achieve the purposes of the [Exchange] Act and the rules and regulations thereunder, the security-based swap data repository shall not

participants who submit trade data. *I.e.,* users of an [SDR] should have the right to access services provided by an [SDR] separately.'').

[481] DTCC 2, *supra* note 19 (SDRs ''should demonstrate strict impartiality in making data available to, or receiving data from, other providers, including affiliates of SDRs.''); MarkitSERV, *supra* note 19; Better Markets 1, *supra* note 19; TriOptima, *supra* note 19; *see also* Better Markets 2, *supra* note 19; DTCC CB, *supra* note 26 (not supporting anti-competitive practices such as contracts with non-compete and/or exclusivity clauses and overly restrictive terms of use).

[482] DTCC 2, *supra* note 19; *see also* DTCC 3, *supra* note 19 (recommending that SDRs ''be able to accept trades in any manner consistent with the regulations, from any market participant'' and ''have appropriate communications links, to the extent feasible, with all parties to its transactions''); DTCC SBSR, *supra* note 27 (stating that SDRs ''will need to support an appropriate set of connectivity methods; the Commission should not, however, require SDRs to support all connectivity methods, as the costs to do so would be prohibitive''); *see also* TriOptima, *supra* note 19 (''[I]t is clear that an [SDR] should provide [s]wap [p]articipants with access to their own trade data.'').

[483] DTCC 3, *supra* note 19.

[484] DTCC 3, *supra* note 19; *see also* DTCC 2, *supra* note 19 (believing that open access to data by other service providers ''is an important principle for allowing development of automation and efficient operational processing in the market, while preserving the parties' control over confidential information'').

[485] MarkitSERV, *supra* note 19.

[486] MarkitSERV, *supra* note 19.

[487] TriOptima, *supra* note 19.

[488] TriOptima, *supra* note 19 (emphasizing ''the importance of enhanced non-discriminatory access rights to [SDR] Information for third party service providers in order to maintain competition and innovation within the post-trade area, especially where such third party service providers have been authorized to access [SDR] Information under Written Client Disclosure Consents'' and stating that ''[a]n explicit obligation for an [SDR] to provide such full and unrestricted access to [SDR] Information to a third party (service provider) is important in order to uphold a fair, secure and efficient post-trade market; an [SDR] should not restrict access to [SDR] Information on other grounds than integrity risks to the [SDR] Information'').

[489] TriOptima, *supra* note 19.

[490] TriOptima, *supra* note 19 (''We note that the third party service provider, for whom a Written Client Disclosure Consents is given, is actually exercising the Swap Participant's right to access their own trade information which is held by the [SDR]. An [SDR] should be required to treat a third party service provider with a disclosure consent as acting as an 'agent' for the owner of the trade information and provide the third party service provider with the same type of access which the owner of such data is entitled to, subject to any restrictions set out in the disclosure consent.'').

[491] TriOptima, *supra* note 19.

[492] TriOptima, *supra* note 19.

[493] Better Markets 1, *supra* note 19; *see also* DTCC 4, *supra* note 19 (suggesting that the Commission clarify its rules to prevent unfair or coercive linking or blocking of links between trading, clearing, or repository services).

[494] Better Markets 2, *supra* note 19.

[495] Better Markets 1, *supra* note 19.

[496] Better Markets 1, *supra* note 19.

[497] Better Markets 1, *supra* note 19.

[498] *See infra* note 500 of the release discussing a modification to proposed Rule 13n–4(c)(1).

[499] *See* Exchange Act Section 13(n)(7)(A), 15 U.S.C. 78m(n)(7)(A).

adopt any policies or procedures [500] or take any action that results in an unreasonable restraint of trade or impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.'' In implementing the first core principle, this rule is intended to protect investors and to maintain a fair, orderly, and efficient SBS market.[501] The Commission believes that this rule will protect investors by, for example, fostering service transparency and promoting competition in the SBS market.[502] Generally speaking, the Commission also believes that ''[m]arket infrastructures and service providers that may or may not offer potentially competing services should not be subject to anti-competitive practices such as product tying, contracts with non-compete and/or exclusivity clauses, overly restrictive terms of use and anti-competitive price discrimination.'' [503] As discussed in the Proposing Release and more fully below, when administering this rule, the Commission generally expects to apply the principles and procedures that it has developed in other areas in which it monitors analogous services, such as clearing agencies.[504] To comply with the first core principle, an SDR is required to comply with four specific requirements.

(1) Rule 13n–4(c)(1)(i): Fair, Reasonable, and Not Unreasonably Discriminatory Dues, Fees, Other Charges, Discounts, and Rebates

Rule 13n–4(c)(1)(i) requires each SDR to ensure that any dues, fees, or other charges that it imposes, and any discounts or rebates that it offers, are fair and reasonable and not unreasonably discriminatory.[505] The rule also requires such dues, fees, other charges, discounts, or rebates to be applied consistently across all similarly-situated users of the SDR's services, including, but not limited to, market participants, market infrastructures (including central counterparties), venues from which data can be submitted to the SDR (including exchanges, SB SEFs, electronic trading venues, and matching and confirmation platforms), and third party service providers.

As discussed in the Proposing Release, the terms ''fair'' and ''reasonable'' often need standards to guide their application in practice.[506] One factor that the Commission has taken into consideration to evaluate the fairness and reasonableness of fees, particularly those of a monopolistic provider of a service, is the cost incurred to provide the service.[507] Consistent with commenters' views,[508] the Commission believes that if an SDR's fees for certain services reflect the SDR's costs of providing those services, then the fees would generally be considered fair and reasonable.

Based on the Commission's experience with other registrants, the Commission will take a flexible approach to evaluate the fairness and reasonableness of an SDR's fees and charges on a case-by-case basis. The Commission recognizes that there may be instances in which an SDR could charge different users different prices for the same or similar services. Such differences, however, cannot be unreasonably discriminatory.

The Commission continues to believe that an SDR should make reasonable accommodations, including consideration of any cost burdens, on a non-reporting counterparty to an SBS in connection with the SDR following up on the accuracy of the SBS transaction data.[509] Thus, the Commission agrees with one commenter's view that an SDR may facilitate a non-reporting counterparty's ability to verify the accuracy of a reported SBS transaction by not charging the counterparty or charging the counterparty only a nominal amount.[510]

With respect to commenters' views on the current ''dealer pays'' or ''sell-side pays'' model,[511] the Commission does not believe that such a model is unreasonably discriminatory per se. As such, the Commission believes that amending proposed Rule 13n–4(c)(1)(i) to explicitly permit different fee structures, as suggested by one commenter,[512] is not necessary. Furthermore, Rule 13n–4(c)(1)(i) is not intended to prohibit an SDR from utilizing any one particular model, including a ''dealer pays'' or ''sell-side pays'' model, a model with different fee structures for different classes of participants, or a model where only the reporting party is required to pay an SDR's fees, as long as there is a fair and reasonable basis for the fee structure and it is not unreasonably discriminatory. If, however, an SDR imposes dues, fees, or other charges to create intentionally a barrier to access the SDR without a legitimate basis, then those dues, fees, or charges may be considered unfair or unreasonable.

The Commission disagrees with three comments received. The first commenter suggested that the Commission establish fees or rates, or dictate formulas by which fees or rates are determined.[513] The Commission believes that in light of the various SDR business models and fee structures that may emerge, it is better to provide SDRs with the flexibility to establish their own fees or rates, provided that they are fair, reasonable, and not unreasonably discriminatory. The Commission is providing SDRs with such flexibility to promote competition among SDRs, thereby keeping the cost of SDRs' services to a minimum.

The second commenter believed that an SDR should charge different fee structures only if it relates to the SDR's ''differing costs of providing access or service to particular categories'' and that

[500] The Commission is making a typographical modification to proposed Rule 13n–4(c)(1), which refers to ''any policies and procedures.'' As adopted, the rule refers to ''any policies or procedures.''

[501] *See* DTCC 5, *supra* note 19 (supporting ''the Commission's stated goals of protecting market participants and maintaining a fair, orderly, and efficient [SBS] market through the promotion of competition'').

[502] *See* DTCC 5, *supra* note 19 (urging ''the Commission to adopt rules that preserve a competitive marketplace and forbid [ ] anti-competitive practices by all [SBS] market participants''); *see also* DTCC CB, *supra* note 26 (stating that ''[i]n a global [SBS] market, the anti-competitive practices of even a single market participant have potential ramifications for the entire marketplace'').

[503] Proposing Release, 75 FR at 77321, *supra* note 2; *accord* DTCC CB, *supra* note 26 (citing to the CPSS–IOSCO Trade Repository Report's recommendation that market infrastructures and service providers should not be subject to anticompetitive practices).

[504] Proposing Release, 75 FR at 77320, *supra* note 2.

[505] The Exchange Act applies a similar standard for other registrants. *See, e.g.,* Exchange Act Section 6(b)(4), 15 U.S.C. 78f(b)(4) (''The rules of the exchange [shall] provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.''); Exchange Act Section 17A(b)(3)(D), 15 U.S.C. 78q–1(b)(3)(D) (''The rules of the clearing agency [shall] provide for the equitable allocation of reasonable dues, fees and other charges among its participants.''); *see also* Exchange Act Sections 11A(c)(1)(C) and (D), 15 U.S.C. 78k–1(c)(1)(C) and (D) (providing that the Commission may prescribe rules to assure that all SIPs may, ''for purposes of distribution and publication, obtain on fair and reasonable terms such information'' and to assure that ''all other persons may obtain on terms which are not unreasonably discriminatory'' the transaction information published or distributed by SIPs).

[506] Proposing Release, 75 FR at 77320, *supra* note 2.

[507] *See* Regulation of Market Information Fees and Revenues, Exchange Act Release No. 42208 (Dec. 9, 1999), 64 FR 70613, 70619 (Dec. 17, 1999).

[508] *See* DTCC 2, *supra* note 19; MarkitSERV, *supra* note 19 (both believing that an SDR's fees for services should be allowable if such fees reflect the SDR's costs of providing such services).

[509] *See* Proposing Release, 75 FR at 77320, *supra* note 2.

[510] *See* DTCC 2, *supra* note 19.

[511] *See* DTCC 2, *supra* note 19; MarkitSERV, *supra* note 19.

[512] *See* MarkitSERV, *supra* note 19.

[513] Better Markets 1, *supra* note 19.

''any preferential pricing such as volume discounts or reductions should be generally viewed as discriminatory.''[514] Although an SDR's costs in providing its services or access to SBS data maintained by the SDR may be a factor in evaluating the SDR's fee structure, the Commission believes that it is not necessarily the only factor. There may be instances in which an SDR's fees or discounts (including volume discounts) are fair, reasonable, and not unreasonably discriminatory, even if the fees or discounts are not related to the SDR's costs in providing such services or access. In all instances, the SDR is responsible for demonstrating that its fees or discounts meet this regulatory standard.[515] As stated above, the Commission expects to evaluate the fairness and reasonableness of an SDR's fees and charges on a case-by-case basis.

The third commenter suggested that the Commission require SDRs to make available any data they collect and may properly use for commercial purposes to all market participants on reasonable terms and pricing and on a non–discriminatory basis.[516] Although the Commission agrees that fees imposed by SDRs should be ''on reasonable terms and pricing and on a non–discriminatory basis,'' the Commission notes that an SDR is not required to make SBS data available to all market participants, aside from SBS data that is publicly disseminated pursuant to Regulation SBSR.[517] As discussed below, there may be limited instances in which an SDR denies access to a market participant.[518]

With respect to cross-subsidies, the Commission believes that it is not necessary, as one commenter suggested,[519] to prohibit cross-subsidies between services provided by an SDR, but the Commission recognizes that there may be instances in which such cross-subsidies would violate Rule 13n–4(c)(1)(i). For example, cross-subsidies between an SDR's services that result in fees that are arbitrary or have no relationship to the costs of providing the service on a discrete basis may not be consistent with Rule 13n–4(c)(1)(i). This is because an arbitrary fee structure could mean that fees are not being incurred consistently by similarly-situated users of the SDR's services and because the Commission believes that, in certain instances, fee structures without some relationship to the costs of the SDR may not be fair and reasonable due to the differential impact such charges would have on market participants that may choose to use some, but not all, of the SDR's or its affiliate's services.[520] Another commenter suggested that the Commission prohibit SDRs from charging fees to third parties acting on behalf of counterparties for accepting SBS transaction information.[521] The commenter also suggested that the Commission require SDRs to share their revenue from redistributing data with parties providing the data to the SDRs.[522] Consistent with the Commission's approach with its other registrants, including exchanges and clearing agencies, the Commission does not believe that it is appropriate to dictate who an SDR can and cannot charge or with whom an SDR must share its revenue.

One commenter suggested that the Commission extend the applicability of its rule to providers engaged in two or more of trading, clearing, or repository services to prevent predatory or coercive pricing by the providers.[523] As with its other rules governing SDRs, the Commission's rule implementing the first core principle generally applies only to SDR services. To the extent that the Commission decides that predatory or coercive pricing with respect to non-SDR services needs to be addressed, the Commission will take appropriate action.

(2) Rule 13n–4(c)(1)(ii): Offering Services Separately

Rule 13n–4(c)(1)(ii) requires each SDR to permit market participants to access specific services offered by the SDR separately. As one commenter suggested,[524] an SDR may bundle its services, including any ancillary services, regardless of the asset class at issue, but this rule requires the SDR to also provide market participants with the option of using its services separately.[525] The Commission believes that it is appropriate to adopt this rule as proposed to promote competition.[526]

If an SDR or its affiliate[527] provides an ancillary service, such as a matching and confirmation service, then the SDR is prohibited by Rule 13n–4(c)(1)(ii) from requiring a market participant to use and pay for that service as a condition of using the SDR's data collection and maintenance services.[528] In such an instance, the SDR is also prohibited from requiring a market participant that uses the SDR's or affiliate's ancillary service to use the SDR's data collection and maintenance services. The Commission also believes that if an SDR enters into an oral or written agreement or arrangement with an affiliate or third party service provider that reflects a business plan in which the affiliate or third party service provider will require its customers to use the core services of that SDR, then the SDR would not be in compliance with Rule 13n–4(c)(1)(ii).[529] In evaluating the fairness and reasonableness of fees that an SDR charges for bundled and unbundled services, the Commission will take into consideration, among other things, the SDR's cost of making those services available on a bundled or unbundled basis, as the case may be, and a market participant's proportional use of the SDR's services.

With regard to one commenter's suggestion that all ''users'' of an SDR's services, including unaffiliated third party service providers, should be permitted to access the SDR's non-SDR services separately,[530] the Commission agrees, as set forth in Rule 13n–4(c)(1)(ii), that market participants that use an SDR's services should have access to specific services offered by the SDR, including any ancillary services, separately. The Commission believes that SDRs should consider giving third

[514] Barnard, *supra* note 19.

[515] *See* Item 26 of Form SDR.

[516] Tradeweb SB SEF, *supra* note 29.

[517] See Regulation SBSR Adopting Release, *supra* note 13 (Rule 902 requiring SDRs to publicly disseminate certain SBS information).

[518] *See* Section VI.D.3.a.iii(3) of this release discussing an SDR's obligation to provide fair, open, and not unreasonably discriminatory access to others.

[519] *See* DTCC 4, *supra* note 19.

[520] *Accord* Exchange Act Section 17A(b)(3)(D), 15 U.S.C. 78q–1(b)(3)(D) (requiring the rules of a clearing agency to provide for the equitable allocation of reasonable dues, fees, and other charges among its participants).

[521] Tradeweb SBSR, *supra* note 27.

[522] Tradeweb SB SEF, *supra* note 29.

[523] DTCC 4, *supra* note 19.

[524] *See* DTCC 2, *supra* note 19 (suggesting that SDRs should be permitted to offer two or more service options, including one that fulfills the minimum regulatory reporting requirements and other services to complement the mandatory reporting function). *But see* DTCC 4, *supra* note 19 (suggesting that bundling should not be permitted across asset classes).

[525] *See* Barnard, *supra* note 19 (believing that SDRs should be able to offer ancillary services, whether bundled or not, but not supporting the bundling of ancillary services with mandatory or regulatory services).

[526] *See* Exchange Act Section 13(n)(7)(A), 15 U.S.C. 78m(n)(7)(A) (regarding the first SDR core principle). *See also* Section VIII discussing economic analysis.

[527] *See supra* note 247 (defining ''affiliate'').

[528] *See* Proposing Release, 75 FR at 77320–77321, *supra* note 2.

[529] The Commission notes that under Exchange Act Section 20(b), 15 U.S.C. 78t(b), ''[i]t shall be unlawful for any person, directly or indirectly, to do any act or thing which it would be unlawful for such person to do under the provisions of [the Exchange Act] or any rule or regulation thereunder through or by means of any other person.''

[530] *See* TriOptima, *supra* note 19.

party service providers acting as agents for such market participants the same rights as the market participants to access these services separately. However, Rule 13n–4(c)(1)(ii) does not require an SDR to afford the agent access to the SDR's unbundled services outside of its agency capacity.

(3) Rule 13n–4(c)(1)(iii): Fair, Open, and Not Unreasonably Discriminatory Access

Rule 13n–4(c)(1)(iii) requires each SDR to establish, monitor on an ongoing basis, and enforce clearly stated objective criteria that would permit fair, open, and not unreasonably discriminatory access to services offered and data maintained by the SDR as well as fair, open, and not unreasonably discriminatory participation by market participants, market infrastructures, venues from which data can be submitted to the SDR, and third party service providers that seek to connect to or link with the SDR. As with Rule 13n–4(c)(1)(i), the Commission will evaluate whether such access or participation is ''fair, open, and not unreasonably discriminatory'' on a case-by-case basis. Although this rule does not explicitly require, as one commenter suggested,[531] SDRs to establish and maintain effective interoperability and interconnectivity with other SDRs,[532] market infrastructures, and venues from which data can be submitted, the rule is intended to encourage such interoperability and interconnectivity by requiring SDRs to establish criteria that would permit fair, open, and not unreasonably discriminatory participation by others, including those that seek to connect to or link with the SDR.

The Commission agrees with most of the comments on this rule. One commenter suggested that market participants should have ''equal and fair access to data on SBS transactions.'' [533] The Commission agrees with the comment to the extent that the commenter equated ''equal and fair access'' with the ''fair, reasonable and not unreasonably discriminatory'' standard in the rule. However, the Commission notes that all market participants are not required to be treated the same way in all instances. For example, if a market participant fails to pay the SDR's reasonable fees, then it may be ''fair, reasonable and not unreasonably discriminatory'' for an SDR to deny access to the market participant.

The Commission agrees that an SDR should be able to condition access to SBS data that it maintains by specifying the methods and channels that must be used to connect to the SDR and by setting certain minimum standards,[534] provided that such conditions are fair, open, and not unreasonably discriminatory. The Commission also agrees with one commenter's view that an SDR should, to the extent feasible, provide each counterparty to an SBS transaction that is reported to an SDR with reasonable access to the data relating to that transaction.[535] If an SDR provides such access to smaller, lower volume market participants at reduced or waived fees, as one commenter suggested,[536] then the discount must be fair and reasonable and not unreasonably discriminatory.[537] The Commission further agrees with commenters' views that an SDR should provide connectivity to others, including third party service providers, clearinghouses, and SB SEFs,[538] and, as one commenter suggested,[539] if the SDR delegates the function of providing connectivity to another entity, that entity cannot require anyone to use the entity's services as a condition to obtaining connectivity to the SDR. The Commission also agrees with another commenter that an SDR generally should impose similar data access rights and requirements on itself (and its affiliates) as those imposed on a third party acting as an agent on behalf of an SBS counterparty.[540]

As stated in the Proposing Release, the Commission is concerned, among other things, that an SDR, controlled or influenced by a market participant, may limit the level of access to the services offered or data maintained by the SDR as a means to impede competition from other market participants or third party service providers.[541] The Commission believes that Rule 13n–4(c)(1)(iii) addresses this concern.

One commenter recommended that the Commission permit SDRs to deny access only on risk-based grounds.[542] Although the Commission concurs that an SDR should always consider the risks that an actual or prospective market participant may pose to the SDR, the Commission does not believe that it is appropriate to explicitly limit an SDR's ability to deny access because there may be reasonable grounds for denial that may not be risk-related—*e.g.,* a counterparty to an SBS fails to pay the SDR's reasonable fees or a third party service provider breaches its contractual obligation to maintain the privacy of data received by the SDR. The same commenter suggested that the Commission should set forth ''clearly stated objective criteria'' with respect to fair access and denial of access in the final rule,[543] but the Commission does not believe that it is necessary to do so. Under Rule 13n–4(c)(1)(iii), SDRs must establish appropriate criteria to govern access to their services and data as well as participation by those seeking to connect to or link with the SDR.

The Commission does not believe that Rule 13n–1(c)(1)(iii) should require an SDR to provide ''full and unrestricted'' access to third party service providers acting pursuant to written authorizations from an SBS counterparty, as suggested by one commenter.[544] While the Commission agrees with the commenter that such a third party service provider is exercising the SBS counterparty's right to access data with respect to that counterparty's trades, the Commission believes that requiring an SDR to provide ''full and unrestricted'' access (beyond that provided to the SBS counterparty acting directly) would appear to be inconsistent with the Exchange Act. Even if the service provider has received written authorization from one SBS counterparty, the SDR nonetheless would be required to protect the privacy and confidentiality of the other

[531] *See* Better Markets 1, *supra* note 19.

[532] The Commission is not explicitly requiring SDRs to maintain effective interoperability and interconnectivity with other SDRs at this time, partly because such a requirement could hinder the developing infrastructure for SBS transactions.

[533] *See* Better Markets 2, *supra* note 19.

[534] *See* MarkitSERV, *supra* note 19. Related to this comment, another commenter suggested that market infrastructures such as clearing agencies and SB SEFs should generally have the ability to report SBS transactions to SDRs to satisfy their customers' reporting preferences. *See* DTCC 3, *supra* note 19. As stated above, the Commission intends to adopt rules relating to clearing agencies and SB SEFs in separate releases.

[535] *See* DTCC 2, *supra* note 19; *see also* DTCC 3, *supra* note 19 (noting that SDRs should be able to accept trades in any manner consistent with the regulations, from any market participant and have appropriate communication links, to the extent feasible, with all counterparties to SBS transactions reported to the SDR); DTCC SBSR, *supra* note 27 (stating that SDRs ''will need to support an appropriate set of connectivity methods'').

[536] *See* DTCC 2, *supra* note 19 (noting that in providing access to SBS data, SDRs should reduce or waive certain fees, as necessary, to smaller, lower volume market participants).

[537] *See* Rule 13n–4(c)(1)(i).

[538] *See, e.g.,* DTCC 3, *supra* note 19 (supporting open access to SBS data maintained by an SDR by other service providers); Better Markets 1, *supra* note 19.

[539] *See* MarkitSERV, *supra* note 19.

[540] *See* TriOptima, *supra* note 19 (stating that non–discriminatory access is important so as to ''not stifle innovation and the competition in the provision of post-trade processing services'').

[541] Proposing Release, 75 FR at 77321, *supra* note 2.

[542] Better Markets 1, *supra* note 19.

[543] Better Markets 1, *supra* note 19.

[544] *See* TriOptima, *supra* note 19.

counterparty;[545] thus, the SDR need only provide the third party service provider with access to such data that the SBS counterparty that has authorized disclosure would be entitled to access. As noted by the commenter, such a third party service provider is acting as the SBS counterparty's agent and should be entitled to the same level of access as provided to the SBS counterparty.[546] The Commission agrees with the commenter regarding the importance of upholding ''a fair, secure and efficient post-trade market''[547] and believes that the rule as adopted achieves this goal.

(4) Rule 13n–4(c)(1)(iv): Prohibited or Limited Access

Rule 13n–4(c)(1)(iv) requires each SDR to establish, maintain, and enforce written policies and procedures reasonably designed to review any prohibition or limitation of any person with respect to access to services offered, directly or indirectly, or data maintained by the SDR and to grant such person access to such services or data if such person has been discriminated against unfairly.

As stated in the Proposing Release, the Commission believes that, for any such policies and procedures to be reasonable, at a minimum, those at an SDR involved in the decision–making process of prohibiting or limiting a person's access to the SDR's services or data cannot be involved in the review of whether the prohibition or limitation was appropriate.[548] Otherwise, the purpose of the review process would be undermined. Additionally, an SDR may wish to consider whether its internal review process should be done by the SDR's board[549] or an executive committee.

As discussed above, one commenter suggested that the Commission require an SDR to promptly file a notice with the Commission if the SDR prohibits or limits any person's access to services offered or data maintained by the SDR.[550] Rule 909 of Regulation SBSR, which the Commission is concurrently adopting in a separate release, requires each registered SDR to register as a SIP, and, as such, Exchange Act Section 11A(b)(5) governs denials of access to services by an SDR.[551] This section provides that ''[i]f any registered securities information processor prohibits or limits any person in respect of access to services offered, directly or indirectly, by such securities information processor, the registered securities information processor shall promptly file notice thereof with the Commission.''[552] Accordingly, an SDR must promptly notify the Commission if it prohibits or limits access to any of its services to any person. In addition, the SDR is required to notify the Commission of any prohibition or limitation with respect to services offered or data maintained by the SDR in its annual amendment to its Form SDR, which will also enable the Commission to evaluate whether the prohibition or limitation is appropriate.[553] Also, pursuant to Rule 13n–7, records of the decision to prohibit or limit access are required to be maintained by the SDR, and the SDR must promptly furnish such records to any representative of the Commission upon request.[554]

b. Second Core Principle: Governance Arrangements (Rule 13n–4(c)(2))

i. Proposed Rule

Proposed Rule 13n–4(c)(2) would incorporate and implement the second core principle[555] by requiring SDRs to establish governance arrangements that are transparent (i) to fulfill public interest requirements under the Exchange Act and the rules and regulations thereunder; (ii) to carry out functions consistent with the Exchange Act, the rules and regulations thereunder, and the purposes of the Exchange Act; and (iii) to support the objectives of the Federal Government, owners, and participants.[556] The proposed rule would impose four specific requirements. First, an SDR would be required to establish governance arrangements that are well defined and include a clear organizational structure with effective internal controls.[557] Second, an SDR's governance arrangements would be required to provide for fair representation of market participants.[558] Third, an SDR would be required to provide representatives of market participants, including end-users, with the opportunity to participate in the process for nominating directors and with the right to petition for alternative candidates.[559] Finally, an SDR would be required to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that the SDR's senior management and each member of the board or committee that has the authority to act on behalf of the board possess requisite skills and expertise to fulfill their responsibilities in the management and governance of the SDR, to have a clear understanding of their responsibilities, and to exercise sound judgment about the SDR's affairs.[560]

In the Proposing Release, the Commission solicited comments on whether to impose any additional requirements, including ownership or voting limitations on SDRs and persons associated with SDRs.[561]

ii. Comments on the Proposed Rule

Four commenters submitted comments relating to this proposed rule.[562] Comments on the proposal were mixed. As a general matter, one commenter stated that the role of the Commission is to ''insure that the governing structure [of SDRs] is fair to all market participants.''[563]

In suggesting that ''ownership and voting limitations be eliminated in their entirety,''[564] another commenter noted that such limitations would be an imprecise tool to achieve the Commission's policy goals regarding conflicts of interest.[565] The commenter stated that instead, ''[t]hese policy goals can best be met by structural governance requirements'' such as governance by market participants.[566] The commenter believed that ''[i]n the specific case of an SDR, governance by market participants is appropriate, given that most potential conflicts of interest are dealt with directly in the Proposed Rule and will be overseen directly by the regulator.''[567] The commenter further believed that because the ''SDR is not

[545] *See* Exchange Act Section 13(n)(5)(F), 15 U.S.C. 78m(n)(5)(F), and Rule 13n–9 (requiring SDRs to maintain the privacy of SBS transaction information).

[546] *See* TriOptima, *supra* note 19.

[547] *See* TriOptima, *supra* note 19.

[548] Proposing Release, 75 FR at 77321, *supra* note 2.

[549] The term ''board'' is defined as ''the board of directors of the security-based swap data repository or a body performing a function similar to the board of directors of the security-based swap data repository.'' *See* Rule 13n–4(a)(2); *see also* Rule 13n–11(b)(1).

[550] *See* Better Markets 1, *supra* note 19.

[551] *See* Regulation SBSR Adopting Release, *supra* note 13.

[552] 15 U.S.C. 78k–1(b)(5).

[553] *See* Item 33 of Form SDR.

[554] *See* Section VI.G of this release discussing Rule 13n–7.

[555] *See* Exchange Act Section 13(n)(7)(B), 15 U.S.C. 78m(n)(7)(B).

[556] Proposed Rule 13n–4(c)(2).

[557] Proposed Rule 13n–4(c)(2)(i).

[558] Proposed Rule 13n–4(c)(2)(ii).

[559] Proposed Rule 13n–4(c)(2)(iii).

[560] Proposed Rule 13–4(c)(2)(iv).

[561] Proposing Release, 75 FR at 77323–77324, *supra* note 2.

[562] *See* Barnard, *supra* note 19; Better Markets 1, *supra* note 19; DTCC 2, *supra* note 19; Saul, *supra* note 19; *see also* Better Markets 2, *supra* note 19; DTCC 3, *supra* note 19.

[563] Saul, *supra* note 19.

[564] DTCC 3, *supra* note 19.

[565] DTCC 2, *supra* note 19.

[566] DTCC 2, *supra* note 19

[567] DTCC 2, *supra* note 19.

defining the reporting party, timeliness or content for public dissemination, and similarly the SDR is not defining the reporting party, content or process for regulatory access . . . the SDR does not have significant influence over the inclusion or omission of information in the reporting process, nor does it control the output of the process.'' [568] The commenter suggested that the Commission focus on ensuring open access and, to support such access, ''the SDR needs governance that has independence from its affiliates and is representative of users who are the beneficiaries of choice in service providers.'' [569] Along this line, the commenter believed that SDRs should assure that ''dealings with affiliates . . . be subject to oversight by members of the SDR's board of directors who are not engaged in the governance or oversight of either the affiliates or their competitors.'' [570] The commenter also suggested that SDRs be ''user-governed,'' including ''a board of directors that is broadly representative of market participants and that incorporates voting safeguards designed to prevent non–regulatory uses of data of a particular class of market participants that are objectionable to that class.'' [571] The commenter believed that ''[i]ndependent perspectives can provide value to a board of directors, but those who do not directly participate in markets may not have sufficient, timely, and comprehensive expertise on those issues critical to the extraordinarily complex financial operations of SDRs.'' [572]

A third commenter recommended that ''meaningful corporate governance requirements apply to [SDRs].'' [573] In this regard, the commenter recommended that the Commission's rules relating to governance arrangements ''be much more detailed and clear'' and ''require SDRs to establish boards and nominating committees that are composed of a majority of independent directors.'' [574] The commenter believed that ''[i]ndependent boards are one of the most effective tools for ensuring that an SDR will abide by the letter and spirit of the enumerated duties and core principles set forth in the Dodd-Frank Act.'' [575] The commenter also believed that as ''important safeguards against the dominant influence of some market participants over others,'' the Commission's rules should impose both individual and aggregate limitations on ownership and voting (*e.g.,* limit the aggregate ownership interest in an SDR by SDR participants and their related persons to 20%, prohibit SDR participants and their related persons from directly or indirectly exercising more than 20% of the voting power of any class of ownership interest in the SDR).[576]

Another commenter suggested that, with respect to ''board membership requirements and ownership and voting limits, there should be a level playing field between at least SDRs and other swap entities.'' [577] The commenter recommended that the Commission propose something similar to the CFTC's ''Independent Perspective'' [578] by ''requiring a registered SDR to have independent public directors on (i) its board of directors and (ii) any committee that has the authority to (A) act on behalf of the board of directors or (B) amend or constrain the action of the board of directors.'' [579]

iii. Final Rule

After considering the comments, the Commission is adopting Rule 13n–4(c)(2) as proposed, with one minor modification.[580] Under this rule, each SDR is required to establish governance arrangements that are transparent to fulfill public interest requirements under the Exchange Act and the rules and regulations thereunder; to carry out functions consistent with the Exchange Act, the rules and regulations thereunder, and the purpose of the Exchange Act; and to support the objectives of the Federal Government, owners, and participants.[581] To comply with the second core principle, each SDR is required to comply with four specific requirements: (i) Establish governance arrangements that are well defined and include a clear organizational structure with effective internal controls; [582] (ii) establish governance arrangements that provide for fair representation of market participants; [583] (iii) provide representatives of market participants, including end-users, with the opportunity to participate in the process for nominating directors and with the right to petition for alternative candidates; [584] and (iv) establish, maintain, and enforce written policies and procedures reasonably designed to ensure that the SDR's senior management and each member of the board or committee that has the authority to act on behalf of the board possess requisite skills and expertise to fulfill their responsibilities in the management and governance of the SDR, have a clear understanding of their responsibilities, and exercise sound judgment about the SDR's affairs.[585]

As proposed, Rule 13n–4(c)(2)(iv) would have required an SDR's policies and procedures be reasonably designed to ensure that its senior management and each member of the board or committee that has the authority to act on behalf of the board to ''possess requisite skills and expertise . . . to have a clear understanding of their responsibilities'' and ''possess requisite skills and expertise . . . to exercise sound judgment about the [SDR's] affairs.'' The Commission is revising the proposed rule by removing the word ''to'' from the clauses above, to provide

[568] DTCC 2, *supra* note 19 (An SDR's conflicts of interest are ''significantly different from other market infrastructures, where these infrastructures may have the ability to influence participation in a service (*e.g.* execution, clearing membership, portfolio compression), or completeness of product offering (where it is proposed that all trades in an asset class are accepted).'').

[569] DTCC 2, *supra* note 19; *see also* DTCC 3, *supra* note 19 (''[S]tructural governance requirements offer the best solution to reduce risk, increase transparency and promote market integrity within the financial system while avoiding the potential negative impact on capital, liquidity and mitigating systemic risk that could result from any ownership or voting limitations.'').

[570] DTCC 2, *supra* note 19.

[571] DTCC 2, *supra* note 19.

[572] DTCC 2, *supra* note 19.

[573] Better Markets 2, *supra* note 19.

[574] Better Markets 1, *supra* note 19; *see also* Better Markets 2, *supra* note 19 (reiterating the importance of independent boards for SDR governance).

[575] Better Markets 1, *supra* note 19.

[576] Better Markets 1, *supra* note 19; *see also* Better Markets 2, *supra* note 19 (reiterating the importance of ownership and voting restrictions for SDRs governance).

[577] Barnard, *supra* note 19.

[578] The CFTC requires each swap data repository to establish, maintain, and enforce written policies or procedures to ensure that the nomination process for its board of directors, as well as the process for assigning members of the board of directors or other person to such committees, adequately incorporates an ''Independent Perspective,'' which is defined as ''a viewpoint that is impartial regarding competitive, commercial, or industry concerns and contemplates the effect of a decision on all constituencies involved.'' *See* CFTC Rules 49.2(a)(14) and 49.20(c)(1)(i)(B), 17 CFR 49.2(a)(14) and 49.20(c)(1)(i)(B); *see also* CFTC Part 45 Adopting Release, 76 FR at 54563, *supra* note 37 (discussing a swap data repository's consideration of an Independent Perspective).

[579] Barnard, *supra* note 19.

[580] *See infra* accompanying text to note 586 of this release discussing a modification to proposed Rule 13n–4(c)(2).

[581] Rule 13n–4(c)(2).

[582] Rule 13n–4(c)(2)(i).

[583] Rule 13n–4(c)(2)(ii). *Accord* Exchange Act Section 17A(b)(3)(C), 15 U.S.C. 78q-1(b)(3)(C) (requiring the rules of a clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs). The term ''market participant'' is defined as ''(1) any person participating in the security-based swap market, including, but not limited to, security-based swap dealers, major security-based swap participants, and any other counterparties to a security-based swap transaction.'' *See* Rule 13n–4(a)(6); *see also* Rule 13n–9(a)(3); Rule 13n–10(a).

[584] Rule 13n–4(c)(2)(iii).

[585] Rule 13n–4(c)(2)(iv).

that an SDR's policies and procedures be reasonably designed to ensure that its senior management and each member of the board or committee that has the authority to act on behalf of the board is required to actually have a clear understanding of their responsibilities and exercise sound judgment about the SDR's affairs, rather than simply possess the skills and expertise to do so.[586] Without the revision from the proposal, the rule could have been misinterpreted to mean that an SDR's management and each member of the board or committee that has the authority to act on behalf of the board need only possess the skills and expertise to have a clear understanding of their responsibilities. With respect to sound judgment, an SDR may want to include, in its policies and procedures, a requirement that its management and each member of the board or committee that has the authority to act on behalf of the board consider fairly all relevant information and views without undue influence from others, and provide advice and recommendations that are reasonable under the relevant facts and circumstances.

Given an SDR's unique and integral role in the SBS market, the Commission believes that it is particularly important that an SDR establish a governance arrangement that is well defined and include a clear organizational structure with effective internal controls. Because the board has a role in overseeing the SDR's compliance with the SDR's statutory and regulatory obligations,[587] the Commission also believes that it is important that those who are managing and overseeing an SDR's activities are qualified to do so. An SDR's failure to comply with their obligations could affect, for example, the SDR's operational efficiency, which could, in turn, impact the SBS market as a whole.[588]

The Commission believes that Rule 13n–4(c)(2)'s requirement that SDRs establish governance arrangements that provide for fair representation of market participants is consistent with one commenter's view that governance of SDRs by market participants is appropriate.[589] With respect to one commenter's recommendation that an SDR's governance should be independent from its affiliates by, for example, ensuring that dealings with its affiliates are subject to oversight by members of the SDR's board who are not engaged in the governance or oversight of either the affiliates or their competitors,[590] the Commission believes that this is one effective way to comply with the rule and to minimize the SDR's potential conflicts of interest, as discussed further in Section VI.D.3.c of this release.

In establishing a governance arrangement that provides for fair representation of market participants, one way for an SDR to comply with Rule 13n–4(c)(2) is to provide market participants with the opportunity to participate in the process for nominating directors and with the right to petition for alternative candidates. These two requirements are interrelated. The Commission believes that if market participants have no say in an SDR's governance process, then the market participants may not be fairly represented.[591] The Commission notes, however, that having fair representation of market participants does not necessarily equate to requiring a fixed number or percentage of enumerated categories of market participants. Instead, the requirement is intended to promote a fair representation of the views and perspectives of market participants.

The Commission considered whether an SDR's potential and existing conflicts of interest would warrant prescriptive rules relating to governance (*e.g.,* ownership or voting limitations, independent directors, nominating committees composed of a majority of independent directors), as two commenters suggested,[592] but believes that the rules that are intended to minimize such conflicts and to help ensure that SDRs meet core principles are sufficient at this time.[593] If the Commission were to impose additional governance requirements and limitations, SDRs would likely incur costs in addition to the costs already imposed by the SDR Rules.[594] The Commission, however, does not believe that the additional costs are warranted at this time. Also, consistent with one comment,[595] the Commission continues to believe that it is appropriate and cost-effective to provide SDRs with flexibility in determining their ownership and governance structure. The Commission may, however, revisit the issue of whether to impose additional governance requirements and limitations as the SBS market evolves.

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[586] Rule 13n–4(c)(2)(iv).

[587] *See* Rule 13n–11(e) (requiring an SDR's CCO to submit an annual compliance report to the board for its review prior to the filing of the report to with the Commission).

[588] *Accord* Proposing Release, 75 FR at 77307, *supra* note 2 (''The inability of an SDR to protect the accuracy and integrity of the data that it maintains or the inability of an SDR to make such data available to regulators, market participants, and others in a timely manner could have a significant negative impact on the SBS market. Failure to maintain privacy of such data could lead to market abuse and subsequent loss of liquidity.'').

[589] *See* DTCC 2, *supra* note 19. In discussing governance arrangements, the commenter seemed to imply that the Commission is responsible for directly overseeing an SDR's conflicts of interest. To clarify, it is the SDR itself that is statutorily required to establish and enforce policies and procedures to minimize its conflicts of interest in its decision-making process. *See* Exchange Act Section 13(n)(7)(C), 15 U.S.C. 78m(n)(7)(C).

[590] *See* DTCC 2, *supra* note 19.

[591] One commenter suggested that the Commission propose something similar to the CFTC's ''Independent Perspective.'' Barnard, *supra* note 19. The Commission believes that although Rule 13n–4(c)(2) is different from CFTC Rule 49.20 in this area, both rules may achieve the same objective of broad representation on SDRs' boards. Rule 13n–4(c)(2)(ii) requires SDRs to ''[e]stablish governance arrangements that provide for fair representation of market participants,'' and Rule 13n–4(c)(2)(iii) requires SDRs to ''[p]rovide representatives of market participants, including end-users, with the opportunity to participate in the process for nominating directors and with the right to petition for alternative candidates.'' Instead of focusing on fair representation of market participants, CFTC Rule 49.20(c) requires a swap data repository to establish, maintain, and enforce written policies and procedures to ensure that its board and other committees adequately consider an ''Independent Perspective'' in their decision-making process. *See* 17 CFR 49.20(c). *Cf.* DTCC 2, *supra* note 19 (stating that ''[i]ndependent perspectives can provide value to a board of directors, but those who do not directly participate in markets may not have sufficient, timely, and comprehensive expertise on those issues critical to the extraordinarily complex financial operations of SDRs'').

[592] *See* Barnard, *supra* note 19; Better Markets 1, *supra* note 19; *see also* Better Markets 2, *supra* note 19.

[593] *See, e.g.,* Rule 13n–4(c)(1) (implementing core principle relating to market access to SDRs' services and data), as discussed in Section VI.D.3.a of this release; Rule 13n–4(c)(3) (implementing core principle relating to conflicts of interest), as discussed in Section VI.D.3.c of this release; and Rule 13n–5 (requiring an SDR to accept all SBSs in a given asset class if it accepts any SBS in that asset class), as discussed in Section VI.E of this release; *see also* Item 32 of Form SDR (requiring disclosure of instances in which an SDR has prohibited or limited a person with respect to access to the SDR's services or data). As stated in Section VI.D.3.a.iii(4) of this release, the Commission is adopting Rule 909 of Regulation SBSR, which requires each SDR to register as a SIP; as such, Exchange Act Section 11A(b)(5) governs denials of access to all services of an SDR. *See* Regulation SBSR Adopting Release, *supra* note 13; Exchange Act Section 11A(b)(5), 15 U.S.C. 78k–1(b)(5).

[594] *See* Section VIII.D of this release (discussing SDRs' costs of complying with the SDR Rules).

[595] *See* DTCC 2, *supra* note 19 (recommending structural governance requirements instead of ownership and voting limitations); *see also* DTCC 3, *supra* note 19 (supporting the mitigation of conflicts of interest through the imposition of structural governance requirements instead of ownership and voting limitations).

c. Third Core Principle: Rules and Procedures for Minimizing and Resolving Conflicts of Interest (Rule 13n–4(c)(3))

i. Proposed Rule

Proposed Rule 13n–4(c)(3) would incorporate the third core principle [596] by requiring each SDR to establish and enforce written policies and procedures reasonably designed to minimize conflicts of interest in the decision making process of the SDR, and establish a process for resolving any such conflicts of interest.[597] The proposed rule provided general examples of conflicts of interest that should be considered by an SDR and would require each SDR to comply with the core principle by (i) establishing, maintaining, and enforcing written policies and procedures reasonably designed to identify and mitigate potential and existing conflicts of interest in the SDR's decision-making process on an ongoing basis; [598] (ii) recusing any person involved in a conflict of interest from the decision-making process for resolving such conflicts of interest; [599] and (iii) establishing, maintaining, and enforcing reasonable written policies and procedures regarding the SDR's non-commercial and/or commercial use of the SBS transaction information that it receives from a market participant, any registered entity, or any other person.[600]

ii. Comments on the Proposed Rule

Seven commenters submitted comments relating to this proposed rule.[601] One commenter agreed that the Proposing Release ''correctly highlights a number of the harmful practices that can thrive in an environment that does not adequately address conflicts of interest. . . .'' [602] These practices are discussed further in Section VI.D.3.c.iii below. Another commenter acknowledged that ''[t]he mandatory reporting regime [under the Dodd-Frank Act] creates an opportunity for [an] SDR to improperly commercialize the information it receives'' and agreed with the Commission that ''market access by service providers to an SDR could be a potential source for conflicts of interest.'' [603] This commenter expressed the view, however, that because ''[t]he reporting rules for SDRs are highly prescriptive, and the primary consumers of this data are regulators, [there is] limited room for conflicts involving regulatory or public data access.'' [604] The commenter noted that ''[i]t is important that regulators ensure that the public utility function of SDRs . . . is separated from potential commercial uses of the data.'' [605]

As noted in the Proposing Release, a few entities that presently provide or had anticipated providing trade repository services identified the following conflicts of interest that could arise at an SDR.[606] First, owners of an SDR could have commercial incentives to exert undue influence to control the level of access to the services offered and data maintained by the SDR and to implement policies and procedures that would further their self-interests to the detriment of others.[607] Specifically, owners of an SDR could exert their influence and control to prohibit or limit access to the services offered and data maintained by the SDR in order to impede competition.[608] Second, an SDR could favor certain market participants over others with respect to the SDR's services and pricing for such services.[609] Third, an SDR could require that services be purchased on a ''bundled'' basis.[610] Finally, an SDR or a person associated with the SDR could misuse or misappropriate data reported to the SDR for financial gain.[611] As one trade repository noted, ''SDR data is extremely valuable and could be sold either stand alone or enhanced with other market data and analysis. The use of this data in this manner would present competitive problems'' as well as conflicts of interest issues.[612]

Several commenters expressed their views on the ownership of SBS data maintained by SDRs. Specifically, three commenters believed that ownership of SBS data should remain with counterparties to the SBS unless specifically agreed by them.[613] One commenter to proposed Regulation SBSR stated that ownership of SBS data should be retained by the reporting party (*e.g.,* SB SEFs, counterparties to an SBS),[614] whereas a commenter to the Proposing Release believed that data ownership does not transfer to an SB SEF or any other regulated entity.[615] Three commenters, including two commenters to proposed Regulation SBSR, believed that SDRs and/or their affiliates should be prohibited from using SBS data for commercial purposes.[616] One of those commenters

[596] *See* Exchange Act Section 13(n)(7)(C), 15 U.S.C. 78m(n)(7)(C)).

[597] Proposed Rule 13n–4(c)(3).

[598] Proposed Rule 13n–4(c)(3)(i).

[599] Proposed Rule 13n–4(c)(3)(ii).

[600] Proposed Rule 13n–4(c)(3)(iii).

[601] *See* Better Markets 1, *supra* note 19; DTCC 2, *supra* note 19; Markit, *supra* note 19; MarkitSERV, *supra* note 19; MFA 1, *supra* note 19; WMBAA SBSR, *supra* note 27; Tradeweb SB SEF, *supra* note 29; *see also* DTCC SBSR, *supra* note 27.

[602] Better Markets 1, *supra* note 19.

[603] DTCC 2, *supra* note 19 (discussing an SDR's conflicts of interest identified by the Commission in the Proposing Release).

[604] DTCC 2, *supra* note 19.

[605] DTCC 2, *supra* note 19.

[606] Proposing Release, 75 FR at 77324–77325, *supra* note 2.

[607] *See, e.g.,* Reval, Responses to the CFTC's Questions on the SDR Requirements, *available at http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission9_100110-reval.pdf* (stating that an SDR with any ownership or revenue sharing arrangements directly or indirectly with a dealer would be an obvious conflict of interest) (''Reval CFTC Response Letter'').

[608] *See, e.g.,* Warehouse Trust Company, Draft Response to CFTC re: CFTC Request for Information regarding SDR Governance, *available at http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission9_100510-wt.pdf* (stating that ''ownership of an SDR could lead to access restrictions on non-owners'') (''Warehouse Trust CFTC Response Letter'').

[609] *See* Reval CFTC Response Letter, *supra* note 607 (stating that preferential treatment in services provided by an SDR could also occur).

[610] *See* Warehouse Trust CFTC Response Letter, *supra* note 608 (''The issue of vertical bundling could arise where [SB SEFs and clearing agencies] have preferred access or servicing arrangements with SDRs primarily due to ownership overlaps.'').

[611] *See* Reval CFTC Response Letter, *supra* note 607 (''[T]here would always be an underlying conflict to ensure that the position information or client activity does not get into the hands of investors or business partners of the SDR who could benefit from that information.'').

[612] Warehouse Trust CFTC Response Letter, *supra* note 608; *see also* Reval CFTC Response Letter, *supra* note 607 (''[I]f only one SDR is created for an asset class and that SDR is held by a market participant that could gain by having an edge on when the information is received, even if by a split second, it could have a trading edge.'').

[613] MarkitSERV, *supra* note 19 (''[I]n the interest of ensuring minimal intrusion on commercial activity and optimal incentives for parties to support and encourage robust and accurate reporting, and the development of valuable commercial products . . . data provided to [SDRs] should only be used as permitted by the relevant market participants in agreements between them and the [SDR].''); Markit, *supra* note 19 (stating that ''commercialization of data should only be done with the specific consent of the data owners''); DTCC 2, *supra* note 19 (''The principle of user control over the data for non-regulatory purposes must . . . be scrupulously maintained.''); *see also* DTCC 3, *supra* note 19 (''It is critical to preserve the trading parties' control over their own data.'').

[614] WMBAA SBSR, *supra* note 27.

[615] Markit, *supra* note 19.

[616] MFA 1, *supra* note 19 (suggesting that the Commission adopt a rule similar to the CFTC's proposed rule that would prohibit SDRs from using data for commercial purposes without express written consent); DTCC SBSR, *supra* note 27 (''It is good public policy that the aggregating entity not itself use the data for commercial purposes, particularly where data is required to be reported to an aggregator serving a regulatory purpose, and make such data available to value added providers on a non-discriminatory basis, consistent with restrictions placed on the data by the data contributors themselves.''); WMBAA SBSR, *supra* note 27 (''Consistent with reporting practices in other markets, the reporting of SBS transaction information to a registered SDR should not bestow the SDR with the authority to use the SBS transaction data for any purpose other than those explicitly enumerated in the Commission's regulations.'').

supported an SDR's use of aggregated data for commercial use, such as marketing.[617]

One commenter to the SB SEF Proposing Release recommended that the Commission clarify in its final rules or adopting release that its rules are not intended to impose or imply any limit on the ability of market participants, including counterparties to SBS transactions, SB SEFs, and clearing agencies, to use and/or commercialize data that they create or receive in connection with the execution or reporting of SBS data.[618] Similarly, one commenter to proposed Regulation SBSR suggested that the Commission require SDRs to adopt policies and procedures explicitly acknowledging that counterparties to SBS transactions and SB SEFs retain the ability to market and commercialize their own proprietary data.[619]

iii. Final Rule

After considering the comments, the Commission is adopting Rule 13n–4(c)(3) as proposed. Under this rule, each SDR is required to establish and enforce written policies and procedures reasonably designed to minimize conflicts of interest in the decision-making process of the SDR and to establish a process for resolving any such conflicts of interest.[620]

Rule 13n–4(c)(3) provides general examples of conflicts of interest that should be considered by an SDR, including, but not limited to: (1) Conflicts between the commercial interests of an SDR and its statutory and regulatory responsibilities, (2) conflicts in connection with the commercial interests of certain market participants or linked market infrastructures, third party service providers, and others, (3) conflicts between, among, or with persons associated with the SDR,[621] market participants, affiliates of the SDR, and nonaffiliated third parties,[622] and (4) misuse of confidential information, material, nonpublic information, and/or intellectual property. These general examples are the same as those included in proposed Rule 13n–4(c)(3) with one modification. The proposed rule provided, as an example, ''conflicts between the commercial interests of [an SDR] and its statutory responsibilities.'' Upon further consideration, the Commission is revising this example, to include potential conflicts between an SDR's commercial interests and its regulatory responsibilities. This revision is intended to clarify that an SDR's commercial interests can conflict with not only its statutory responsibilities, but also its regulatory responsibilities, which may be more prescriptive than its statutory responsibilities.

To comply with the third core principle, an SDR is required to comply with three specific requirements. First, Rule 13n–4(c)(3)(i) requires each SDR to establish, maintain, and enforce written policies and procedures reasonably designed to identify and mitigate potential and existing conflicts of interest in the SDR's decision-making process on an ongoing basis. The Commission continues to believe that requiring an SDR to conduct ongoing identification and mitigation of conflicts of interest is important because such conflicts can arise gradually over time or unexpectedly. Furthermore, a situation that is acceptable one day may present a conflict of interest the next. The Commission believes that in order to identify and address potential conflicts that may arise over time, an SDR's procedures generally should provide a means for regular review of conflicts as they impact the SDR's decision-making processes. Rather than imposing prescriptive requirements on SDRs regarding how to address conflicts, the Commission believes that SDRs should be provided the flexibility to determine how best to address and manage their conflicts.

Second, Rule 13n–4(c)(3)(ii) requires an SDR to recuse any person involved in a conflict of interest from the decision-making process for resolving that conflict of interest. As stated in the Proposing Release, the Commission believes that such recusal is necessary to eliminate an apparent conflict of interest in an SDR's decision-making process.[623] Additionally, recusal will likely increase confidence in the SDR's decision-making process and avoid an appearance of impropriety.

Finally, Rule 13n–4(c)(3)(iii) requires an SDR to establish, maintain, and enforce reasonable written policies and procedures regarding the SDR's non-commercial and/or commercial use of the SBS transaction information that it receives from a market participant, any registered entity, or any other person. The Commission recognizes that an SDR may have commercial incentives to operate as an SDR and agrees with one commenter's view that the Dodd-Frank Act's mandatory reporting regime creates an opportunity for an SDR to commercialize improperly the information that it receives.[624] To the extent that an SDR uses data that it receives from others for commercial purposes, the Commission believes that such uses should be clearly defined and disclosed to market participants.[625] If, for example, a market participant is considering waiving confidentiality of the data that it provides to an SDR, then, at the very least, such disclosure should provide the market participant with the information necessary to make a meaningful choice. One commenter suggested that an SDR should, as a way to minimize potential conflicts of interest, consider separating its utility function from its commercial use of the

[617] MFA 1, *supra* note 19; *see also* Tradeweb SB SEF, *supra* note 29 (supporting SDRs' commercial use of data with limitations).

[618] Tradeweb SB SEF, *supra* note 29 (believing that its recommendation will help ensure a robust and competitive market, as envisioned by the Dodd-Frank Act, and help limit the possibility of overreaching by SDRs due to their unique position in the data-reporting regime).

[619] WMBAA SBSR, *supra* note 27.

[620] Rule 13n–4(c)(3).

[621] Rule 13n–4(a)(8) defines ''person associated with a security-based swap data repository'' as (i) any partner, officer, or director of such SDR (or any person occupying a similar status or performing similar functions), (ii) any person directly or indirectly controlling, controlled by, or under common control with such SDR, or (iii) any employee of such SDR. *See also* Rule 13n–9(a)(7). This definition draws from the definition of ''person associated with a broker or dealer'' in the Exchange Act, and includes persons associated with an SDR whose functions are solely clerical or ministerial. *See* Exchange Act Section 3(a)(18), 15 U.S.C. 78c(a)(18). Rule 13n–4(a)(3) defines ''control'' (including the terms ''controlled by'' and ''under common control with'') as ''the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.'' Pursuant to Rule 13n–4(a)(3), ''[a] person is presumed to control another person if the person: (i) Is a director, general partner, or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25 percent or more of the capital.'' The Commission is correcting a typographical error in the proposed definition. Proposed Rule 13n–4(a)(3)(ii) referred to the right to vote 25 percent ''of'' more of a class of securities. *See* Proposing Release, 75 FR at 77367, *supra* note 2. As adopted, Rule 13n–4(a)(3)(ii) refers to the right to vote 25 percent ''or'' more of a class of securities. *See also* Rules 13n–9(a)(2) and 13n–11(b)(2). The definition of ''control'' incorporates the definition of ''control'' in Exchange Act Rule 12b–2 and Form BD, the registration form for broker-dealers. *See* 17 CFR 240.12b–2 and Form BD, 17 CFR 249.501.

[622] The term ''nonaffiliated third party'' of an SDR is defined as any person except (1) the SDR, (2) an SDR's affiliate, or (3) a person employed by an SDR and any entity that is not the SDR's affiliate (and ''nonaffiliated third party'' includes such entity that jointly employs the person). *See* Rule 13n–4(a)(7); *see also* Rule 13n–9(a)(4). This definition draws from the definition of ''nonaffiliated third party'' in § 248.3 of Regulation S–P. *See* 17 CFR 248.3.

[623] Proposing Release, 75 FR at 77325, *supra* note 2.

[624] *See* DTCC 2, *supra* note 19.

[625] *See* Section VI.I.2 of this release discussing an SDR's disclosure requirements.

SBS transaction information that it receives.[626] The Commission agrees that this could be a way to address potential conflicts of interest, but the Commission does not believe that it necessarily mitigates or eliminates conflicts in all circumstances. Thus, while SDRs may wish to consider this approach, the Commission is not requiring them to do so at this time.

As discussed in the Proposing Release, the Commission believes that a small number of dealers could control an SDR, which may require SDR owners to balance competing interests.[627] Owners of an SDR could derive greater revenues from their non-trade repository activities in the SBS market than they would from sharing in the profits of the SDR in which they hold a financial interest; consequently, the owners of an SDR may be conflicted in making decisions that would increase the SDR's profitability, but decrease the profitability of their non-trade repository activities. In addition, there may be a tension between an SDR's statutory or regulatory obligations (*e.g.,* maintaining the privacy of data reported to the SDR) and its own commercial interests or those of its owners (*e.g.,* using data reported to the SDR for commercial purposes).[628]

An SDR's conflicts of interest that are not properly managed could limit the benefits of the SDR to the markets and regulators of SDRs as well as undermine the mandatory reporting requirement in Exchange Act Section 13(m)(1)(G), thereby impacting efficiency in the SBS market.[629] If, for instance, a market participant loses confidence in a particular SDR because the SDR fails to minimize its conflicts of interest, then the market participant may report its SBS transactions to an alternative SDR, which could lead to data fragmentation. By requiring an SDR to take specific actions to minimize its conflicts of interest, the Commission believes that Rule 13n–4(c)(3), as adopted, addresses these concerns as well as the concerns expressed in comments received on the rule proposal.

Several commenters expressed their views on whether an SDR should be permitted to use data for commercial purposes.[630] For a number of reasons, the Commission continues to believe that it is not appropriate to adopt, at this time, a rule prohibiting an SDR and its affiliates from using for commercial purposes SBS data that the SDR maintains without obtaining express written consent from both counterparties to the SBS transaction or the reporting party. First, the Commission believes that such a prohibition may limit transparency by hindering an SDR's ability to provide anonymized and aggregated reports to the public if the Commission does not specifically mandate an SDR to provide these reports to the public. Under the final rule, an SDR may provide these reports to the public, provided that it complies with the privacy requirements of Rule 13n–9, as discussed in Section VI.I.1 below.[631] Second, a rule that prohibits an SDR from using SBS data for commercial purposes seems to presume that the market participants or reporting party owns the data. As evidenced by the comment letters received,[632] the issue of who owns the data is not clear cut, particularly when value is added to it. Third, a general prohibition on an SDR's commercial use of SBS data could hinder competition and the establishment of new SDRs. As stated in Section III.D of this release, the Commission does not support any particular business model; restricting an SDR's commercial use of SBS data entirely, however, may be viewed as the Commission favoring one model over other models. Finally, the Commission believes that it is adopting adequate mechanisms to prevent or detect an SDR's misuse of SBS data.[633] If, however, such mechanisms prove to be inadequate, then the Commission may revisit this issue.

At this time, the Commission believes that the core principles and statutory requirements applicable to SDRs under the Dodd-Frank Act can be appropriately addressed under the final SDR Rules, without the need for the Commission to take a position on ownership of SBS data. In response to one commenter's request for clarification,[634] the Commission notes that Rule 13n–4(c)(3) is not intended to impose or imply any limit on the ability of market participants, including counterparties to SBS transactions, SB SEFs, and clearing agencies, to use or commercialize data that they create or receive in connection with the execution or reporting of SBS data. The Commission, however, does not believe that it is necessary, as another commenter suggested,[635] to require SDRs to adopt policies and procedures explicitly acknowledging that market participants retain the ability to market and commercialize their own proprietary data.

4. Indemnification Exemption (Rule 13n–4(d))

In the Cross-Border Proposing Release, the Commission proposed Rule 13n–4(d), pursuant to its authority under Exchange Act Section 36,[636] to provide a tailored exemption from the indemnification requirement set forth in Exchange Act Section 13(n)(5)(H)(ii)[637] and previously proposed Rule 13n–4(b)(10) thereunder.[638] The Commission received a number of comments relating to the indemnification requirement and

[626] DTCC 2, *supra* note 19.

[627] Proposing Release, 75 FR at 77324, *supra* note 2.

[628] *See* Proposing Release, 75 FR at 77324, *supra* note 2 (citing to CPSS–IOSCO Trade Repository Report (noting the conflicts of interest ''between the unique public role of the [SDR] and its own commercial interests particularly if the [SDR] offers services other than record keeping or between commercial interests relating to different participants and linked market infrastructures and service providers'')).

[629] *See* 15 U.S.C. 78m(m)(1)(G). Exchange Act Section 13(m)(1)(G) imposes a mandatory reporting requirement, which provides that ''[e]ach security-based swap (whether cleared or uncleared) shall be reported to a registered security-based swap data repository.'' *See also* Exchange Act Section 13A(a)(1), 15 U.S.C. 78m-1(a)(1) (''Each security-based swap that is not accepted for clearing by any clearing agency or derivatives clearing organization shall be reported to—(A) a security-based swap data repository . . ., or (B) in the case in which there is no security-based swap data repository that would accept the security-based swap, to the Commission . . . .'').

[630] *See Markit, supra* note 19 (stating that ''commercialization of data should only be done with the specific consent of the data owners''); MarkitSERV, *supra* note 19 (stating that ''data provided to [SDRs] should only be used as permitted by the relevant market participants in agreements between them and the [SDR]''); MFA 1, *supra* note 19 (suggesting that the Commission adopt a rule similar to the CFTC's proposed rule that would prohibit SDRs from using data for commercial purposes without express written consent); *see also* DTCC SBSR, *supra* note 27 (suggesting that an SDR should not use data for commercial purposes); WMBAA SBSR, *supra* note 27 (indicating that an SDR should not have the authority to use SBS transaction data ''for any purpose other than those explicitly enumerated in the Commission's regulations''). *See also* CFTC Rule 49.17(g), 17 CFR 49.17(g) (''Swap data accepted and maintained by the swap data repository generally may not be used for commercial or business purposes by the swap data repository or any of its affiliated entities''; however, ''[t]he swap dealer, counterparty or any other registered entity that submits the swap data maintained by the registered swap data repository may permit the commercial or business use of the data by express written consent.'').

[631] *Cf.* SBSR Adopting Release, *supra* note 13 (prohibiting public dissemination of ''non-mandatory reports,'' as defined in Regulation SBSR).

[632] *See* DTCC 2, *supra* note 19; Markit, *supra* note 19; MarkitSERV, *supra* note 19; MFA 1, *supra* note 19; DTCC SBSR, *supra* note 27; WMBAA SBSR, *supra* note 27.

[633] *See, e.g.,* Rules 13n–4(c)(1)(i) (fair and reasonable fee requirements) and 13n–9 (privacy requirements).

[634] *See* Tradeweb SB SEF, *supra* note 29.

[635] *See* WMBAA SBSR, *supra* note 27.

[636] 15 U.S.C. 78mm.

[637] 15 U.S.C. 78m(n)(5)(H)(ii).

[638] Cross-Border Proposing Release, 78 FR at 31209, *supra* note 3.

the proposed exemption.[639] While the Commission continues to believe that an exemption from the indemnification requirement should be considered, the Commission also believes that the final resolution of this issue can benefit from further consideration and public comment. Accordingly, the Commission is not adopting proposed Rule 13n–4(d) at this time. The Commission anticipates soliciting additional public comment regarding the indemnification requirement and a proposed exemption. As discussed above, SDRs will have to comply with all statutory requirements, including the indemnification requirement set forth in Exchange Act Section 13(n)(5)(H)(ii),[640] when the current exemptive relief from the statutory requirements expires.[641]

E. Data Collection and Maintenance (Rule 13n–5)

The Commission proposed Exchange Act Rule 13n–5 to specify the data collection and maintenance requirements applicable to SDRs.[642] After considering the comments received on this proposal, the Commission is adopting Rule 13n–5 as proposed, with certain modifications.[643]

1. Transaction Data (Rule 13n–5(b)(1))

a. Proposed Rule

Proposed Rule 13n–5(b)(1)(i) would require every SDR to establish, maintain, and enforce written policies and procedures reasonably designed for the reporting of transaction data to the SDR, and would require the SDR to accept all transaction data that is reported to the SDR in accordance with such policies and procedures. Proposed Rule 13n–5(a)(1) defined ''transaction data'' to mean all the information reported to an SDR pursuant to the Exchange Act and the rules and regulations thereunder.[644]

Proposed Rule 13n–5(b)(1)(ii) would require an SDR, if it accepts any SBS in a given asset class, to accept all SBSs in that asset class that are reported to it in accordance with its policies and procedures required by paragraph (b)(1) of the proposed rule. Proposed Rule 13n–5(a)(3) defined ''asset class'' as ''those security-based swaps in a particular broad category, including, but not limited to, credit derivatives, equity derivatives, and loan-based derivatives.''

Proposed Rule 13n–5(b)(1)(iii) would require every SDR to establish, maintain, and enforce written policies and procedures reasonably designed to satisfy itself by reasonable means that the transaction data that has been submitted to the SDR is accurate. This proposed rule would also require every SDR to clearly identify the source for each trade side and the pairing method (if any) for each transaction in order to identify the level of quality of that transaction data.[645]

Proposed Rule 13n–5(b)(1)(iv) would require every SDR to promptly record the transaction data it receives.[646]

b. Comments on the Proposed Rule

Three commenters submitted comments relating to this proposed rule.[647] One commenter stated that an SDR should have ''certain minimum data standards'' with regard to the transaction data that it accepts, but that ''such standards should be able to accommodate a wide variety of SBS transactions submitted per asset class.'' [648] The commenter also stated that ''the regulations should be understood to permit [SDRs] to specify the methods and channels that participants need to use to connect to them, which will most commonly be provided in the form of the Application Programming Interfaces (APIs) and through setting of certain minimum standards.'' [649]

Another commenter recommended revising the definition of ''asset class'' from the proposal to eliminate ''the distinction between loan-based and credit asset classes,'' and noted that ''products like CDS on loans, while loan-based, are currently reported alongside other CDS products.'' [650] The commenter believed that ''[i]n general, equity and credit derivatives will be easy to classify, although it is possible that certain transactions could be mixed and more difficult to classify.'' [651] The commenter stated that it considers it more likely to have classification difficulties between ''a swap and an SBS, rather than between SBS asset classes.'' [652] The commenter suggested that, in order to mitigate the problem of classification between asset classes, the Commission could combine ''the loan-based asset class with credit derivatives, and [allow] an SBS to be reported to either the equity or credit SDR if there is any uncertainty of a product's asset class.'' [653]

Two commenters agreed that SDRs should be required to support all trades in an asset class.[654] One commenter stated that ''[w]ithout specific requirements related to the range of products that can be reported to them, [SDRs] may be tempted to limit their operating costs by only accepting the more standardized categories of swaps [that] also tend to trade in high volumes. This would result in incomplete market coverage and an increased fragmentation of the reported data.'' [655] Thus, the commenter recommended that the Commission require SDRs ''to accept all trades in a given asset class as a means of ensuring broad coverage while guarding against fragmentation that could result from inadequate [SDR]

[639] *See* DTCC 2, *supra* note 19; ESMA, *supra* note 19; US & Foreign Banks, *supra* note 24; *see also* DTCC 1*, *supra* note 20; DTCC CB, *supra* note 26.

[640] 15 U.S.C. 78m(n)(5)(H)(ii).

[641] *See* Section V of this release discussing the implementation of the SDR Rules.

[642] Rule 13n–5 is being promulgated under Exchange Act Sections 13(n)(4)(B), 13(n)(7)(D), and 13(n)(9). *See* 15 U.S.C. 78m(n)(4)(B), 78m(n)(7)(D), and 78m(n)(9). Rule 13n–5(b) does not apply to SDR records other than transaction data and positions, as defined below. Records made or kept by an SDR, other than transaction data and positions, are governed by Rule 13n–7, as discussed in Section VI.G of this release.

[643] Each definition in Rule 13n–5(a) is discussed alongside the substantive rule in which the definition is used. *See* Section VI.E.1 below discussing ''asset class'' and ''transaction data''; and Section VI.E.2 below discussing ''position.''

[644] In a separate rulemaking implementing Dodd-Frank Act Sections 763(i) and 766(a) (adding Exchange Act Sections 13(m) and 13A(a)(1) respectively), the Commission is adopting rules requiring SBS transactions to be reported to a registered SDR. *See* Regulation SBSR Adopting Release, *supra* note 13 (Rules 901 and 902). In another separate proposal relating to implementation of Dodd-Frank Act Section 763(i) (adding Exchange Act Section 13(n)(5)(E)), the Commission proposed rules that would require SDRs to receive SBS transaction data that satisfies the notice requirement for parties that elect the end-user exception to mandatory clearing of SBSs in order to aid the Commission in its responsibility to prevent abuse of the end-user exception as provided for in Exchange Act Section 3C(g). *See* End-User Exception Proposing Release, *supra* note 15 (''Using the centralized facilities of SDRs should also make it easier for the Commission to analyze how the end-user clearing exception is being used, monitor for potentially abusive practices, and take timely action to address abusive practices if they were to develop.'').

[645] Proposed Rule 13n–5(b)(1)(iii).

[646] In a separate release, the Commission is adopting rules prescribing the data elements that an SDR is required to accept for each SBS, in association with requirements under Dodd-Frank Act Section 763(i) (adding Exchange Act Section 13(n)(4)(A), relating to standard setting and data identification). *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 901).

[647] *See* DTCC 2, *supra* note 19; MarkitSERV, *supra* note 19; MFA 1, *supra* note 19; *see also* DTCC 3, *supra* note 19; DTCC 4, *supra* note 19; DTCC 5, *supra* note 19.

[648] MarkitSERV, *supra* note 19.

[649] MarkitSERV, *supra* note 19.

[650] DTCC 2, *supra* note 19.

[651] DTCC 2, *supra* note 19.

[652] DTCC 2, *supra* note 19 (giving as an example a trade constructed based on the correlation between commodities and equities).

[653] DTCC 2, *supra* note 19.

[654] MarkitSERV, *supra* note 19; DTCC 2, *supra* note 19; *see also* DTCC 3, *supra* note 19; DTCC 4, *supra* note 19.

[655] MarkitSERV, *supra* note 19 (citation omitted).

functionality.'' [656] The other commenter stated that the ''requirement for an SDR to support all trades in an asset class is . . . important to reduce the complexity for reporting parties,'' and that the ''requirement discourages an SDR from only servicing high volume products within an asset class to maximize profit, and leaving more complex (and less frequently traded) transactions to be reported by reporting parties directly to the Commission.'' [657]

Three commenters addressed the SDR's role with respect to verifying the accuracy of the transaction data submitted.[658] One commenter fully supported the requirement that SDRs confirm with both counterparties the accuracy of the data submitted.[659] Another commenter stated that ''the Commission should encourage the use and reporting of trade data that has been confirmed or verified by both counterparties via an affirmation or a matching process,'' [660] and that this should be ''connected with'' the Commission's proposed requirement that SBS dealers and major SBS participants provide trade acknowledgments and verify those trade acknowledgments.[661] This commenter suggested, however, that SDRs should be able to accept single-sided trades for real-time reporting purposes, and that any subsequently discovered discrepancies could be corrected after confirmation.[662] The third commenter recommended that ''SDRs should not have additional duties with respect to verifying the accuracy of [a] submission, as there is limited data available to the SDR. The SDR may carry out certain routine functions to identify trades which may indicate erroneous data (*e.g.* based on size), but in general, the primary responsibility for accuracy of reported information should remain with the reporting party.'' [663] This commenter also recommended that the Commission determine that an SDR has satisfied its obligation where ''(i) the [SBS] has been reported by a [SEF], clearing agency, designated contract market, or other regulated counterparty who has an independent obligation to maintain the accuracy of the transaction data; (ii) a confirmation has been submitted to the [SDR] to demonstrate that both counterparties have agreed to the accuracy of the swap information that was submitted to the [SDR]; or (iii) the [SBS] is deemed verified and the [SDR] has developed and implemented policies and procedures reasonably designed to provide the non-reporting side of the [SDR] with an opportunity to confirm the information submitted by the reporting side.'' [664] This same commenter stated that SDRs should ''process transactions in real-time.'' [665]

c. Final Rule

After considering the comments, the Commission is adopting Rule 13n–5(b)(1) and the definition of ''transaction data'' under Rule 13n–5(a)(3) as proposed, with modifications.[666] The Commission is adopting the definition of ''asset class'' under Rule 13n–5(a)(1) as proposed, with one modification.[667]

Rule 13n–5(b)(1)(i) and the definition of ''transaction data'': Rule 13n–5(b)(1)(i) requires every SDR to establish, maintain, and enforce written policies and procedures reasonably designed for the reporting of complete and accurate transaction data to the SDR, and requires the SDR to accept all transaction data that is reported to the SDR in accordance with such policies and procedures. ''Transaction data'' is defined to mean all the information reported to an SDR pursuant to the Exchange Act and the rules and regulations thereunder, except for information provided pursuant to Rule 906(b) of Regulation SBSR.[668]

As explained in the Proposing Release, a fundamental goal of Title VII is to have all SBSs reported to SDRs.[669] Therefore, ''transaction data'' includes all information, including life cycle events, required to be reported to an SDR under Rule 901 of Regulation SBSR.[670] Rule 13n–5(b)(1)(i) is intended to prevent SDRs from rejecting SBSs for arbitrary or anti-competitive reasons, minimize the number of SBSs that are not accepted by an SDR, and to the extent that an SDR's policies and procedures make clear which SBSs the SDR will accept, make it easier for market participants and market infrastructures to determine whether there is an SDR that will accept a particular SBS.[671]

The Commission is revising the rule from the proposal to clarify that an SDR's policies and procedures should be reasonably designed for the reporting of ''complete and accurate'' transaction data to the SDR.[672] For example, an SDR's policies and procedures may not be reasonable if they do not require reporting of all the data elements

[656] MarkitSERV, *supra* note 19 (noting that ''some level of data fragmentation will be unavoidable'') (citation omitted).

[657] DTCC 2, *supra* note 19; *see also* DTCC 3, *supra* note 19 (recommending that any SDR ''be able to receive and manage all swaps in any asset class for which it is registered in accordance with the requirements of the Commission'' because such requirement is ''critical . . . for assuring that the more complex and non-standard transactions, typically the higher risk creating transactions . . ., are appropriately registered in SDRs so accurate risk and market activity profiles can be maintained''); DTCC 4, *supra* note 19 (stating that ''no provider of trading or clearing services should be permitted to simply declare itself the SDR for trades it facilitates'' and that it ''strenuously objects'' to allowing SDRs accept only those SBSs that are cleared).

[658] *See* DTCC 2, *supra* note 19; MarkitSERV, *supra* note 19; MFA 1, *supra* note 19.

[659] MFA 1, *supra* note 19.

[660] MarkitSERV, *supra* note 19 (stating such an approach would motivate parties to ensure the accuracy of reported data because of the associated economic and legal consequences).

[661] *See* Trade Acknowledgment Release, *supra* note 133.

[662] MarkitSERV, *supra* note 19.

[663] DTCC 2, *supra* note 19.

[664] DTCC 5, *supra* note 19.

[665] DTCC 2, *supra* note 19.

[666] The Commission is making one technical amendment to proposed Rule 13n–5(b)(1)(ii). As proposed, the rule referenced the ''policies and procedures required by paragraph (b)(1) of this section.'' As adopted, the rule references the ''policies and procedures required by paragraph (b)(1)(i) of this section.'' Additionally, the Commission is renumbering the definition of ''transaction data'' as Rule 13n–5(a)(3) in order to alphabetize the definitions in Rule 13n–5(a). The definition of ''transaction data'' is also being revised from the proposal, as discussed below.

[667] The definition of ''asset class'' is also being renumbered as Rule 13n–5(a)(1) in order to alphabetize the definitions in Rule 13n–5(a).

[668] Rule 13n–5(a)(3). As proposed, the definition of ''transaction data'' did not include the exception for information provided pursuant to Rule 906(b) of Regulation SBSR. *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 906(b) requiring a participant to provide information related to its ultimate parent(s) and affiliates). Because the information provided pursuant to Rule 906(b) is not tied to a particular SBS, the Commission believes that it does not make sense to tie the retention of the information to the expiration of an SBS. *See* Rule 13n–5(b)(4) (requiring an SDR to maintain transaction data ''for not less than five years after the applicable [SBS] expires''). By adding the exception to the definition of ''transaction data,'' the information that an SDR receives pursuant to Rule 906(b) will instead be required to be kept and preserved for not less than five years, pursuant to Rule 13n–7(b).

[669] Proposing Release, 75 FR at 77327, *supra* note 2. *See* Exchange Act Section 13(m)(1)(G), 15 U.S.C. 78m(m)(1)(G), as added by Dodd-Frank Act Section 763(i) (requiring ''[e]ach security-based swap (whether cleared or uncleared)'' to be reported to a registered SDR).

[670] A definition of ''life cycle event'' is included in Regulation SBSR. *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 900).

[671] In a separate release relating to implementation of Dodd-Frank Act Section 763(i), the Commission is adopting additional rules requiring an SDR to have policies and procedures relating to the reporting of SBS data to the SDR. *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 907); *see also id.* (Rule 901(h) requiring information to be reported to an SDR ''in a format required by the registered [SDR]'').

[672] *See* Proposing Release, 75 FR at 77307 and 77327, *supra* note 2 (''SDRs are required to collect and maintain accurate SBS transaction data so that relevant authorities can access and analyze the data from secure, central locations to better monitor for systemic risk and potential market abuse'' and ''an SDR is useful only insofar as the data it retains is accurate''); *see also* MFA 1, *supra* note 19 (discussing the importance of SDRs maintaining accurate data).

required under Regulation SBSR and that the data reported be accurate.

The Commission agrees with one commenter's view that an SDR's policies and procedures should allow for the reporting of ''a wide variety of SBS transactions.'' [673] The Commission also agrees that SDRs should be allowed to ''specify the methods and channels that participants need to use to connect to [SDRs],'' [674] so long as such methods and channels are reasonable. Therefore, an SDR may reject SBS data that is reported in a manner that is inconsistent with its reasonable policies and procedures.

In addition, to the extent that an SDR's policies and procedures allow SBSs to be reported to it in more than one format,[675] the SDR may need to reformat or translate the data to conform to any format and taxonomy that the Commission may adopt pursuant to Rule 13n–4(b)(5) in order to satisfy the requirement of providing direct electronic access to the Commission.[676] For example, the SDR may need to reformat or translate terms of the transaction (*e.g.,* scheduled termination dates, prices, or fixed or floating rate payments). The Commission notes that an SDR is not required to make persons who report SBSs to the SDR use any of the formats and taxonomies specified by the Commission. Rather, the SDR is only required to use such formats and taxonomies when providing the Commission with direct electronic access.

Rule 13n–5(b)(1)(ii) and the definition of ''asset class'': Rule 13n–5(b)(1)(ii) requires an SDR, if it accepts any SBS in a particular asset class, to accept all SBSs in that asset class that are reported to it in accordance with its policies and procedures required by Rule 13n–5(b)(1)(i). As explained in the Proposing Release, this requirement is designed to maximize the number of SBSs that are accepted by an SDR.[677] The comments that the Commission received on this rule endorsed it.[678] The Commission believes that if certain SBSs are not accepted by any SDR and are reported to the Commission instead,[679] the purpose of the Dodd-Frank Act to have centralized data on SBSs for regulators and others to access could be undermined.[680] In addition, the Commission agrees with one commenter that this requirement will ''reduce the complexity for reporting parties.'' [681] The Commission also agrees with commenters' views that without this requirement, SDRs may be tempted to limit their services to standardized, high-volume SBSs.[682] Given these incentives, the requirement that an SDR accept all SBSs in a given asset class if it accepts any SBS in that asset class is meant to facilitate the aggregation of, and relevant authorities' and market participants' access to, SBS transaction data. This requirement prevents a provider of trading or clearing services to act as an SDR for only those SBSs that it trades or clears.[683] This requirement also prevents an SDR from accepting only SBSs that have been cleared.[684]

As explained in the Proposing Release, an SDR is required to accept only those SBSs that are reported in accordance with the SDR's policies and procedures required by Rule 13n–5(b)(1)(i).[685] For example, an SDR's policies and procedures could prescribe the necessary security and connectivity protocols that market participants and market infrastructures must have in place prior to transmitting transaction data to the SDR. The SDR is not required to accept transaction data from market participants and market infrastructures that do not comply with these protocols; otherwise the transmission of the transaction data could compromise the SDR's automated systems.[686]

In response to the comment recommending amending the definition of ''asset class'' to remove the ''the distinction between loan–based and credit asset classes,'' [687] the Commission agrees that removing such distinction will make it easier for reporting parties when classifying a transaction. Therefore, the Commission is modifying from the proposal the definition of ''asset class'' in Rule 13n–5(a)(1) to mean ''those security-based swaps in a particular broad category, including, but not limited to, credit derivatives and equity derivatives.'' [688]

Where an SBS arguably could belong to more than one asset class, for example, if it has characteristics of both credit and equity derivatives, then an SDR serving either asset class should be able to accept that SBS without then being required to accept all SBSs in the other asset class—*i.e.,* an SDR for the credit derivative asset class could accept such an SBS without then having to accept all equity SBSs, and an SDR for the equity derivative asset class could

[673] *See* MarkitSERV, *supra* note 19.

[674] *See* MarkitSERV, *supra* note 19.

[675] *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 907(a)(2) requiring a registered SDR to establish and maintain written policies and procedures that specify one or more acceptable data formats (each of which must be an open-source structured data format that is widely used by participants), connectivity requirements, and other protocols for submitting information).

[676] *See* Section VI.D.2.c.ii of this release discussing Rule 13n–4(b)(5) (requiring SDRs to provide direct electronic access to the Commission or any designee); Section VI.E.4 of this release discussing Rule 13n–5(b)(4) (requiring every SDR to maintain transaction data in a format readily accessible and usable to the Commission); and Section VI.H of this release discussing Rule 13n–8 (requiring every SDR to promptly report information to the Commission in a form and manner acceptable to the Commission).

[677] Proposing Release, 75 FR at 77327, *supra* note 2.

[678] *See* DTCC 2, *supra* note 19; MarkitSERV, *supra* note 19; DTCC 3, *supra* note 19; DTCC 4, *supra* note 19.

[679] *See* Exchange Act Section 13A(a)(1), 15 U.S.C. 78m–1(a)(1) (requiring an uncleared SBS to be reported to the Commission if there is no SDR that would accept the SBS)); *see also* Regulation SBSR Adopting Release, *supra* note 13 (Rule 901(b) requiring SBSs to be reported to the Commission if there is no SDR that would accept the SBSs).

[680] *See also* MarkitSERV, *supra* note 19 (stating that the requirement to accept all trades in an asset class is ''a means of ensuring broad coverage while guarding against fragmentation'').

[681] *See* DTCC 2, *supra* note 19.

[682] *See* DTCC 2, *supra* note 19 (stating that the requirement for an SDR to support all trades in an asset class ''discourages an SDR from only servicing high volume products within an asset class to maximize profit, and leaving more complex (and less frequently traded) transactions to be reported by reporting parties directly to the Commission''); MarkitSERV, *supra* note 19 (''Without specific requirements related to the range of products that can be reported to them, [SDRs] may be tempted to limit their operating costs by only accepting the more standardized categories of swaps [that] also tend to trade in high volumes. This would result in incomplete market coverage and an increased fragmentation of the reported data.'') (citation omitted).

[683] *See* DTCC 4, *supra* note 19 (stating that ''no provider of trading or clearing services should be permitted to simply declare itself the SDR for trades it facilitates'').

[684] *See* DTCC 4, *supra* note 19 (stating that it ''strenuously objects'' to allowing SDRs to accept only those SBSs that are cleared).

[685] Proposing Release, 75 FR at 77327, *supra* note 2. An SDR is required to disclose to market participants its criteria for providing others with access to services offered and data maintained by the SDR pursuant to Rule 13n–10(b)(1), as discussed in Section VI.I.2 of this release. Therefore, market participants will be made aware of an SDR's policies and procedures for reporting data.

[686] To the extent that an SDR already has systems in place to accept and maintain SBSs in a particular asset class, the Commission believes that Rule 13n–5(b)(1)(ii) will not add a material incremental financial or regulatory burden to SDRs. *See* Proposing Release, 75 FR at 77327, *supra* note 2.

[687] *See* DTCC 2, *supra* note 19.

[688] In a separate release relating to implementation of Dodd-Frank Act Section 763(i), the Commission is adopting the same definition of ''asset class.'' *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 900). In addition, the Commission proposed rules relating to trade acknowledgments and verifications of SBSs, which proposed a definition of ''asset class'' that is the same as the definition of ''asset class'' in the Proposing Release, 75 FR at 77369, *supra* note 2, and therefore differs from the definition of ''asset class'' being adopted in this release. *See* Trade Acknowledgment Release, *supra* note 133. The Commission expects to consider conforming the proposed definition of ''asset class'' in the Trade Acknowledgment Release with the definition being adopted today at a later time.

accept the SBS without then having to accept all credit SBSs.

One commenter expressed concern about transactions that could be considered both swaps and SBSs, such as one constructed based on the correlation between commodities and equities.[689] The Commission notes that it has adopted, jointly with the CFTC, regulations applicable to mixed swaps.[690] The Commission believes that if an SDR accepts a mixed swap, then it should not be required to accept all SBSs in all asset classes to which the mixed swap belongs. For example, if a swap data repository that accepts commodity swaps accepts a mixed swap that is based on the value of both equity and commodity prices, then that swap data repository should not be required to accept all equity SBSs.

Rule 13n–5(b)(1)(iii): Rule 13n–5(b)(1)(iii) requires every SDR to establish, maintain, and enforce written policies and procedures reasonably designed to satisfy itself that the transaction data that has been submitted to the SDR is complete and accurate.[691] Rule 13n–5(b)(1)(iii) also requires every SDR to clearly identify the source for each trade side and the pairing method (if any) for each transaction in order to identify the level of quality of that transaction data.[692] These requirements, which are intended to improve data accuracy, are based on the requirement in Exchange Act Section 13(n)(5)(B) that an SDR ''confirm with both counterparties to the security-based swap the accuracy of the data that was submitted.'' [693] As explained in the Proposing Release, the requirement is based on the premise that an SDR is useful only insofar as the data it retains is accurate.[694] Unreliable SBS data does not enhance transparency. Requiring the SDR to take steps regarding the accuracy of the transaction data submitted to it, should help ensure that the data submitted to the SDR is accurate and agreed to by both counterparties. One commenter suggested that ''SDRs should not have additional duties with respect to verifying the accuracy of submission.'' [695] But because of the statutory requirement and the likelihood that the commenter's approach would lead to less accurate information being provided to the Commission and the marketplace, the Commission is adopting Rule 13n–5(b)(1)(iii) largely as proposed.

As proposed, the rule would require an SDR's policies and procedures to address the accuracy of the transaction data. For purposes of clarification, the rule as adopted requires that an SDR's policies and procedures address both the completeness and accuracy of the transaction data. For example, an SDR's policies and procedures may not be reasonable if they allow data elements required under Regulation SBSR to be blank.

The Commission understands that with respect to certain asset classes, third party service providers currently provide an electronic affirmation or matching process prior to the SBS data reaching an SDR.[696] As explained in the Proposing Release, the Commission believes that an SDR can fulfill its responsibilities under Exchange Act Section 13(n)(5)(B), Rule 13n–4(b)(3),[697] and this Rule 13n–5(b)(1)(iii) by developing reasonable policies and procedures that rely on confirmations completed by another entity, such as an SB SEF, clearing agency, or third party vendor, as long as such reliance is reasonable.[698] In order for such policies and procedures establishing reliance on a third party to be reasonable, the SDR would need to oversee and supervise the performance of the third party confirmation provider. This could include having policies and procedures in place to monitor the third party confirmation provider's compliance with the terms of any agreements and to assess the third party confirmation provider's continued fitness and ability to perform the confirmations. It could also include having the SDR or an independent auditor inspect or test the performance of the third party confirmation provider, with the SDR retaining records of such inspections or tests.[699]

For example, if an SBS is traded on an SB SEF, that SB SEF could confirm the accuracy of the transaction data with both counterparties, and the SB SEF could then report the transaction data to an SDR.[700] The SDR would not need to further substantiate the accuracy of the transaction data, as long as the SDR has a reasonable belief that the SB SEF performed an accurate confirmation. However, the SDR would not comply with Exchange Act Section 13(n)(5)(B), Rule 13n–4(b)(3), and this Rule 13n–5(b)(1)(iii) if the confirmation proves to be inaccurate and the SDR's reliance on the SB SEF for providing accurate confirmations was unreasonable (*e.g.,* the SDR ignored a pattern of inaccuracies or red flags). In certain circumstances, such as where an SBS is transacted by two commercial end-users and is not electronically traded or cleared, and is reported to an SDR by one of those end-users, there may not be any other entity upon which the SDR can reasonably rely to perform the confirmation. In such a case, the SDR would have to contact each of the counterparties to substantiate the accuracy of the transaction data.[701]

Similarly, it would not be reasonable for an SDR to rely on a trade acknowledgment provided by one counterparty to an SBS, without verifying that the other counterparty has agreed to the trade. However, if a party to an SBS timely delivers a trade acknowledgment to both the counterparty and the SDR (or a third party confirmation provider), and the counterparty promptly sends the

[689] *See* DTCC 2, *supra* note 19.

[690] *See* Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48207 (Aug. 13, 2012).

[691] As proposed, Rule 13n–5(b)(1)(iii) would require the SDR's policies and procedures to be ''reasonably designed to satisfy [the SDR] by reasonable means that the transaction data that has been submitted to the SDR is accurate.'' In adopting Rule 13n–5(b)(1)(iii), the Commission is removing the phrase ''by reasonable means'' to make the rule text clearer. This revision is not intended to substantively change the meaning of the rule.

[692] With regard to this requirement, proposed Rule 13n–5(b)(1)(iii) used the phrase ''including clearly identifying.'' In adopting Rule 13n–5(b)(1)(iii), the Commission is changing ''including clearly identifying'' to ''clearly identifies'' to make the rule text clearer. This revision is not intended to substantively change the meaning of the rule.

[693] 15 U.S.C. 78m(n)(5)(B); *see also* Rule 13n–4(b)(3) (implementing same requirement).

[694] Proposing Release, 75 FR at 77327, *supra* note 2. *Accord* CPSS–IOSCO Trade Repository Report, *supra* note 48 (the primary public policy benefit of an SDR is facilitated by the integrity of the information maintained by an SDR).

[695] *See* DTCC 2, *supra* note 19; *see also* DTCC 5, *supra* note 19 (recommending that SDRs be determined to have satisfied their obligation to confirm the accuracy of data under certain circumstances).

[696] *See, e.g.,* MarkitSERV, *supra* note 19 (noting that commenter provides confirmation and matching services for post-trade SBS transactions).

[697] Rule 13n–4(b)(3) requires SDRs to ''[c]onfirm, as prescribed in Rule 13n–5 (§ 240.13n–5), with both counterparties to the security-based swap the accuracy of the data that was submitted.''

[698] Proposing Release, 75 FR at 77327–8, *supra* note 2. *See, e.g.,* MarkitSERV, *supra* note 19 (The ''Commission should encourage the use and reporting of trade data that has been confirmed or verified by both counterparties via an affirmation or a matching process.'').

[699] Such records would have to be maintained pursuant to Rule 13n–7(b). *See* Section VI.G.2 of this release discussing SDR recordkeeping.

[700] *See* Proposing Release, 75 FR at 77328, *supra* note 2.

[701] The Commission believes that an SDR should consider making reasonable accommodations, including consideration of any cost burdens, for a non–reporting counterparty of an SBS transaction in connection with any follow-up by the SDR regarding the accuracy of the counterparty's SBS transaction. These accommodations could, for example, include providing means for non–reporting counterparties to substantiate the accuracy of the transaction data without having to incur significant systems or technology costs.

verification back to both the original party and the SDR (or a third party confirmation provider), then the SDR could use the trade acknowledgment and verification to fulfill its obligations under this rule.[702]

With regard to the requirement that an SDR ''clearly identif[y] the source for each trade side and the pairing method (if any) for each transaction,'' [703] the Commission notes that transaction data may vary in terms of reliability and such source and pairing method may affect the reliability of the transaction data. As explained in the Proposing Release, some transaction data may be affirmed by counterparties to an SBS, but not confirmed.[704] Some transaction data may be confirmed informally by the back-offices of the counterparties, but the confirmation may not be considered authoritative. Other transaction data may go through an electronic confirmation process, which is considered authoritative by the counterparties. The Commission is adopting this requirement to enable relevant authorities to better determine the reliability of any particular transaction data maintained by an SDR. In order for an SDR's policies and procedures for satisfying itself that the transaction data that has been submitted to the SDR is complete and accurate to be reasonable, the SDR could consider documenting the processes used by third parties to substantiate the accuracy of the transaction data.

Rule 13n–5(b)(1)(iv): Rule 13n–5(b)(1)(iv) requires every SDR to promptly record the transaction data it receives. As explained in the Proposing Release, it is important that SDRs keep up-to-date records so that regulators and counterparties to SBSs will have access to accurate and current information.[705] One commenter recommended that SDRs process transactions in ''real-time.'' [706] The commenter did not define ''real-time.'' If, by ''real-time,'' the commenter means that SDRs should begin to record the transaction data as soon as it arrives, then the Commission believes that the rule's requirement to ''promptly record the transaction data it receives'' is consistent with the commenter's recommendation.

2. Positions (Rule 13n–5(b)(2))

a. Proposed Rule

Proposed Rule 13n–5(b)(2) would require every SDR to establish, maintain, and enforce written policies and procedures reasonably designed to calculate positions for all persons with open SBSs for which the SDR maintains records. Proposed Rule 13n–5(a)(2) defined ''position'' as the gross and net notional amounts of open SBS transactions aggregated by one or more attributes, including, but not limited to, the (i) underlying instrument, index, or reference entity; (ii) counterparty; (iii) asset class; (iv) long risk of the underlying instrument, index, or reference entity; and (v) short risk of the underlying instrument, index, or reference entity. The Commission requested comment regarding whether it should require SDRs to calculate market values of each position at least daily and provide them to the Commission.[707]

b. Comments on the Proposed Rule

Three commenters submitted comments relating to this proposed rule.[708] One commenter expressed the view that ''position data is most valuable when aggregated among all SDRs,'' and therefore suggested that ''one SDR should be given the responsibility to aggregate and maintain the consolidated position data for regulatory purposes.'' [709]

None of the commenters believed that SDRs should be required to perform valuation calculations at this time. One commenter indicated, however, that providing valuations should be a long-term goal.[710] In this commenter's view, existing SDRs do not have the capability to provide valuations and they are not currently best situated to develop this capability; the short-term goal should be for SDRs to collect, and potentially report, valuations provided by the counterparties to an SBS and/or any relevant third party entities.[711] Another commenter expressed the view that ''firms'' should provide market values because they invest considerable resources in valuing trades and it would be difficult for an SDR to replicate these activities for all trades.[712] The commenter stated that an ''SDR could contract with a market valuation service to provide some values and this would provide some independent valuation, but this will not readily extend to illiquid or structured products.'' [713] The commenter also stated that while mark-to-market values would be of some use to regulators, without collateral information ''the values would not be useful in assessing counterparty risk exposures.'' [714] A third commenter stated that valuation models for counterparty credit risks and systemic risk should include independent, third party data.[715]

c. Final Rule

After considering the comments, the Commission is adopting Rule 13n–5(b)(2) and the definition of ''position'' under Rule 13n–5(a)(2) as proposed. Rule 13n–5(b)(2) requires every SDR to establish, maintain, and enforce written policies and procedures reasonably designed to calculate positions for all persons with open SBSs for which the SDR maintains records.[716] Rule 13n–5(a)(2) defines ''position'' as the gross and net notional amounts of open SBS transactions aggregated by one or more attributes, including, but not limited to, the (i) underlying instrument, index, or reference entity; (ii) counterparty; (iii) asset class; (iv) long risk of the underlying instrument, index, or reference entity; and (v) short risk of the underlying instrument, index, or reference entity.[717]

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[702] Although the Commission proposed rules requiring SBS dealers and major SBS participants to provide trade acknowledgment and verification of SBS transactions, it has not adopted any such rules. *See* Trade Acknowledgment Release, *supra* note 133. The Commission may address in a later release whether the procedure described above would comply with any such rules. *See* MarkitSERV, *supra* note 19 (stating that ''the environment envisaged by the SBS SDR Regulation would greatly benefit from being connected with the confirmation requirement (such as the verified trade acknowledgement record)'').

[703] Rule 13n–5(b)(1)(iii).

[704] Proposing Release, 75 FR at 77328, *supra* note 2.

[705] Proposing Release, 75 FR at 77328, *supra* note 2.

[706] *See* DTCC 2, *supra* note 19 (stating that SDRs should ''process transactions in real-time'').

[707] *See* Proposing Release, 75 FR at 77329, *supra* note 2.

[708] *See* DTCC 2, *supra* note 19; Markit, *supra* note 19; Ethics Metrics, *supra* note 19.

[709] DTCC 2, *supra* note 19.

[710] Markit, *supra* note 19 (''[W]e believe that the Commission should work to create a system where SBS SDRs play an important and even primary role not only in ensuring the accuracy of counterparties' swap valuations, but also in performing independent valuations for the counterparties.'').

[711] Markit, *supra* note 19 (recognizing that an SDR performing ''independent valuations may not be practical given the highly customized and bespoke nature of many swaps'').

[712] DTCC 2, *supra* note 19.

[713] DTCC 2, *supra* note 19.

[714] DTCC 2, *supra* note 19.

[715] Ethics Metrics, *supra* note 19; *see also* MarkitSERV, *supra* note 19 (describing valuations as a possible ancillary service of SDRs).

[716] Position data is required to be provided by an SDR to certain entities pursuant to Exchange Act Section 13(n)(5)(G), 15 U.S.C. 78m(n)(5)(G).

[717] As stated in the Proposing Release, for purposes of this definition, positions aggregated by long risk would be only for the aggregate notional amount of SBSs in which a market participant has long risk of the underlying instrument, index, or reference entity. Proposing Release, 75 FR at 77326 n.102, *supra* note 2. Similarly, positions aggregated by short risk would be only for the aggregate notional amount of SBSs in which a market participant has short risk of the underlying instrument, index, or reference entity. For SBSs other than credit default swaps, a counterparty has long risk where the counterparty profits from an increase in the price of the underlying instrument or index, and a counterparty has short risk where the counterparty profits from a decrease in the price

As explained in the Proposing Release, position information is important to regulators for risk, enforcement, and examination purposes.[718] In addition, having a readily available source of position information can be useful to counterparties in evaluating their own risk. As explained in the Proposing Release, in order to meet its obligation to calculate positions, an SDR could require reporting parties to report the necessary events to calculate positions, or it could have a system that will monitor for and collect such information.[719] In order for the positions to be calculated accurately, an SDR will need to promptly incorporate recently reported transaction data and collected unreported data. It is important that the SDR keep up-to-date records so that relevant authorities and parties to the SBS will have access to accurate and current information. In calculating positions, an SDR is only required to reflect SBS transactions reported to that SDR.

As explained in the Proposing Release, the definition of ''position'' is designed to be sufficiently specific so that SDRs are aware of the types of position calculations that regulators may require an SDR to provide, while at the same time, provide enough flexibility to encompass the types of position calculations that regulators and the industry will find important as new types of SBSs are developed.[720]

While one commenter suggested that ''one SDR should be given the responsibility to aggregate and maintain the consolidated position data for regulatory purposes,'' [721] the Commission is not mandating the aggregation of position data at one SDR. At this time, the Commission believes that it—rather than any particular registered entity—is in the best position to aggregate data across multiple registered SDRs. As described above, the Commission anticipates that it will propose for public comment detailed specifications of acceptable formats and taxonomies that will facilitate an accurate interpretation, aggregation, and analysis of SBS data by the Commission.[722] The Commission may revisit this issue as the SBS market evolves.[723]

With regard to valuations, the Commission agrees with commenters [724] that SDRs are not necessarily in the best position to calculate market valuations at this time. While, as one commenter pointed out, an SDR could contract with a market valuation service to provide some values,[725] it is not apparent how useful the valuation would be without collateral information,[726] and a valuation service could not readily provide valuations for illiquid or structured products.[727] Therefore, the Commission is not requiring SDRs to calculate market values of positions daily and to provide them to the Commission. The Commission notes that under Regulation SBSR, the counterparties are required to report to an SDR the ''data elements included in the agreement between the counterparties that are necessary for a person to determine the market value of the transaction.'' [728] Accordingly, if necessary, the Commission could calculate some market valuations either in–house or by hiring a third party market valuation service provider. As the market develops and SDRs develop and increase their capabilities, the Commission may revisit this issue.

3. Maintain Accurate Data (Rule 13n–5(b)(3))

a. Proposed Rule

Proposed Rule 13n–5(b)(3) would require every SDR to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that the transaction data and positions that it maintains are accurate.

b. Comments on the Proposed Rule

Both commenters that submitted comments relating to this proposed rule agreed that SDRs serve an important role in collecting and maintaining accurate SBS data.[729] One commenter stated that ''[e]nsuring the accuracy and quality of [data reported to SDRs] will be critical for the Commission's achievement of the regulatory goals of transparency, efficiency and systemic risk mitigation [and that] SDRs will play a pivotal role in ensuring the accuracy of [SBS] data both for public consumption and regulatory reporting purposes.'' [730] The commenter further noted that ''[t]he existence of a number of feedback loops and distribution channels through which data will flow will enable participants to identify, test and correct inaccuracies and errors.'' [731] This commenter also indicated that the ability to ensure data accuracy would be influenced by the degree to which such data is utilized by industry participants in other processes. Therefore, that commenter stressed that ''SDRs and their affiliates should be permitted to offer a range of ancillary services in addition to their core services of data acceptance and data storage.'' [732]

Another commenter stated that ''the multiple bilateral reconciliations performed between the parties to a trade throughout the life of a trade (and often on an ad hoc basis or only following a dispute), could be replaced by one single reconciliation framework with a shared central record, increasing both [sic] operating efficiency as well as reducing operational risks. The Commission's suggestion for portfolio reconciliation seems well aligned with this, and this would give the direct benefit of improved bilateral portfolio reconciliation processes between the parties.'' [733] The commenter also stated that ''[a]fter each recorded transaction is

of the underlying instrument or index. For credit default swaps, a counterparty has long risk where the counterparty profits from a decrease in the price of the credit risk of the underlying index or reference entity, and a counterparty has short risk where the counterparty profits from an increase in the price of the credit risk of the underlying index or reference entity. As the market develops, the Commission may consider whether to require SDRs calculate positions in another manner and provide those positions to the Commission on a confidential basis.

[718] Proposing Release, 75 FR at 77329, *supra* note 2.

[719] Proposing Release, 75 FR at 77329, *supra* note 2.

[720] Proposing Release, 75 FR at 77326, *supra* note 2. The Commission notes that Dodd-Frank Act Section 763(h) adds Exchange Act Section 10B, which provides, among other things, for the establishment of position limits for any person that holds SBSs. *See* 15 U.S.C. 78j–2. Specifically, Exchange Act Section 10B(a) provides that ''[a]s a means reasonably designed to prevent fraud and manipulation, the Commission shall, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors, establish limits (including related hedge exemption provisions) on the size of positions in any security-based swap that may be held by any person.'' *Id.* In addition, Exchange Act Section 10B(d) provides that the Commission may establish position reporting requirements for any person that effects transactions in SBSs, whether cleared or uncleared. *Id.*

[721] DTCC 2, *supra* note 19.

[722] *See* Section VI.D.2.c.ii of this release discussing anticipated Commission proposal pursuant to Rule 13n–4(b)(5).

[723] *See* Section IV of this release for further discussion of consolidating data in one SDR.

[724] *See* DTCC 2, *supra* note 19; Markit, *supra* note 19.

[725] *See* DTCC 2, *supra* note 19.

[726] *See* DTCC 2, *supra* note 19 (stating that valuations without collateral information would not be useful in assessing counterparty risk exposures).

[727] *See* DTCC 2, *supra* note 19 (stating that independent market valuations services could not readily value illiquid or structured products).

[728] *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 901).

[729] *See* DTCC 2, *supra* note 19; MarkitSERV, *supra* note 19; *see also* DTCC 1*, *supra* note 20.

[730] MarkitSERV, *supra* note 19.

[731] MarkitSERV, *supra* note 19.

[732] MarkitSERV, *supra* note 19.

[733] DTCC 2, *supra* note 19. In the Proposing Release, the Commission stated that the policies and procedures required by Rule 13n–5(b)(3) ''could include portfolio reconciliation.'' Proposing Release, 75 FR at 77330, *supra* note 2.

consummated, the SDR can maintain the validity of the data for that transaction by offering an asset servicing function.'' [734]

c. Final Rule

After considering the comments, the Commission is adopting Rule 13n–5(b)(3) as proposed, with one modification. Rule 13n–5(b)(3) requires every SDR to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that the transaction data and positions that it maintains are complete and accurate. As explained in the Proposing Release, maintaining accurate records is an integral function of an SDR.[735] As further explained in the Proposing Release, maintaining accurate records requires diligence on the part of an SDR because, among other things, SBSs can be amended, assigned, or terminated and positions change upon the occurrence of new events (such as corporate actions).[736]

As proposed, the rule would require an SDR's policies and procedures to address the accuracy of the transaction data and positions. For purposes of clarification, the rule as adopted requires that an SDR's policies and procedures address both the completeness and accuracy of the transaction data and positions. For example, an SDR's policies and procedures may not be reasonable if they allow data elements required under Regulation SBSR to be blank.

The Commission agrees with one commenter that the degree to which industry participants use the data will influence the accuracy of the data, and that the ability of participants to identify, test, and correct inaccuracies and errors should be encouraged.[737] The Commission also agrees with another commenter that offering an asset servicing function may assist an SDR in maintaining the validity of transaction data and positions.[738] Therefore, the Commission supports the provision by SDRs of voluntary ancillary services, such as asset servicing, that improve the quality of the SBS data in the SDRs.[739] With regard to the comment acknowledging the value to portfolio reconciliation,[740] while portfolio reconciliation is a voluntary ancillary service, the Commission believes, consistent with its position in the Proposing Release,[741] that it is a method that an SDR can use to ensure reasonably the accuracy of the transaction data and positions that the SDR maintains.

4. Data Retention (Rule 13n–5(b)(4))

a. Proposed Rule

Proposed Rule 13n–5(b)(4) would require every SDR to maintain transaction data for not less than five years after the applicable SBS expires and historical positions for not less than five years. Alternatively, the Commission considered, but did not propose a rule, requiring every SDR to maintain transaction data for not less than five years after the applicable SBS expires or ten years after the applicable SBS is executed, whichever is greater, and historical positions for not less than five years.[742] Under either alternative, SDRs would be required to maintain the transaction data and historical positions (i) in a place and format that is readily accessible to the Commission and other persons with authority to access or view such information; and (ii) in an electronic format that is non-rewriteable and non-erasable.[743]

b. Comments on the Proposed Rule

Four commenters submitted comments relating to this proposed rule.[744] The commenters generally agreed with the Commission's proposal that SDRs should maintain SBS data for the life of the SBS contract and a reasonable time period thereafter.[745] Commenters expressed various views on whether the Commission should require SBS data to be maintained in a particular format.[746] One commenter stated that ''[t]he Proposed Rule should require the retention of electronic records of transactions, including life cycle events. These should be maintained for the life of the contract in order to provide an audit trail to positions and for a reasonable retention period thereafter. An SDR's records should be in an electronically readable format (where available) that allows for application and analysis.'' [747] The commenter also stated that ''certain aggregate data should be maintained beyond the maturity of contracts to provide public availability of time series data.'' [748]

One commenter to the Temporary Rule Release believed that the Commission should consider requiring SBS transaction data to be recorded and reported pursuant to a single electronic data standard because ''[t]his will enable transactions to be reported in an efficient and timely manner in a form readily accessible to all concerned parties.'' [749] The commenter recommended using Financial products Markup Language (FpML) [750] as that standard.[751] Another commenter recommended that ''the Commission require that all SDRs maintain [stored SBS data] in the same format.'' [752] This commenter further recommended that ''the Commission specifically require the SDR to organize and index accurately the transaction data and positions so that the Commission and other users of such information are easily able to obtain the specific information that they require.'' [753] Another commenter stated that a ''registered SDR should have flexibility to specify acceptable data formats, connectivity requirements and other protocols for submitting information. Market practice, including structure of confirmation messages and detail of economic fields, evolve over time, and the SDR should have the capability to adopt and set new formats.'' [754]

Another commenter recommended that data be ''standardized and use a common terminology.'' [755] The commenter also recommended that records at SDRs be kept indefinitely because the commenter believed that there is ''no technological or practical reason for limiting the retention period.'' [756] The commenter further recommended that ''[a]ny original documents should be scanned.'' [757]

c. Final Rule

After considering the comments, the Commission is adopting Rule 13n–

[734] DTCC 1*, *supra* note 20.

[735] Proposing Release, 75 FR at 77307 and 77329–30, *supra* note 2.

[736] Proposing Release, 75 FR at 77330, *supra* note 2.

[737] *See* MarkitSERV, *supra* note 19.

[738] *See* DTCC 1*, *supra* note 20.

[739] *See* Section III.C of this release discussing ancillary services.

[740] *See* DTCC 2, *supra* note 19.

[741] Proposing Release, 75 FR at 77330, *supra* note 2 (stating that the policies and procedures required by proposed Rule 13n–5(b)(3) ''could include portfolio reconciliation'').

[742] *See* Proposing Release, 75 FR at 77330, *supra* note 2.

[743] Proposed Rule 13n–5(b)(4).

[744] *See* DTCC 2, *supra* note 19; Better Markets 1, *supra* note 19; ISDA Temp Rule, *supra* note 28; Barnard, *supra* note 19; *see also* Better Markets 2, *supra* note 19.

[745] *See, e.g.,* DTCC 2, *supra* note 19.

[746] *See* DTCC 2, *supra* note 19; Better Markets 1, *supra* note 19; ISDA Temp Rule, *supra* note 28.

[747] DTCC 2, *supra* note 19.

[748] DTCC 2, *supra* note 19.

[749] ISDA Temp Rule, *supra* note 28.

[750] FpML is based on XML (eXtensible Markup Language), the standard meta-language for describing data shared between applications.

[751] ISDA Temp Rule, *supra* note 28.

[752] Better Markets 1, *supra* note 19; *see also* Better Markets 2, *supra* note 19 (recommending reported data be subject to uniform formatting requirements).

[753] Better Markets 1, *supra* note 19.

[754] DTCC SBSR, *supra* note 27.

[755] Barnard, *supra* note 19.

[756] Barnard, *supra* note 19.

[757] Barnard, *supra* note 19.

5(b)(4) as proposed, with two modifications. Rule 13n–5(b)(4) requires every SDR to maintain transaction data and related identifying information for not less than five years after the applicable SBS expires and historical positions for not less than five years. Rule 13n–5(b)(4) also requires SDRs to maintain the transaction data and historical positions (i) in a place and format that is readily accessible and usable to the Commission and other persons with authority to access or view such information; and (ii) in an electronic format that is non-rewriteable and non-erasable.

Time Period: As explained in the Proposing Release, a five-year retention period is the current requirement for the records of clearing agencies and other registered entities, and is the statutory requirement for SB SEFs.[758] Because an SBS transaction creates obligations that continue for a specified period of time, the Commission believes that the transaction data should be maintained for the duration of the SBS, with the five years running after the SBS expires. This requirement applies to all transaction data, including life cycle events that are reported to an SDR pursuant to Regulation SBSR.[759] The Commission believes that transaction data and position data that are older than their respective retention periods will not be materially useful to the Commission or other relevant authorities.

There may be transaction-specific identifying information assigned or used by an SDR, such as a transaction ID [760] or a time stamp,[761] that are not included in the definition of ''transaction data.'' This identifying information should also be maintained for the same time period as the transaction data because it is necessary to understanding the transaction data. Therefore, the Commission is revising the proposed rule to require SDRs to maintain ''related identifying information'' for not less than five years after the applicable SBS expires. Positions are not tied to any particular SBS transaction; therefore, the Commission requires positions, as calculated pursuant to Rule 13n–5(b)(2), to be maintained for five years, similar to the record retention requirement for clearing agencies.[762]

The Commission is not adopting the alternative time period that was set forth in the Proposing Release. No comments supported the alternative time period. The Commission is not adopting one commenter's recommendation that data at SDRs be kept indefinitely [763] because the Commission believes that requiring transaction data to be maintained for not less than five years after the applicable SBS expires is more reasonable,[764] and this approach is consistent with the record retention period for other Commission registrants and the statutory requirement for SB SEFs.

One commenter stated that ''certain aggregate data should be maintained beyond the maturity of contracts to provide public availability of time series data.'' [765] Because the Commission is not requiring an SDR to provide the public with historic data (aggregated or otherwise) that it previously publicly disseminated, the Commission does not believe that it is appropriate to require SDRs to maintain aggregate data for public availability. However, SDRs may find it useful to maintain such data if they intend to provide the public with data sets beyond the public dissemination requirements of Regulation SBSR.[766] To the extent that the Commission requires the creation of aggregate data, such as through reports requested pursuant to Rule 13n–8, the data will be for regulatory purposes. Any aggregation of data that is created by an SDR, either at the Commission's direction or voluntarily, must be retained for five years pursuant to Rule 13n–7(b).[767]

Format: As explained in the Proposing Release, the Commission believes that transaction data, including life cycle events, and positions should be maintained in a place and format that is readily accessible to the Commission and other persons with authority to access or view such information.[768] This requirement is important to ensure that SDRs maintain the information in an organized and accessible manner so that users, including relevant authorities and counterparties, can easily obtain the data that would assist them in carrying out their appropriate functions. The Commission also believes that this requirement helps ensure that the information is maintained in a common and easily accessible language, such as a language commonly used in financial markets. The Commission agrees with one commenter's recommendation that an SDR's records should ''be in an electronically readable format (where available) that allows for application and analysis,'' [769] and therefore the Commission is modifying proposed Rule 13n–5(b)(4) to provide that the information must be in a format that is usable to (1) the Commission and (2) other persons with authority to access or view such information.[770] The Commission believes that if the information is not in a usable format, then the Commission and others would not have the ability to analyze the information as needed.

Despite comments to the contrary,[771] the Commission is not establishing a specific, prescribed format in which an SDR must maintain transaction data and positions. The Commission expects that the ''readily accessible and usable'' requirement will be sufficient to cause

[758] Proposing Release, 75 FR at 77330, *supra* note 2. *See also* Exchange Act Rule 17a–1, 17 CFR 240.17a–1 (requiring recordkeeping for national securities exchanges, national securities associations, clearing agencies, and the Municipal Securities Rulemaking Board); Exchange Act Section 3D(d)(9), 15 U.S.C. 78c–4(d)(9) (requiring recordkeeping for SB SEFs).

[759] *See* Regulation SBSR Adopting Release, *supra* note 13 (Rules 901, 905, and 906(a)); *see also* DTCC 2, *supra* note 19 (recommending requiring the retention of life cycle events).

[760] *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 901(g) requiring a registered SDR to assign a transaction ID to each SBS, or establish or endorse a methodology for transaction IDs to be assigned by third parties).

[761] *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 901(f) requiring a registered SDR to time stamp, to the second, its receipt of any information submitted to it pursuant to Rules 901(c), (d), (e), or (i)).

[762] *See* Exchange Act Rule 17a–1, 17 CFR 240.17a–1 (requiring clearing agencies to retain records for five years). *See also* Exchange Act Section 13(n)(4)(C), 15 U.S.C. 78m(n)(4)(C) (requiring ''standards prescribed by the Commission under this subsection [to] be comparable to the data standards imposed by the Commission on clearing agencies in connection with their clearing of security-based swaps''). Clearing Agency Standards Release, 77 FR at 66243 n.270, *supra* note 138 (''Clearing agencies may destroy or otherwise dispose of records at the end of five years consistent with Exchange Act Rule 17a–6.'').

[763] *See* Barnard, *supra* note 19.

[764] *See* DTCC 2, *supra* note 19 (''[E]lectronic records of transactions . . . should be maintained for the life of the contract . . . and for a reasonable retention period thereafter.'').

[765] DTCC 2, *supra* note 19.

[766] *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 902).

[767] *See* Section VI.G.2 of this release.

[768] Proposing Release, 75 FR at 77330, *supra* note 2.

[769] *See* DTCC 2, *supra* note 19 (recommending that an SDR's records ''be in an electronically readable format (where available) that allows for application and analysis'').

[770] Rule 13n–5(b)(4). The Commission notes that this change is consistent with other Commission rules. For example, Rule 605(a)(2) of Regulation NMS, 17 CFR 242.605(a)(2), requires reports be ''in a uniform, readily accessible, and usable electronic form.''

[771] *See* Better Markets 1, *supra* note 19 (recommending that the Commission require all SDRs to maintain stored SBS data in the same format); ISDA Temp Rule, *supra* note 28 (recommending that the Commission require SBS transaction data to be reported and recorded pursuant to a single electronic data standard, and using FpML as that standard); Barnard, *supra* note 19 (recommending that data be ''standardized and use a common terminology'' and that original documents be scanned); *see also* Better Markets 2, *supra* note 19 (recommending that reported data be subject to uniform formatting requirements).

the format and content of transaction data and historical positions maintained by any individual SDR to be sufficiently robust and complete for relevant persons to fully, accurately, and consistently process the data. The Commission believes that SDRs, working with market participants, will be in a better position to upgrade formats and data elements as needed. Having the Commission establish a specific format could impede the timely collection of data on new types of transactions from the SDRs.[772]

However, in order to oversee the SBS market, it will be necessary for the Commission to aggregate and analyze data across different SDRs.[773] As discussed above, the Commission anticipates that it will propose for public comment detailed specifications of acceptable formats and taxonomies for providing SBS data to the Commission in order to facilitate an accurate interpretation, aggregation, and analysis by the Commission of SBS data submitted to it by different SDRs.[774]

The requirement for transaction data and historical positions to be maintained in an electronic format that is non–rewriteable and non–erasable [775] is consistent with the record retention format applicable to electronic broker-dealer records.[776] As explained in the Proposing Release, this requirement would prevent the maintained information from being modified or removed without detection.[777]

The Commission is not specifically requiring that SDRs organize and index the transaction data and positions that they collect and maintain.[778] The Commission believes that the requirement in Rule 13n–5(b)(4) that each SDR must maintain transaction data and related identifying information for not less than five years after the applicable SBS expires and historical positions for not less than five years, in a place and format that is ''readily accessible and usable to the Commission and other persons with authority to access or view such information'' incorporates the requirement that the data must be organized in a way that allows the data to be readily obtained or accessed by the Commission and other appropriate persons—data is not readily accessible and usable if it is not organized in a way that allows the data to be obtained quickly and easily. Further, whether users of information maintained by an SDR, other than the Commission, are able to easily obtain such information is also addressed by Rule 13n–4(c)(1)(iii), which requires, among other things, an SDR to establish, monitor on an ongoing basis, and enforce clearly stated objective criteria that would permit fair, open, and not unreasonably discriminatory access to data maintained by the SDR.[779]

With respect to the Commission's ability to obtain the specific information it requires, the Commission believes that several other statutory and regulatory requirements under the Exchange Act also address this issue. For example, the Commission will have direct electronic access to the transaction data and positions pursuant to Exchange Act Section 13(n)(5)(D) [780] and Rule 13n–4(b)(5).[781] The Commission expects to be able to query and analyze the data as necessary without imposing an indexing requirement at this time.[782] In addition, Rule 13n–8, discussed below, requires each SDR to promptly report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under the Exchange Act and the rules and regulations thereunder.[783]

5. Controls to Prevent Invalidation (Rule 13n–5(b)(5))

a. Proposed Rule

Proposed Rule 13n–5(b)(5) would require every SDR to establish, maintain, and enforce written policies and procedures reasonably designed to prevent any provision in a valid SBS from being invalidated or modified through the procedures or operations of the SDR.

b. Comments on the Proposed Rule

Two commenters submitted comments relating to this proposed rule.[784] Both commenters seemed to agree with this proposal.[785] One commenter stated that an SDR ''should be able to offer life cycle event processing and asset servicing activities'' that may lead to ''an update or modification to the records in the SDR,'' with the consent of both parties.[786]

c. Final Rule

After considering the comments, the Commission is adopting Rule 13n–5(b)(5) as proposed. Rule 13n–5(b)(5) requires every SDR to establish, maintain, and enforce written policies and procedures reasonably designed to prevent any provision in a valid SBS from being invalidated or modified through the procedures or operations of the SDR. The terms of SBSs can be the result of negotiation between the counterparties, and the Commission believes that these terms should not be modified or invalidated without the full consent of the counterparties.[787]

The Commission agrees with one commenter's view that an SDR should be able to offer life cycle event processing and asset servicing activities that may lead to an updating of the records in the SDR, with the consent of

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[772] *See* DTCC SBSR, *supra* note 27 (stating that SDRs ''should have flexibility to specify acceptable data formats, connectivity requirements and other protocols for submitting information,'' and that SDRs ''should have the capability to adopt and set new formats'' as market practices evolve over time).

[773] *See* Section VI.D.2.c.ii of this release discussing aggregation of data across multiple registered SDRs by the Commission.

[774] *See* Section VI.D.2.c.ii of this release discussing Rule 13n–4(b)(5) (direct electronic access).

[775] Rule 13n–5(b)(4).

[776] *See* Exchange Act Rule 17a–4(f)(2)(ii)(A), 17 CFR 240.17a–4(f)(2)(ii)(A). In Electronic Storage of Broker-Dealer Records, Exchange Act Release No. 47806 (May 7, 2003), 68 FR 25281 (May 12, 2003), the Commission stated, among other things, that a broker-dealer would not violate Exchange Act Rule 17a–4(f)(2)(ii)(A) ''if it used an electronic storage system that prevents the overwriting, erasing or otherwise altering of a record during its required retention period through the use of integrated hardware and software control codes.'' The Commission incorporates this interpretation into Rule 13n–5(b)(4).

[777] Proposing Release, 75 FR at 77330, *supra* note 2.

[778] *See* Proposing Release, 75 FR at 77331, *supra* note 2 (asking whether the Commission should adopt a requirement that SDRs organize and index transaction data and positions ''so that the Commission and other users of such information are easily able to obtain the specific information that they require''); Better Markets 1, *supra* note 19.

[779] *See* Section VI.D.3.a of this release discussing Rule 13n–4(c)(1)(iii).

[780] 15 U.S.C. 78m(n)(5)(D).

[781] *See* Sections VI.D.1 and VI.D.2 of this release discussing Rules 13n–4(a)(5) and 13n–4(b)(5). Rule 13n–4(b)(5) requires each SDR to provide direct electronic access to the Commission or its designees; ''direct electronic access'' is defined in Rule 13n–4(a)(5) to mean access, which shall be in a form and manner acceptable to the Commission, to data stored by an SDR in an electronic format and updated at the same time as the SDR's data is updated so as to provide the Commission with the ability to query or analyze the data in the same manner that the SDR can query or analyze the data.

[782] Although the Commission is not imposing an indexing requirement, SDRs are required under Regulation SBSR to utilize a transaction ID for each SBS. The transaction ID is designed to allow the Commission and other relevant persons to link related activity, such as life cycle events, to the original transaction. *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 901).

[783] *See* Section VI.H of this release discussing Rule 13n–8.

[784] *See* DTCC 2, *supra* note 19; MarkitSERV, *supra* note 19.

[785] DTCC 2, *supra* note 19 (supporting ''the approach that records are not invalidated by the actions of the SDR''); MarkitSERV, *supra* note 19.

[786] DTCC 2, *supra* note 19.

[787] *See* Proposing Release, 75 FR at 77331, *supra* note 2.

both parties.[788] In such a case, it is not the SDR that is modifying the SBS, but the parties to the SBS who are doing so (or the parties are submitting information regarding the SBS that relates to the terms of the original contract); the SDR is simply updating its records to reflect the changes to the SBS made by the parties to the SBS, or to reflect life cycle events that have occurred and the parties to the SBS agree should be reflected in the updated records of the SDR. However, whenever an SDR updates its records, it must retain the data as it existed prior to the update pursuant to Rule 13n–5(b)(4), which is discussed above.[789]

If the reporting party reports inconsistent data, such as where the reporting party reports that the SBS is a standard SBS, but also reports a non–standard provision, the SDR can correct the inconsistency if it gives appropriate notice to both parties.[790] In formulating its policies and procedures required by Rule 13n–5(b)(5), an SDR may want to consider providing the parties with notice of the inconsistency as soon as practicable.

6. Dispute Resolution Procedures (Rule 13n–5(b)(6))

a. Proposed Rule

Proposed Rule 13n–5(b)(6) would require every SDR to establish procedures and provide facilities reasonably designed to effectively resolve disputes over the accuracy of the transaction data and positions that are recorded in the SDR.[791]

b. Comments on the Proposed Rule

Two commenters submitted comments relating to this proposed rule.[792] One commenter supported this proposed rule, stating that it is a key step in the effort to have accurate data at the SDR.[793] The commenter stated that a reporting party and a non-reporting party may disagree on the terms of a reported SBS transaction and the reporting party may refuse to correct the erroneously reported transaction information.[794] The commenter urged the Commission to require the SDR to review promptly the disputed data with the parties.[795] The other commenter stated that it believed that ''an SDR should be in a position to identify disputes or unconfirmed data as part of its process to confirm the data with both parties. However, only the parties to a transaction can resolve any dispute as to the terms of the trade.'' [796] Where a trade comes through a third party service provider that ''act[s] directly as an affirmation, confirmation or verification platform and already utilizes dispute resolution workflows,'' the commenter did ''not support a Proposed Rule that would require that the SDR [build] processes to replicate these services.'' [797] The commenter stated that ''an SDR can make the quality of the data or disputed trades visible to a firm's prudential regulator and this would act as an incentive to timely resolution.'' [798]

c. Final Rule

After considering the comments, the Commission is adopting Rule 13n–5(b)(6) as proposed. Rule 13n–5(b)(6) requires every SDR to establish procedures and provide facilities reasonably designed to effectively resolve disputes over the accuracy of the transaction data and positions that are recorded in the SDR. As the Commission explained in the Proposing Release, the data maintained by an SDR will be used by relevant authorities and counterparties.[799] Parties, therefore, should have the ability to dispute the accuracy of the data maintained by an SDR regarding their SBSs. SDRs providing the means to resolve disputes should enhance data quality and integrity.

The Commission agrees with one commenter that only the parties to a dispute can resolve it,[800] but the Commission believes that SDRs can provide processes to facilitate resolution, which would improve the quality and accuracy of SBS data. The Commission does not believe that this requirement mandates that an SDR replicate the services of third party service providers, such as providing matching platforms.[801] Having both parties verify the SBS data through a third party service provider prior to submitting it to an SDR will ensure a great deal of accuracy in the data maintained by the SDR. However, there may be instances where disputes still occur, such as where a party disagrees with a position reflected in an SDR's records, where one party realizes it mistakenly verified a transaction and the other party refuses to submit or verify a correction, or where a transaction has been amended, but one party refuses to report or verify the amendment. In such instances, the Commission believes that the SDR should provide a party with the ability to raise the dispute, and have some sort of process to resolve the dispute. As with the other SDR Rules, an SDR could rely on a third party service provider to perform the SDR's obligation to provide a dispute resolution process. If it does so, in order for such a process to be ''reasonably designed,'' the SDR would have to oversee and supervise the performance of the third party service provider. The Commission agrees with one commenter [802] that to the extent that Rule 13n–5(b)(6) makes disputes visible to regulators, the rule should incentivize parties to resolve them. In any event, the Commission believes that the rule will further increase the quality and accuracy of SBS data.

7. Data Preservation After an SDR Ceases To Do Business (Rule 13n–5(b)(7))

a. Proposed Rule

Proposed Rule 13n–5(b)(7) would require an SDR, if it ceases to do business, or ceases to be registered as an SDR, to continue to preserve, maintain, and make accessible the transaction data and historical positions required to be collected, maintained, and preserved by Rule 13n–5 in the manner required by the Exchange Act and the rules and regulations thereunder for the

[788] *See* DTCC 2, *supra* note 19.

[789] *See* Section VI.E.4 of this release discussing Rule 13n–5(b)(4).

[790] The Commission believes that an SDR's policies and procedures would not necessarily be reasonable if they authorize the SDR to ''deem'' a user to have effectively consented to the SDR's changes if the user merely utilizes the SDR system after such change. At a minimum, the SDR should inform both parties of the change. The Commission notes that Rule 905 of Regulation SBSR establishes procedures for correcting errors in data reported to an SDR. *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 905). Additionally, as discussed in Section VI.E.6 of this release, Rule 13n–5(b)(6) requires SDRs to establish procedures and provide facilities reasonably designed to effectively resolve disputes over the accuracy of the transaction data and positions that are recorded in the SDR.

[791] In a separate release, the Commission is adopting rules regarding the correction of errors in SBS information maintained by an SDR in association with requirements under Dodd-Frank Act Section 763(i). *See* Regulation SBSR Adopting Release, *supra* note 13 (Rules 905 and 907(a)(3)).

[792] *See* DTCC 2, *supra* note 19; MFA 1, *supra* note 19; *see also* MFA SBSR, *supra* note 27.

[793] MFA 1, *supra* note 19; *see also* MFA SBSR, *supra* note 27.

[794] MFA SBSR, *supra* note 27.

[795] MFA SBSR, *supra* note 27.

[796] DTCC 2, *supra* note 19.

[797] DTCC 2, *supra* note 19.

[798] DTCC 2, *supra* note 19.

[799] Proposing Release, 75 FR at 77331, *supra* note 2. In some cases, the data maintained by the SDR may be considered by the counterparties to be the legal or authoritative record of the SBS. However, this is due to the consent of the counterparties. Simply reporting an SBS to an SDR does not affect the legal terms of the SBS. *See* Section III.A of this release discussing the service of maintaining legally binding records.

[800] *See* DTCC 2, *supra* note 19.

[801] *See* DTCC 2, *supra* note 19

[802] *See* DTCC 2, *supra* note 19.

remainder of the period required by this rule.[803]

b. Comments on the Proposed Rule

The Commission received no comments relating to this proposed rule.

c. Final Rule

The Commission is adopting Rule 13n–5(b)(7) as proposed. Rule 13n–5(b)(7) requires an SDR, if it ceases to do business, or ceases to be registered pursuant to Exchange Act Section 13(n) and the rules and regulations thereunder, to continue to preserve, maintain, and make accessible the transaction data and historical positions required to be collected, maintained, and preserved by Rule 13n–5 in the manner required by the Exchange Act and the rules and regulations thereunder (including in a place and format that is readily accessible and usable to the Commission and other persons with authority to access or view such information, in an electronic format that is non-rewriteable and non-erasable, and in a manner that protects confidentiality and accuracy) for the remainder of the period required by Rule 13n–5 (*i.e.,* not less than five years after the applicable SBS expires for transaction data and not less than five years for historical positions). As the Commission explained in the Proposing Release, given the importance of the records maintained by an SDR to the functioning of the SBS market, an SDR ceasing to do business could cause serious disruptions in the market should the information it maintains becomes unavailable.[804]

8. Plan for Data Preservation (Rule 13n–5(b)(8))

a. Proposed Rule

Proposed Rule 13n–5(b)(8) would require an SDR to make and keep current a plan to ensure that the transaction data and positions that are recorded in the SDR continue to be maintained in accordance with proposed Rule 13n–5(b)(7).

b. Comments on the Proposed Rule

The Commission received no comments relating to this proposed rule.

c. Final Rule

The Commission is adopting Rule 13n–5(b)(8) as proposed. Rule 13n–5(b)(8) requires an SDR to make and keep current a plan to ensure that the transaction data and positions that are recorded in the SDR continue to be maintained in accordance with Rule 13n–5(b)(7), which shall include procedures for transferring the transaction data and positions to the Commission or its designee (including another registered SDR).[805] As the Commission explained in the Proposing Release, given the importance of the records maintained by an SDR to the functioning of the SBS market, if an SDR ceases to do business, the absence of a plan to transfer information could cause serious disruptions.[806] The Commission expects that an SDR's plan would establish procedures and mechanisms so that another entity would be in the position to maintain this information after the SDR ceases to do business or ceases to be registered pursuant to Exchange Act Section 13(n) [807] and the rules and regulations thereunder.

F. Automated Systems (Rule 13n–6)

1. Proposed Rule

The Commission proposed Exchange Act Rule 13n–6 to provide standards for SDRs with regard to their automated systems' capacity, resiliency, and security. The proposed rule was designed to be comparable to the standards applicable to SROs, including exchanges and clearing agencies,[808] and market information dissemination systems, pursuant to the Commission's Automation Review Policy (''ARP'') program [809] and rules applicable to significant-volume alternative trading systems (''ATSs'').[810]

2. Comments on the Proposed Rule

Three commenters submitted comments relating to proposed Rule 13n–6.[811] One commenter ''support[ed] the Commission's intent'' behind the rule, but suggested several specific changes.[812] The commenter also stated that it ''has always placed a high priority on maintaining business resiliency,'' including having ''in place multiple fully staffed data and operations centers in diverse regions of the country, each capable of handling [the commenter's] entire business.'' [813] The commenter stated that it ''performs both data center and operational failover tests every year'' and ''[d]atacenter recovery tests are performed at least six times a year in various configurations, and there are more than two dozen operational failover tests each year, ranging from a single department failover, to an operational recovery involving more than 400 staff.'' [814] The commenter believed that ''[t]hese capabilities are fundamental to any registration as an SDR.'' [815] The commenter further stated that ''[g]iven the importance of SDRs to the regulatory and systemic risk oversight of the financial markets and the important role they will play in providing market transparency, a lack of robust resiliency and redundancy in operations should disqualify an entity from registering as an SDR.'' [816]

[803] As noted in the Proposing Release, this proposed requirement was based on Exchange Act Rule 17a–4(g), 17 CFR 240.17a–4(g), which applies to books and records of broker-dealers. Proposing Release, 75 FR at 77332 n.128, *supra* note 2.

[804] Proposing Release, 75 FR at 77332, *supra* note 2.

[805] In addition, Item 45 of Form SDR requires each SDR to attach as an exhibit to its Form SDR ''a plan to ensure that the transaction data and position data that are recorded in the applicant continue to be maintained after the applicant withdraws from registration as [an SDR], which shall include procedures for transferring the transaction data and position data to the Commission or its designee (including another registered [SDR]).'' This item implements Rule 13n–5(b)(8).

[806] Proposing Release, 75 FR at 77332, *supra* note 2.

[807] 15 U.S.C. 78m(n).

[808] *See* Automated Systems of Self-Regulatory Organizations, Exchange Act Release No. 27445 (Nov. 16, 1989), 54 FR 48703 (Nov. 24, 1989) (''ARP I Release''); Automated Systems of Self-Regulatory Organizations, Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991) (''ARP II Release'') (collectively, ''ARP Policy Statements'').

[809] *See* ARP II Release, 56 FR at 22491 n.4, *supra* note 808 (stating that the Commission's automated review policies are intended to ''encompass SRO systems that disseminate transaction and quotation information''); *see also* ARP I Release, 54 FR at 48704, *supra* note 808 (discussing that ''the SROs have developed and continue to enhance automated systems for the dissemination of transaction and quotation information'').

[810] *See* Regulation of Exchanges and Alternative Trading Systems, Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844 (Dec. 22, 1998) (adopting Rule 301(b)(6) of Regulation ATS, 17 CFR 242.301(b)(6)). Rule 301(b)(6) has since been superseded in part by Regulation SCI, 17 CFR 242.1000–1007.

[811] *See* DTCC 2, *supra* note 19; Deutsche Temp Rule, *supra* note 28; ISDA, *supra* note 19; *see also* DTCC 3, *supra* note 19; DTCC 5, *supra* note 19.

[812] *See* DTCC 2, *supra* note 19 (stating that business continuity provisions should include multiple redundant systems, supporting ''the Commission in requiring robust operational capabilities of an SDR,'' and stating that SDRs should ''maintain multiple levels of operational redundancy''); DTCC 3, *supra* note 19 (recommending that SDRs ''maintain multiple levels of operational redundancy and data security''); DTCC 5, *supra* note 19 (recommending (1) granting an SDR flexibility to make contingency and disaster recovery plans part of a parent's or affiliate's disaster recovery operations, (2) revising proposed Rule 13n–6(b)(2) to require an external audit only once every five years when the SDR's objective review is performed by an internal department rather than every year, and (3) revising proposed Rule 13n–6(b)(3) to be less prescriptive in its time frames and grant more flexibility to an SDR for reporting outages).

[813] DTCC 2, *supra* note 19.

[814] DTCC 2, *supra* note 19.

[815] DTCC 2, *supra* note 19.

[816] DTCC 2, *supra* note 19; *see also* DTCC 3, *supra* note 19 (recommending that ''a failure to

The second commenter suggested that the Commission ''take all possible steps to ensure that identifying information is protected by SDRs and the [Commission].'' [817] The third commenter believed that SDRs, among other entities, should ''have proper safeguards and barriers in place in order to ensure the security of data, prevent cyber-crime and safeguard against inappropriate access,'' and that such entities should ''make the appropriate level of investment to design, implement and continually review their information barriers . . . in order to protect markets and market participants.'' [818] The commenter also believed that ''[i]t is equally important that regulators ensure that the viability and rigor of these information barriers . . . are reviewed and audited as they are at all other market participants.'' [819]

3. Final Rule

After considering the comments received on this proposal, the Commission is not adopting the more specific requirements of proposed Rule 13n–6(b)(1),[820] but is instead adopting the core policies and procedures requirement. Thus, final Rule 13n–6 is consistent with, but is more general and flexible than, proposed Rule 13n–6. Final Rule 13n–6 provides in full that ''[e]very security-based swap data repository, with respect to those systems that support or are integrally related to the performance of its activities, shall establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its systems provide adequate levels of capacity, integrity, resiliency, availability, and security.'' [821] The Commission is not adopting proposed Rules 13n–6(b)(2), (3), and (4).[822]

The Commission is not adopting Rule 13n–6 as proposed because, after proposing Rule 13n–6, the Commission considered the need for an updated regulatory framework for certain systems of the U.S. securities trading markets and adopted Regulation Systems Compliance and Integrity (''Regulation SCI'').[823] Regulation SCI supersedes the Commission's ARP Policy Statements and Rule 301(b)(6) of Regulation ATS (with respect to significant-volume ATSs that trade NMS stocks [824] and non-NMS stocks), on which proposed Rule 13n–6 was largely based. The Regulation SCI Adopting Release includes a discussion of comment letters addressing the application of Regulation SCI to SDRs.[825]

In light of this development, the Commission believes that Rule 13n–6, as adopted, better sets an appropriate core framework for the policies and procedures of SDRs with respect to automated systems. While this framework responds to comments about the application of Regulation SCI to SDRs and is broadly consistent with Regulation SCI, Rule 13n–6 does not apply Regulation SCI and its specific obligations to SDRs.[826] In adopting Regulation SCI, the Commission explained that it will ''monitor and evaluate the implementation of Regulation SCI, the risks posed by the systems of other market participants, and the continued evolution of the securities markets, such that it may consider, in the future, extending the types of requirements in Regulation SCI to additional categories of market participants.'' [827] Consistent with this approach and in recognition of the importance of SDRs as the primary repositories of SBS trade information, the Commission may consider the application of any features of Regulation SCI to SDRs in the future. In addition, to the extent that an SDR may share systems with an SCI entity (*e.g.,* an affiliated clearing agency), such systems may meet the definition of ''indirect SCI systems'' of the SCI entity, as defined in Regulation SCI, and certain provisions of Regulation SCI may apply.[828]

Rule 13n–6 applies to ''systems that support or are integrally related to the performance of [each SDR's] activities.'' [829] This includes automated systems that support or are integrally related to performing both core and ancillary services, including functions that may be required by Regulation SBSR, such as public dissemination of SBS information.[830] To the extent that an SDR uses a third party service provider to perform the SDR's functions, the SDR's policies and procedures required by Rule 13n–6 continue to apply; an SDR cannot absolve itself of its responsibilities under this rule through the use of a third party service provider.

The Commission believes that Rule 13n–6 addresses commenters' concerns about operational capabilities and protecting information.[831] With respect to comments suggesting specific substantive requirements,[832] the Commission believes that a more measured approach is to adopt a rule that requires SDRs to adopt policies and procedures reasonably designed to ensure that they have adequate levels of

demonstrate robust resiliency, security and redundancy in operations should preclude an entity from registering as an SDR'').

[817] Deutsche Temp Rule, *supra* note 28 (stating that the Commission should use its authority under Dodd-Frank Act Section 763 to ''impose strict requirements on the handling, disclosure and use by the SDRs of identifying information and on the operational and technological measures that must be employed by SDRs to protect such information from disclosure (including by way of unauthorized access)'').

[818] ISDA, *supra* note 19 (''[T]here is a real need for [SDRs] to have robust policies, procedures and systems in place to address the information barrier and privacy issue.'').

[819] ISDA, *supra* note 19.

[820] Rule 13n–6 is being promulgated under Exchange Act Sections 13(n)(4)(B), 13(n)(7)(D), and 13(n)(9). *See* 15 U.S.C. 78m(n)(4)(B), 78m(n)(7)(D), and 78m(n)(9).

[821] Rule 13n–6 is similar to the first sentence in proposed Rule 13n–6(b)(1). As adopted, the words ''integrity'' and ''availability'' have been added. The addition is consistent with, and captures concepts in, the rule as proposed, which implicitly addressed both integrity and availability. *See* Proposing Release, 75 FR at 77370, *supra* note 2 (proposing requirement that an SDR has policies and procedures that, at a minimum, (i) establish reasonable current and future capacity estimates; (ii) conduct periodic capacity stress tests of critical systems to determine such systems' ability to process transactions in an accurate, timely, and efficient manner; (iii) develop and implement reasonable procedures to review and keep current its system development and testing methodology; (iv) review the vulnerability of its systems and data center computer operations to internal and external threats, physical hazards, and natural disasters; and (v) establish adequate contingency and disaster recovery plans). These edits also make Rule 13n–6 more consistent with Rule 1001(a)(1) of Regulation SCI, 17 CFR 242.1000(a)(1) (requiring each SCI entity to ''establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems and, for purposes of security standards, indirect SCI systems, have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets'').

[822] In addition, the Commission is not adopting proposed Rules 13n–6(a), (c), and (d) because they are not applicable without proposed Rules 13n–6(b)(2), (3), and (4).

[823] *See* Regulation Systems Compliance and Integrity, Exchange Act Release No. 73639 (Nov. 19, 2014), 79 FR 72252 (Dec. 5, 2014) (''Regulation SCI Adopting Release'').

[824] *See* 17 CFR 242.600 (defining ''NMS stock'').

[825] Regulation SCI Adopting Release, 79 FR at 72363–4, *supra* note 823.

[826] In preparing their policies and procedures, SDRs may consider whether to incorporate aspects of Regulation SCI that may be appropriate for their particular implementation of Rule 13n–6, including where an SDR is related by virtue of its corporate structure to an entity subject to Regulation SCI.

[827] Regulation SCI Adopting Release, 79 FR at 72259, *supra* note 823.

[828] *See* Regulation SCI, 17 CFR 242.1000–1007. Rule 1000 of Regulation SCI defines ''indirect SCI systems'' as ''any systems of, or operated by or on behalf of, an SCI entity that, if breached, would be reasonably likely to pose a security threat to SCI systems.''

[829] Rule 13n–6.

[830] *See* Regulation SBSR Adopting Release, *supra* note 13; *see also* ARP II Release, 56 FR at 22491 n.4, *supra* note 808 (stating that ARP standards encompass ''systems that disseminate transaction and quotation information'').

[831] *See* DTCC 2, *supra* note 19; Deutsche Temp Rule, *supra* note 28; ISDA, *supra* note 19.

[832] *See* DTCC 2, *supra* note 19; DTCC 3, *supra* note 19; Deutsche Temp Rule, *supra* note 28.

capacity, integrity, resiliency, availability, and security. Consistent with the comments,[833] an SDR may want to consider, in developing its policies and procedures required by Rule 13n–6, whether to include the establishment and maintenance of multiple redundant systems and data and operations centers in diverse regions of the country,[834] periodic data center and operational failover tests,[835] robust operational capabilities,[836] and multiple levels of operational redundancy and data security.[837] The Commission also believes that an SDR's policies and procedures required by Rule 13n–6 can be ''a part of or consistent with a parent or affiliate entity's disaster recovery operations.'' [838] The Commission further believes that Rule 13n–6 is consistent with one commenter's recommendation that SDRs should ''have proper safeguards and barriers in place in order to ensure the security of data, prevent cyber-crime and safeguard against inappropriate access.'' [839] Additionally, the Commission believes that to comply with Rule 13n–6, SDRs will likely need to ''make the appropriate level of investment to design, implement and continually review their information barriers . . . in order to protect markets and market participants.'' [840]

G. SDR Recordkeeping (Rule 13n–7)

The Commission proposed Rule 13n–7 to specify the books and records requirements applicable to SDRs. After receiving no comments on this proposal, the Commission is adopting Rule 13n–7 as proposed, with some technical modifications.

1. Records To Be Made by SDRs (Rule 13n–7(a))

a. Proposed Rule

Proposed Rule 13n–7(a) would require every SDR to make and keep current certain books and records relating to its business.

b. Comments on the Proposed Rule

The Commission received no comments relating to this proposed rule.

c. Final Rule

The Commission is adopting Rule 13n–7(a)(1) as proposed. Rule 13n–7(a)(1) requires every SDR to make and keep current ''a record for each office listing, by name or title, each person at that office who, without delay, can explain the types of records the security-based swap data repository maintains at that office and the information contained in those records.'' The Commission continues to believe that SDR recordkeeping practices may vary in ways ranging from format and presentation to the name of a record.[841] Therefore, as explained in the Proposing Release, the Commission believes that each SDR must be able to promptly explain how it makes, keeps, and titles its records.[842] To comply with this rule, an SDR may identify more than one person and list which records each person is able to explain. Because it may be burdensome for an SDR to keep this record current if it lists each person by name, an SDR may satisfy this requirement by recording the persons capable of explaining the SDR's records by either name or title.

The Commission is also adopting Rule 13n–7(a)(2) as proposed. Rule 13n–7(a)(2) requires every SDR to make and keep current ''a record listing each officer, manager, or person performing similar functions of the security-based swap data repository responsible for establishing policies and procedures that are reasonably designed to ensure compliance with the [Exchange] Act and the rules and regulations thereunder.'' This rule is intended to assist securities regulators by identifying individuals responsible for designing an SDR's compliance policies and procedures.

The purpose of both Rules 13n–7(a)(1) and 13n–7(a)(2) is to assist the Commission in its inspection and examination function.[843] These two requirements are based on Exchange Act Rules 17a–3(a)(21) and (22), respectively, which are applicable to broker-dealers.[844] It is important for the Commission's examiners to have the ability to find quickly what records are maintained in a particular office and who is responsible for establishing particular policies and procedures of an SDR.

2. Records To Be Preserved by SDRs (Rule 13n–7(b))

a. Proposed Rule

Proposed Rule 13n–7(b) would require every SDR to keep and preserve copies of its documents, keep such documents for a period of not less than five years, the first two in a place that is immediately available to Commission staff, and promptly furnish such documents to Commission staff upon request.

b. Comments on the Proposed Rule

The Commission received no comments relating to this proposed rule.

c. Final Rule

The Commission is adopting Rule 13n–7(b) as proposed, with one technical modification. Rule 13n–7(b)(1) requires every SDR to ''keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the [Exchange] Act and the rules and regulations thereunder, correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it in the course of its business as such.'' Rule 13n–7(b)(2) requires every SDR to ''keep all such documents for a period of not less than five years, the first two years in a place that is immediately available to representatives of the Commission for inspection and examination.'' [845] Rule 13n–7(b)(3) requires every SDR to, ''upon request of any representative of the Commission, promptly furnish [846] to the possession of such representative copies of any documents required to be

[833] *See* DTCC 2, *supra* note 19; DTCC 3, *supra* note 19; Deutsche Temp Rule, *supra* note 28.

[834] *See* DTCC 2, *supra* note 19.

[835] *See* DTCC 2, *supra* note 19.

[836] *See* DTCC 2, *supra* note 19; Deutsche Temp Rule, *supra* note 28 (commenting on the need for ''strict requirements . . . on the operational and technological measures . . . employed by SDRs to protect [reported data] from disclosure (including by way of unauthorized access)'').

[837] *See* DTCC 2, *supra* note 19; DTCC 3, *supra* note 19.

[838] DTCC 5, *supra* note 19.

[839] ISDA, *supra* note 19.

[840] ISDA, *supra* note 19.

[841] *See* Proposing Release, 75 FR at 77337, *supra* note 2.

[842] Proposing Release, 75 FR at 77337, *supra* note 2.

[843] *See* Exchange Act Section 13(n)(2), 15 U.S.C. 78m(n)(2) (stating that ''[e]ach registered security-based swap data repository shall be subject to inspection and examination by any representative of the Commission''); *see also* Rule 13n–4(b)(1) (implementing same requirement).

[844] 17 CFR 240.17a–3(a)(21) and (22).

[845] The Commission is making a technical modification to Rule 13n–7(b)(2) from the proposal. As proposed, the rule referred to ''the staff of the Commission.'' As adopted, the rule instead refers to ''representatives of the Commission'' for consistency with other rules being adopted in this release. *See* Rule 13n–4(b)(1) and Rule 13n–7(b)(3) (both referring to ''any representative of the Commission'').

[846] For purposes of Rule 13n–7(b)(3), the Commission interprets the term ''promptly'' to mean making reasonable efforts to produce records that are requested by Commission representatives during an examination without delay. The Commission believes that in many cases, an SDR could, and therefore will be required to, furnish records immediately or within a few hours of a request. The Commission expects that only in unusual circumstances would an SDR be permitted to delay furnishing records for more than 24 hours. *Accord* Registration of Municipal Advisors, Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67468, 67578–67579 n.1347 (Nov. 12, 2013) (interpreting the term ''prompt'' in the context of Exchange Act Rule 15Ba1–8(d)).

kept and preserved by it pursuant to paragraphs (a) and (b) of this [rule].''

Rule 13n–7(b) is based on Exchange Act Rule 17a–1, which is the recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board.[847] As explained in the Proposing Release, Rule 13n–7(b) is intended to set forth the recordkeeping obligation of SDRs and thereby facilitate implementation of the broad inspection authority given to the Commission in Exchange Act Section 13(n)(2).[848] This rule includes all electronic documents and correspondence, such as data dictionaries, emails and instant messages, which should be furnished in their original electronic format.

3. Recordkeeping After an SDR Ceases To Do Business (Rule 13n–7(c))

a. Proposed Rule

Proposed Rule 13n–7(c) would require an SDR that ceases doing business, or ceases to be registered as an SDR, to continue to preserve, maintain, and make accessible the records/data required to be collected, maintained, and preserved by Rule 13n–7 in the manner required by this rule and for the remainder of the period required by this rule.[849]

b. Comments on the Proposed Rule

The Commission received no comments relating to this proposed rule.

c. Final Rule

The Commission is adopting Rule 13n–7(c) as proposed, with a technical modification. Rule 13n–7(c) requires an SDR that ceases doing business, or ceases to be registered pursuant to Exchange Act Section 13(n) and the rules and regulations thereunder, to continue to preserve, maintain, and make accessible the records and data[850] required to be collected, maintained, and preserved by Rule 13n–7 in the manner required by this rule and for the remainder of the period required by this rule. This requirement is intended to allow Commission representatives to perform effective inspections and examinations of an SDR pursuant to Exchange Act Section 13(n)(2).[851] In addition, the Commission notes that, as discussed in Section VI.B of this release regarding Rule 13n–2, an SDR that ceases to exist or do business as an SDR is required to file a withdrawal from registration on Form SDR pursuant to Rule 13n–2(b) and designate on Item 12 of Form SDR a custodian of books and records.

An SDR may wish to consider establishing contingency plans so that another entity will be in the position to maintain the SDR's records and data after the SDR ceases to do business. The Commission notes that the requirement in Rule 13n–5(b)(8) for an SDR to make and keep current a plan to ensure that the SDR's transaction data and positions are maintained after it ceases doing business or ceases to be registered[852] does not expressly extend to a plan for maintaining all of the records and data required to be maintained pursuant to Rule 13n–7, but that plan could also include such records and data.

4. Applicability (Rule 13n–7(d))

a. Proposed Rule

Proposed Rule 13n–7(d) provided that Rule 13n–7 ''does not apply to data collected and maintained pursuant to Rule 13n–5.''

b. Comments on the Proposed Rule

The Commission received no comments relating to this proposed rule.

c. Final Rule

The Commission is adopting Rule 13n–7(d) as proposed, with a technical modification. Rule 13n–7(d) states that Rule 13n–7 ''does not apply to transaction data and positions collected and maintained pursuant to Rule 13n–5 (§ 240.13n–5).''[853] As explained in the Proposing Release, the purpose of this rule is to clarify that the requirements in Rule 13n–7 are designed to capture those records of an SDR other than the transaction data, positions, and market data that would be required to be maintained in accordance with Rule 13n–5, as discussed in Section VI.E of this release.[854] The requirements of Rule 13n–7 do apply to records that an SDR creates using the data required to be maintained in accordance with Rule 13n–5, such as aggregate reports.

H. Reports To Be Provided to the Commission (Rule 13n–8)

The Commission proposed Rule 13n–8 to specify certain reports that an SDR would be required to provide to the Commission. After considering the two comments received on this proposal, the Commission is adopting Rule 13n–8 as proposed.

1. Proposed Rule

Proposed Rule 13n–8 would require every SDR to ''promptly report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under the [Exchange] Act and the rules and regulations thereunder.'' This proposed rule was designed to provide the Commission with the necessary information for it to fulfill its regulatory duties.

2. Comments on the Proposed Rule

Two commenters submitted comments relating to this proposed rule.[855] One commenter stated that it ''currently makes information available directly to regulators, having created a web portal for access to scheduled reports, and providing extracts from [the trade repository's] database based on parameters set by regulators . . . . Through this system, [the commenter] expects to be able to offer acceptable access to the Commission.''[856] The other commenter recommended that reports ''be standardized and use a common terminology.''[857]

[847] 17 CFR 240.17a–1.

[848] 15 U.S.C. 78m(n)(2); *see also* Rule 13n–4(b)(1) (implementing same requirement); Proposing Release, 75 FR at 77338, *supra* note 2.

[849] This requirement is based on Exchange Act Rule 17a–4(g), 17 CFR 240.17a–4(g), which applies to books and records of broker-dealers.

[850] The Commission is making a technical amendment to Rule 13n–7(c) from the proposal. As proposed, the rule referred to ''records/data.'' The rule being adopted refers to ''records and data'' for clarity.

[851] 15 U.S.C. 78m(n)(2); *see also* Rule 13n–4(b)(1) (implementing same requirement).

[852] *See* Section VI.E.8 of this release discussing Rule 13n–5(b)(8).

[853] The Commission is making a technical modification to Rule 13n–7(d) from the proposal, changing ''data'' to ''transaction data and positions.'' This is to clarify that the data that Rule 13n–7 does not apply to is limited to transaction data and positions, both of which are required to be maintained in accordance with Rule 13n–5(b)(4). Rule 13n–7 applies to other information that may be created pursuant to Rule 13n–5, but which is not required to be maintained pursuant to Rule 13n–5(b)(4). For example, in order to assure itself of compliance with Rule 13n–5(b)(1)(iv), an SDR could run tests to determine how long it takes for it to record transaction data that it receives. Data from such test would be required to be retained pursuant to Rule 13n–7, not Rule 13n–5(b)(4). The Commission clearly contemplated this distinction in the Proposing Release when it stated that Rule 13n–7(d) was proposed to clarify that Rule 13n–7 was designed to capture those records other than the data required to be maintained in accordance with proposed Rule 13n–5. *See* Proposing Release, 75 FR at 77338, *supra* note 2.

[854] Proposing Release, 75 FR at 77338, *supra* note 2.

[855] *See* DTCC 2, *supra* note 19; Barnard, *supra* note 19. In addition, one commenter to the Temporary Rule Release suggested that the Commission affirmatively state that it intends to keep information furnished to the Commission pursuant to the rules in that release, which could be information similar to that reported to the Commission under Rule 13n–8, confidential under FOIA or to seek a legislative solution. *See* Deutsche Temp Rule, *supra* note 28.

[856] DTCC 2, *supra* note 19.

[857] Barnard, *supra* note 19.

3. Final Rule

After considering the comments, the Commission is adopting Rule 13n–8 as proposed. Rule 13n–8 requires every SDR to ''promptly report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under the [Exchange] Act and the rules and regulations thereunder.'' This requirement provides flexibility to the Commission to obtain information on a case-by-case basis and in connection with fulfilling its examination function.[858]

Under Rule 13n–8, the Commission may request specific reports related to the final SDR Rules.[859] For example, in the Proposing Release, the Commission stated that it may request a report on the number of complaints an SDR has received pertaining to data integrity.[860] In addition, the Commission may request other reports in the future based upon, for example, developments in the SBS markets or a newly identified need for particular SBS information. The Commission expects that an SDR will be able to promptly report any information in its possession to the Commission pursuant to Rule 13n–8. If the report involves provision of SBS data, then the Commission could require an SDR to adhere to any formats and taxonomies required pursuant to Rule 13n–4(b)(5).[861] This approach is consistent with one commenter's recommendation that reports ''be standardized and use common terminology.'' [862]

I. Privacy of SBS Transaction Information and Disclosure to Market Participants (Rules 13n–9 and 13n–10)

1. Privacy Requirements (Rule 13n–9)

Proposed Rule 13n–9 set forth requirements to implement an SDR's statutory duty to ''maintain the privacy of any and all security-based swap transaction information that the [SDR] receives from a security-based swap dealer, counterparty, or any other registered entity.'' [863] After considering the comments received on the proposal, the Commission is adopting the rule as proposed.

a. Proposed Rule

Proposed Rule 13n–9 would require each SDR to establish, maintain, and enforce written policies and procedures reasonably designed to protect the privacy of any and all SBS transaction information that the SDR receives from an SBS dealer, counterparty, or any registered entity. Such policies and procedures would be required to include, but not be limited to, policies and procedures to protect the privacy of any and all SBS transaction information that the SDR shares with affiliates and nonaffiliated third parties.[864] The proposed rule would also require each SDR to establish and maintain safeguards, policies, and procedures reasonably designed to prevent the misappropriation or misuse of (i) any confidential information received by the SDR; (ii) material, nonpublic information; and/or (iii) intellectual property, by the SDR or any person associated with the SDR for their personal benefit or the benefit of others.[865] Such safeguards, policies, and procedures would be required to address, without limitation, (1) limiting access to such confidential information, material, nonpublic information, and intellectual property, (2) standards pertaining to the trading by persons associated with the SDR for their personal benefit or the benefit of others, and (3) adequate oversight to ensure compliance of this provision.[866]

b. Comments on the Proposed Rule

Five commenters submitted comments relating to this proposed rule.[867] Two of the commenters supported the proposal.[868] One commenter ''fully support[ed] the Commission's efforts to protect the privacy of any and all SBS transaction information received by an SDR'' and believed that ''no communication of data (other than to, or as required by, applicable regulators) that could have the result of disclosing the actual positions or specific business or trading activity of a counterparty should be permitted without the consent of that counterparty.'' [869] The commenter suggested that the definition of ''personally identifiable information'' in proposed Rule 13n-9(a)(6) be limited to information that is not otherwise disclosed or made available to the public.[870] In making its suggestion, the commenter stated that ''[b]ecause much of the information utilized to on-board participants or to identify counterparties to an [SBS] will be publicly available through Web sites issuing legal entity identifiers or similar identifiers, this information should not be considered confidential simply because it is required by an [SDR].'' [871]

Another commenter also ''agree[d] with the Commission's concerns about privacy of SBS data'' and ''strongly support[ed] imposing privacy requirements on [SDRs].'' [872] Specifically, the commenter supported the Commission's proposed requirements related to policies and procedures reasonably designed to protect the privacy of SBS transaction information and noted that ''such privacy protections will ensure that market participants utilize the services of registered [SDRs] with confidence.'' [873] The commenter made a number of suggestions. First, the commenter suggested that the Commission add safeguards related to ''confidentiality of trading positions'' to

[858] One commenter describes its approach to addressing the proposed rule's requirements. *See* DTCC 2, *supra* note 19. With respect to the commenter to the Temporary Rule Release suggesting that the Commission affirmatively state that it intends to keep information furnished pursuant to the rules in that release confidential under FOIA or to seek a legislative solution, the Commission anticipates that it will keep reported data that SDRs submit to the Commission (via Rule 13n–8 or any other means) confidential, subject to the provisions of applicable law. *See* Deutsche Temp Rule, *supra* note 28. Pursuant to Commission rules, confidential treatment can be sought for information submitted to the Commission. *See* 17 CFR 200.83 (regarding confidential treatment procedures under FOIA). The Commission does not intend to affirmatively seek any legislative action to protect further such information. The commenter is not precluded from doing so on its own initiative.

[859] In a separate release, the Commission is adopting a rule requiring an SDR to provide the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to the SDR. *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 907(e)).

[860] Proposing Release, 75 FR at 77339, *supra* note 2.

[861] *See* Section VI.D.2.c.ii of this release discussing anticipated Commission proposal pursuant to Rule 13n–4(b)(5). With regard to other types of reports, the Commission will seek to work with SDRs to develop the form and the manner for the SDRs to provide the Commission with the information it needs, while seeking to minimize the SDRs' burdens.

[862] *See* Barnard, *supra* note 19.

[863] *See* Exchange Act Section 13(n)(5)(F), 15 U.S.C. 78m(n)(5)(F).

[864] Proposed Rule 13n–9(b)(1).

[865] Proposed Rule 13n–9(b)(2).

[866] *Id.*

[867] *See* DTCC 2, *supra* note 19; MFA 1, *supra* note 19; TriOptima, *supra* note 19; Deutsche Temp Rule, *supra* note 28; ISDA, *supra* note 19; *see also* DTCC 5, *supra* note 19.

[868] *See* DTCC 2, *supra* note 19; MFA 1, *supra* note 19. The Commission received no comments on proposed Rule 13n–9(a), which set forth the definitions applicable to the rule, and is adopting each of them as proposed. *See supra* note 247 (discussing a general comment regarding the term ''affiliate'').

[869] DTCC 2, *supra* note 19; *see also* DTCC 5, *supra* note 19.

[870] DTCC 5, *supra* note 19.

[871] DTCC 5, *supra* note 19.

[872] MFA 1, *supra* note 19.

[873] MFA 1, *supra* note 19 (''Specifically, we recommend adding to the information covered under [proposed Rule] 13n–9(b): (i) information related to transactions of a market participant, including the size and volume of such transactions; (ii) the identity of each market participant; and (iii) the details of any master agreement (to the extent provided) governing the relevant SBS.'').

the Commission's proposed rule because disclosure of position information could reveal market participants' customized and proprietary investment strategies in which they invest heavily and ''which form the foundation of their businesses.'' [874] Second, the commenter suggested that the Commission expand its proposed rules to include a standard of care that would require SDRs to adopt policies and procedures to ensure that any confidential information received will be used solely for the purpose of fulfilling regulatory obligations.[875] Third, the commenter suggested that the Commission require SDRs to adopt policies and procedures to limit access to confidential information to directors, officers, employees, agents, and representatives who need to know such information in order to fulfill regulatory obligations.[876] The commenter noted that ''[t]hose policies and procedures should also have a mechanism in place for all [SDR representatives] to be informed of, and required to follow, the [SDR's] policies and procedures related to privacy of information received.'' [877] The commenter believed that such persons should be liable for any breach of an SDR's policies and procedures related to privacy of information.[878]

Another commenter suggested that ''where trading counterparties have given [written authorizations] in favor of a third party service provider to access their [SBS transaction information], there is no need to have the third party service provider observe the [SDR's] privacy policies and procedures.'' [879] The commenter stated that ''if the counterparties to a trade authorize the third party service provider to use their information, an [SDR] should not be able to restrict or limit such use through privacy policies and procedures when the owners of the information have provided appropriate consents and authorizations.'' [880]

Consistent with the commenters supporting proposed Rule 13n–9, a commenter to the Temporary Rule Release stated that ''market participants have legitimate interests in the protection of their confidential and identifying financial information.'' [881] In this regard, the commenter suggested that the Commission ''take all possible steps to ensure that identifying information is protected by SDRs and the [Commission]'' and that the Commission use its statutory authority under Dodd-Frank Act Section 763 to ''impose strict requirements on the handling, disclosure and use by the SDRs of identifying information and on the operational and technological measures that must be employed by SDRs to protect such information from disclosure (including by way of unauthorized access).'' [882]

Another commenter believed that ''non–bank entities,'' including SDRs, should ''make the appropriate level of investment to design, implement and continually review their . . . data privacy policies and procedures in order to protect markets and market participants.'' [883] The commenter also believed that ''[i]t is equally important that regulators ensure that the viability and rigor of these . . . privacy policies are reviewed and audited as they are at all other market participants.'' [884]

c. Final Rule

After considering the comments, the Commission is adopting Rule 13n–9 as proposed, with two minor modifications.[885] Specifically, Rule 13n–9(b)(1) requires each SDR to establish, maintain, and enforce written policies and procedures reasonably designed to protect the privacy of any and all SBS transaction information that the SDR receives from an SBS dealer, counterparty, or any registered entity. The rule further provides that such policies and procedures shall include, but are not limited to, policies and procedures to protect the privacy of any and all SBS transaction information that the SDR shares with affiliates [886] and nonaffiliated third parties.[887] As mentioned above, the Exchange Act [888] requires, and commenters supported, the Commission's imposition of privacy requirements on SDRs.[889]

Additionally, Rule 13n–9(b)(2) requires each SDR to establish and maintain safeguards, policies, and procedures reasonably designed to prevent the misappropriation or misuse, directly or indirectly, of: (1) Any confidential information received by the SDR, including, but not limited to, trade data, position data, and any nonpublic personal information [890] about a market participant [891] or any of its customers; (2) material, nonpublic information; and/or (3) intellectual property, such as trading strategies or portfolio positions, by the SDR or any person associated

[874] MFA 1, *supra* note 19.

[875] MFA 1, *supra* note 19.

[876] MFA 1, *supra* note 19.

[877] MFA 1, *supra* note 19.

[878] MFA 1, *supra* note 19.

[879] TriOptima, *supra* note 19 (stating that ''establishment of clear rights and obligations governing access to [SDR] Information'' is an important element in establishing ''fair, secure and efficient market functioning for market participants,'' and believing that it would ''be appropriate and helpful to the market if the SEC can clarify in the final rule that [SDRs] shall provide third party service providers, who have been authorized to access information by the counterparties to the relevant trades under Written Client Disclosure Consents, with access to [SDR] Information'').

[880] TriOptima, *supra* note 19 (asking the Commission to ''treat a third party service provider with a disclosure consent as acting as an 'agent' for the owner of the trade information and provide the third party service provider with the same type of access which the owner of such data is entitled to, subject to any restrictions set out in the disclosure consent'').

[881] Deutsche Temp Rule, *supra* note 28.

[882] Deutsche Temp Rule, *supra* note 28.

[883] ISDA, *supra* note 19 (''[T]here is a real need for [SDRs] to have robust policies, procedures and systems in place to address the information barrier and privacy issue.'').

[884] ISDA, *supra* note 19.

[885] *See infra* note 886 (discussing revised definition of ''control'') and note 890 (discussing revised definition of ''nonpublic personal information'').

[886] *See supra* notes 247 and 621 (defining ''affiliate'' and ''control''). The Commission is correcting a typographical error in the proposed definition of ''control.'' Proposed Rule 13n–9(a)(2)(ii) referred to the right to vote 25 percent ''of'' more of a class of securities. *See* Proposing Release, 75 FR at 77371, *supra* note 2. As adopted, Rule 13n–9(a)(2)(ii) refers to the right to vote 25 percent ''or'' more of a class of securities. *See also* Rule 13n–4(a)(3).

[887] Rule 13n–9(b)(1); *see also supra* note 622 (defining ''nonaffiliated third party'').

[888] *See* Exchange Act Section 13(n)(5), 15 U.S.C. 78m(n)(5).

[889] *See* DTCC 2, *supra* note 19; MFA 1, *supra* note 19 (noting that an SDR's protection of the privacy of SBS transaction information ''will ensure that market participants utilize the services of [a] registered [SDR] with confidence'').

[890] In response to one commenter's suggestion, the Commission is revising the definition of ''nonpublic personal information'' from the proposal to mean (1) personally identifiable information that is not publicly available information and (2) any list, description, or other grouping of market participants (and publicly available information pertaining to them) that is derived using personally identifiable information that is not publicly available information. *See* Rule 13n–9(a)(5); DTCC 5, *supra* note 19 (suggesting limiting the applicability of Rule 13n–9 to ''personally identifiable information'' that is not otherwise disclosed or made available to the public ''[b]ecause much of the information utilized to on–board participants or to identify counterparties to an [SBS] will be publicly available through Web sites issuing legal entity identifiers or similar identifiers, this information should not be considered confidential simply because it is required by an [SDR]''). This revision, which limits personally identifiable information to not publicly available information, is consistent with the definition of ''nonpublic personal information'' in Regulation SP, 17 CFR 248.3(t). The term ''personally identifiable information'' is defined as any information (i) a market participant provides to an SDR to obtain service from the SDR, (ii) about a market participant resulting from any transaction involving a service between the SDR and the market participant, or (iii) the SDR obtains about a market participant in connection with providing a service to that market participant. *See* Rule 13n–9(a)(6).

[891] *See supra* note 583 (defining ''market participant'').

with the SDR[892] for their personal benefit or the benefit of others. Such safeguards, policies, and procedures shall address, without limitation, (1) limiting access to such confidential information, material, nonpublic information, and intellectual property, (2) standards pertaining to the trading by persons associated with the SDR for their personal benefit or the benefit of others, and (3) adequate oversight to ensure compliance with Rule 13n–9(b)(2).[893] As stated in the Proposing Release, Rule 13n–9(b)(2) incorporates current requirements regarding the treatment of proprietary information of clearing members, which are contained in exemptive orders issued to SBS clearing agencies,[894] and draws from Exchange Act Section 15(g), which requires broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer.[895]

The Commission anticipates that as a central recordkeeper of SBS transactions, each SDR will receive proprietary and highly sensitive information, which could disclose, for instance, a market participant's trade information, trading strategy, or nonpublic personal information.[896] Rule 13n–9 is designed to ensure that an SDR has reasonable safeguards, policies, and procedures in place to protect such information from being misappropriated or misused by the SDR or any person associated with the SDR. The Commission agrees with one commenter's view that ''market participants have legitimate interests in the protection of their confidential and identifying financial information,'' and Rule 13n–9 sets forth requirements sufficient to protect such information from disclosure, as the commenter suggested.[897]

The Commission also believes that as part of an SDR's responsibility to have adequate oversight to ensure compliance with Rule 13n–9, an SDR's governance arrangements and organizational structure should have adequate internal controls to protect against misappropriation or misuse of a market participant's trade information, trading strategy, or nonpublic personal information.[898] For instance, an SDR could limit access to the proprietary and sensitive information by creating informational, technological, and physical barriers. Consistent with one commenter's suggestion,[899] an SDR could also limit access to the data that it maintains to only those officers, directors, employees, and agents who need to know the data to perform their job responsibilities, including responsibilities to fulfill the SDR's regulatory obligations. An SDR may want to consider limiting such access to data only to the extent that such access is justified based on the particular job responsibilities of the officers, directors, employees, or agents. In preventing the misappropriation or misuse of confidential information, material, nonpublic information, and intellectual property pursuant to Rule 13n–9(b)(2), an SDR could have controls to prevent unauthorized or unintentional access to its data. An SDR may want to consider holding its officers, directors, employees, and agents contractually liable for a breach of its privacy policies and procedures, as suggested by one commenter.[900] In order for an SDR to enforce effectively its written policies and procedures to protect the privacy of SBS transaction information, it is reasonable to expect that the SDR must, as one commenter noted,[901] properly convey these policies and procedures to all those subject to its privacy requirements.

Additionally, in establishing standards pertaining to the trading by persons associated with an SDR in accordance with Rule 13n–9(b)(2), the SDR should consider restricting the trading activities of individuals who have access to proprietary or sensitive information maintained by the SDR or implementing firm-wide restrictions on trading certain SBSs, as well as underlying or related investment instruments.[902] Such restrictions could include, for example, a pre-trade clearance requirement. An SDR should also have systems in place to prevent and detect insider trading by the SDR or persons associated with the SDR. Such systems could include a mechanism to monitor such persons' access to the SDR's data, their trading activities, and their emails.[903]

The Commission believes that to the extent that an SDR or any person associated with the SDR shares information with the SDR's affiliate or a nonaffiliated third party, the SDR's policies and procedures pursuant to Rule 13n–9(b)(1) should be reasonably designed to protect the privacy of the information shared.[904] One option that an SDR could choose to comply with this requirement would be to require the affiliate or nonaffiliated party to consent to being subject to the SDR's privacy policies and procedures as a condition of receiving any sensitive information from the SDR.[905]

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[892] *See supra* note 621 (defining ''person associated with a security-based swap data repository'').

[893] *Id.*

[894] *See, e.g.,* Order Extending and Modifying Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection with Request of ICE Trust U.S. LLC Related to Central Clearing of Credit Default Swaps and Request for Comment, Exchange Act Release No. 63387 (Nov. 29, 2010), 75 FR 75502 (Dec. 3, 2010) (''ICE Trust shall establish and maintain adequate safeguards and procedures to protect clearing members' confidential trading information. Such safeguards and procedures shall include: (A) limiting access to the confidential trading information of clearing members to those employees of ICE Trust who are operating the system or responsible for its compliance with this exemption or any other applicable rules; and (B) establishing and maintaining standards controlling employees of ICE Trust trading for their own accounts. ICE Trust must establish and maintain adequate oversight procedures to ensure that the safeguards and procedures established pursuant to this condition are followed . . . .''); Exchange Act Release No. 61973 (Apr. 23, 2010), 75 FR 22656 (Apr. 29, 2010), and Exchange Act Release No. 63389 (Nov. 29, 2010), 75 FR 75520 (Dec. 3, 2010) (temporary exemptions in connection with CDS clearing by ICE Clear Europe, Limited). *See also* Proposing Release, 75 FR at 77339 n.171, *supra* note 2.

[895] *See* 15 U.S.C. 78o(g); *see also* Exchange Act Section 15F(j)(5), 15 U.S.C. 78o-10(j)(5) (requiring SBS dealers and major SBS participants to ''establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any security-based swap or acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the [enumerated] core principles of open access and the business conduct standards'').

[896] *See* Proposing Release, 75 FR at 77339, *supra* note 2.

[897] *See* Deutsche Temp Rule, *supra* note 28.

[898] *See* Proposing Release, 75 FR at 77339, *supra* note 2.

[899] *See* MFA 1, *supra* note 19.

[900] *See* MFA 1, *supra* note 19.

[901] *See* MFA 1, *supra* note 19.

[902] *See* Proposing Release, 75 FR at 77339–77340, *supra* note 2.

[903] *Cf., e.g., Janney Montgomery Scott LLC,* Exchange Act Release No. 64855, 2011 SEC LEXIS 3166 (July 11, 2011) (finding, in a settled action, Exchange Act Section 15(g) violation where broker-dealer failed to monitor its proprietary trading and employee trading); *Merrill Lynch, Pierce, Fenner & Smith, Inc.,* Exchange Act Release No. 59555, 2009 SEC LEXIS 660 (Mar. 11, 2009) (finding, in a settled action, Exchange Act Section 15(f) [subsequently renumbered as Section 15(g)] violation where broker-dealer failed to limit or monitor traders' access to the equity squawk box that broadcasts material, nonpublic information).

[904] *See* Proposing Release, 75 FR at 77340, *supra* note 2.

[905] The Commission notes that CFTC Rule 49.17(e) permits a third party service provider to access swap data maintained by a swap data repository on the condition that both the swap data repository and the provider have strict confidentiality procedures that protect data and information from proper disclosure and that they execute a ''confidentiality agreement.'' *See* 17 CFR 49.17(e).

Consistent with one commenter's view, the Commission agrees that an SDR will likely need to make an appropriate level of investment to design, implement, and periodically review its privacy policies and procedures ''in order to protect markets and market participants,'' [906] but that an SDR should have some flexibility to develop reasonable policies and procedures to protect the privacy of the SBS transaction information that the SDR receives. One approach, as one commenter suggested,[907] may be for an SDR's policies and procedures to require consent of counterparties prior to communication of the SBS transaction information to an SDR's affiliate or a nonaffiliated third party.[908] An SDR may, however, develop other reasonable policies and procedures to protect the privacy of the SBS transaction information.

With respect to one commenter's suggestion that the Commission add safeguards related to ''confidentiality of trading positions,'' [909] the Commission believes that its final rule broadly covers such safeguards. Although not explicitly stated in Rule 13n–9, the Commission also believes that its definitions of ''nonpublic personal information'' [910] and ''personally identifiable information'' [911] overlap significantly with the information that the commenter recommended the rule to explicitly cover.[912] Certain information, however, will be subject to public dissemination under Regulation SBSR.[913] The commenter further suggested that SDRs should be permitted to use confidential information solely to fulfill their regulatory obligations,[914] but the Commission does not believe that it is necessary or appropriate to impose such a narrow restriction on SDRs. It could, for example, be in the public interest for SDRs to use transaction-specific confidential SBS data to generate aggregated reports for the public even though such reports are not mandated. However, any such reports must be sufficiently anonymized so that the trading positions or identities of market participants, or group of market participants, cannot be derived from the reports.

One commenter suggested that a third party service provider should not be required to observe an SDR's privacy policies and procedures if such third party service provider has received written authorization from an SBS counterparty to access its SBS transaction information.[915] The Commission believes that an SDR's obligation to provide fair, open, and not unreasonably discriminatory participation to third party service providers [916] would prohibit an SDR from unreasonably imposing its privacy policies and procedures on third party service providers. The Commission also believes that, generally, a third party service provider, acting as an agent for a counterparty, should be given the same rights to access SBS transaction information as the counterparty for which it is acting as an agent. To the extent that the counterparties to a transaction reach a confidentiality agreement between themselves limiting the information that can be provided to their agents, it is up to the parties to ensure that the authorizations they provide to the SDR are appropriately limited.[917]

With respect to one commenter's view that regulators should ''ensure that the viability and rigor of [an SDR's] privacy policies are reviewed and audited as they are at all other market participants,'' [918] the Commission contemplates that its review of an SDR's privacy policies and procedures will be sufficient.[919] As a general matter, the Commission will review an SDR's privacy policies and procedures for compliance with the law in a manner similar to reviews of other registrants' privacy policies and procedures. For example, an SDR is required to file, as exhibits to Form SDR, its policies and procedures to protect the privacy of any and all SBS transaction information that the SDR receives from a market participant or any registered entity.[920] These policies and procedures are subject to the Commission's review. As discussed in Section VI.A.2 of this release, the Commission will review an SDR's application for registration on Form SDR in determining whether the SDR is able to comply with the federal securities laws and the rules and regulations thereunder. The Commission will also review an SDR's comprehensive annual amendment on Form SDR in determining whether the SDR continues to be in compliance with the federal securities laws and the rules and regulations thereunder. Additionally, an SDR (including its privacy policies and procedures) are subject to inspection and examination by any representative of the Commission.[921] In addition, an SDR's CCO is required to review the compliance of its policies and procedures at least on an annual basis and include a description of such compliance as well as the SDR's enforcement of its policies and procedures in the SDR's annual compliance report that is filed with the Commission.[922]

2. Disclosure Requirements (Rule 13n–10)

a. Proposed Rule

Proposed Rule 13n–10 would require each SDR to provide a disclosure document to each market participant prior to accepting any SBS data from the market participant or upon the market participant's request. The disclosure document would include specific information designed to enable a market participant to identify and evaluate the risks and costs associated with using the SDR's services.

[906] *See* ISDA, *supra* note 19.

[907] *See* DTCC 2, *supra* note 19 (''[N]o communication of data (other than to, or as required by, applicable regulators) that could have the result of disclosing the actual positions or specific business or trading activity of a counterparty should be permitted without the consent of that counterparty.'').

[908] The Commission notes that CFTC Rule 49.17(g) requires a swap data repository to obtain express written consent from the swap dealer, counterparty, or any other registered entity that submits the swap data maintained by the swap data repository before using that swap data for commercial or business purposes. *See* 17 CFR 49.17(g).

[909] *See* MFA 1, *supra* note 19.

[910] *See* Rule 13n–9(a)(5).

[911] *See* Rule 13n–9(a)(6).

[912] *See* MFA 1, *supra* note 19 (recommending adding to proposed Rule 13n–9(b): (i) information related to transactions of a market participant (including a market participant's trading positions), (ii) the identity of each market participant, and (iii) details of any master agreement governing the relevant SBS that are provided to an SDR).

[913] *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 902).

[914] *See* MFA 1, *supra* note 19.

[915] *See* TriOptima, *supra* note 19 (stating that ''if the counterparties to a trade authorize the third party service provider to use their information, an [SDR] should not be able to restrict or limit such use through privacy policies and procedures when the owners of the information have provided appropriate consents and authorizations'').

[916] *See* Section VI.D.3.a of this release discussing fair, open, and not unreasonably discriminatory access.

[917] To the extent that a transaction is executed anonymously on an SB SEF or exchange, when the counterparties do not know each other's identity or other reported information (*e.g.,* the trader ID), the SDR's policies and procedures under Rule 13n–9(b) must not allow either counterparty to access this information relating to the other counterparty.

[918] ISDA, *supra* note 19.

[919] To the extent that the Commission addresses other market participants' privacy policies and procedures, it will do so in separate releases pertaining specifically to those market participants.

[920] *See* Item 39 of Form SDR.

[921] Exchange Act Section 13(n)(2), 15 U.S.C. 78m(n)(2) (stating that ''[e]ach registered security-based swap data repository shall be subject to inspection and examination by any representative of the Commission'').

[922] *See* Rules 13n–11(c)(2) and 13n–11(d)(1).

b. Comments on the Proposed Rule

Two commenters submitted comments relating to this proposed rule.[923] One commenter agreed with proposed Rule 13n–10(b)(8), which would require disclosure of an SDR's updated schedule of any dues; unbundled prices, rates, or other fees for all of its services, including any ancillary services; any discounts or rebates offered; and the criteria to benefit from such discounts or rebates.[924] In supporting the Commission's proposed rule, another commenter ''recognize[d] the importance of providing market participants with disclosure documents outlining the SDR's policies regarding member participant criteria and the safeguarding and privacy of data submitted to the SDR.'' [925]

c. Final Rule

After considering the comments, the Commission is adopting Rule 13n–10 as proposed. The Commission is adopting the rule to enhance transparency in the SBS market, bolster market efficiency, promote standardization, and foster competition.[926] Specifically, the rule provides that before accepting any SBS data from a market participant [927] or upon a market participant's request, each SDR must furnish to the market participant a disclosure document that contains the following written information, which must reasonably enable the market participant to identify and evaluate accurately the risks and costs associated with using the SDR's services: (1) The SDR's criteria for providing others with access to services offered and data maintained by the SDR, (2) the SDR's criteria for those seeking to connect to or link with the SDR, (3) a description of the SDR's policies and procedures regarding its safeguarding of data and operational reliability, as described in Rule 13n–6, (4) a description of the SDR's policies and procedures reasonably designed to protect the privacy of any and all SBS transaction information that the SDR receives from an SBS dealer, counterparty, or any registered entity, as described in Rule 13n–9(b)(1), (5) a description of the SDR's policies and procedures regarding its non-commercial and/or commercial use of the SBS transaction information that it receives from a market participant, any registered entity, or any other person, (6) a description of the SDR's dispute resolution procedures involving market participants, as described in Rule 13n–5(b)(6), (7) a description of all the SDR's services, including any ancillary services, (8) the SDR's updated schedule of any dues; unbundled prices, rates, or other fees for all of its services, including any ancillary services; any discounts or rebates offered; and the criteria to benefit from such discounts or rebates, and (9) a description of the SDR's governance arrangements.[928]

As stated in the Proposing Release, these disclosure requirements are intended to promote competition and foster transparency regarding SDRs' services by enabling market participants to identify the range of services that each SDR offers and to evaluate the risks and costs associated with using such services.[929] The Commission also believes that transparency regarding SDRs' services is particularly important in light of the complexity of OTC derivatives products and their markets, and that greater service transparency could improve market participants' confidence in an SDR and result in greater use of the SDR, which would ultimately increase market efficiency.

J. Chief Compliance Officer of Each SDR; Compliance Reports and Financial Reports (Rule 13n–11)

Proposed Rule 13n–11 set forth the requirements for an SDR's CCO, annual compliance reports, and financial reports. The Commission is adopting the rule substantially as proposed with changes in response to comments.

1. In General (Rule 13n–11(a))

a. Proposed Rule

To implement the statutory requirement for each SDR to designate an individual to serve as a CCO,[930] the Commission proposed Rule 13n–11(a), which would require each SDR to identify on Form SDR a person who has been designated by the board to serve as a CCO of the SDR. In addition, to promote the independence and effectiveness of the CCO, the proposed rule would require that the compensation and removal of the CCO be approved by a majority of the SDR's board.[931]

b. Comments on the Proposed Rule

Two commenters submitted comments relating to this proposed rule.[932] Specifically, one commenter agreed that ''[w]ith respect to compensation and termination of the CCO, the Proposed Rules appropriately assign authority over those matters to the board, rather than management,'' but believed that ''[t]he rules should go one step further and confer that authority upon the *independent* board members.'' [933] Additionally, the commenter suggested that ''the [SDR Rules] should preclude the General Counsel or a member of that office from serving as CCO, since those attorneys owe a duty of loyalty to the SDR itself that may not be compatible with the watchdog function of the CCO.'' [934] The commenter also suggested ''[c]ompetency standards to ensure that CCOs have the background and skills necessary to fulfill their responsibilities.'' [935] The commenter further suggested requiring a group of affiliated or controlled entities to appoint the CCO.[936]

Another commenter fully supported the intent of proposed Rule 13n–11, but also suggested that the Commission ''restrict the CCO from serving as the General Counsel or other attorney within the legal department of the SDR.'' [937] The commenter stated that the CCO's remuneration must be designed so as to avoid potential conflicts of interest with his compliance role.[938] The commenter further suggested that the Commission amend the rule so that ''the authority and sole responsibility to appoint or remove the CCO, or to materially change its duties and responsibilities[ ] only vests with the independent public directors or 'Independent Perspective' . . . and not the full board.'' [939]

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[923] *See* Barnard, *supra* note 19; DTCC 2, *supra* note 19. The Commission received no comments on proposed Rule 13n–10(a), which set forth the definition applicable to the rule, and is adopting it as proposed.

[924] *See* Barnard, *supra* note 19.

[925] DTCC 2, *supra* note 19.

[926] Rule 13n–10 is being promulgated under Exchange Act Sections 13(n)(3), 13(n)(7)(D)(i), and 13(n)(9). *See* 15 U.S.C. 78m(n)(3), 78m(n)(7)(D)(i), and 78m(n)(9).

[927] *See supra* note 583 (defining ''market participant'').

[928] Rule 13n–10(b).

[929] Proposing Release, 75 FR at 77340, *supra* note 2. *See also* Barnard, *supra* note 19 (believing that the disclosure requirement in Rule 13n–10(b)(8) would formalize ''the market practice and ensure that informed decisions were being made'').

[930] *See* Exchange Act Section 13(n)(6)(A), 15 U.S.C. 78m(n)(6)(A).

[931] Proposed Rule 13n–11(a).

[932] *See* Better Markets 1, *supra* note 19; Barnard, *supra* note 19; *see also* Better Markets 3, *supra* note 19.

[933] Better Markets 1, *supra* note 19 (emphasis in the original); *see also* Better Markets 3 *supra* note 19 (suggesting ''[t]he vesting of authority in the independent board members to oversee the hiring, compensation, and termination of the CCO'').

[934] Better Markets 1, *supra* note 19.

[935] Better Markets 3, *supra* note 19.

[936] Better Markets 3, *supra* note 19.

[937] Barnard, *supra* note 19 (''[T]he CCO should have a single compliance role and no other competing role or responsibility that could create conflicts of interest or threaten [his] independence . . . .'').

[938] Barnard, *supra* note 19.

[939] Barnard, *supra* note 19 (believing that the suggested amendment would help ensure the CCO's

c. Final Rule

After considering the comments, the Commission is adopting Rule 13n–11(a) as proposed, with one modification. Rule 13n–11(a) requires that (1) each SDR identify on Form SDR a person who has been designated by the board to serve as a CCO of the SDR and (2) the compensation and removal of the CCO be approved by a majority of the SDR's board.[940] The Commission is revising the rule from the proposal to require the appointment of the CCO to be approved by the majority of the SDR's board.[941]

In the Proposing Release, the Commission asked whether there are other measures that would further enhance a CCO's independence and effectiveness that should be prescribed in a rule.[942] Two commenters suggested that the Commission require the CCO's appointment, removal, or compensation be approved by independent board members or ''independent public directors.'' [943] The Commission has determined not to adopt such a requirement at this time because, as discussed in Section VI.D.3.b.iii of this release, the Commission is not requiring SDRs to have independent directors.[944] Based in part on these comments, however, the Commission believes that requiring the appointment of the CCO to be approved by a majority of the SDR's board would be another measure to enhance the CCO's independence and effectiveness. The Commission notes that the requirement that the appointment of the CCO must be approved by a majority of the SDR's board is consistent with the requirement that the designation of CCOs at investment companies must be approved by the board of directors.[945] One commenter suggested requiring a group of affiliated or controlled entities to appoint the CCO.[946] The Commission believes that this suggestion contravenes an SDR's statutory requirement to designate the CCO.[947]

The Commission is concerned that an SDR's commercial interests might discourage its CCO from making forthright disclosure to the board or senior officer about any compliance failures.[948] The Commission believes that to mitigate this potential conflict of interest, an SDR's CCO should be independent from its management so as not to be conflicted in reporting or addressing any compliance failures. Accordingly, as discussed in Section VI.J.3 below, each CCO of an SDR is required to report directly to the board or its senior officer,[949] but only the board is able to approve the CCO's appointment, remove the CCO from his or her responsibilities, and approve the CCO's compensation.

Rule 13n–11(a) is intended to promote a CCO's independence and effectiveness. The Commission is not extending the applicability of this rule to an SDR's senior officer because the Commission believes that this may unnecessarily create conflicts of interest for the CCO, particularly if the CCO is subsequently responsible for reviewing the senior officer's compliance with the Exchange Act and the rules and regulations thereunder.

In promoting a CCO's independence and effectiveness, the Commission does not believe that it is necessary to adopt, as two commenters suggested,[950] a rule prohibiting a CCO from being a member of the SDR's legal department or from serving as the SDR's general counsel. To the extent that this poses a potential or existing conflict of interest, the Commission believes that an SDR's written policies and procedures can be designed to adequately identify and mitigate any associated costs.[951]

With respect to one commenter's suggestion that there should be ''[c]ompetency standards to ensure that CCOs have the background and skills necessary to fulfill their responsibilities,'' [952] the Commission notes that while it is not requiring such standards, Form SDR requires an SDR to provide a brief account of the CCO's prior business experience and business affiliations in the securities industry or derivatives industry.[953] In addition, as discussed above, the Commission is adopting Rule 13n–4(c)(2)(iv) to require an SDR to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that the SDR's senior management and each member of the board or committee that has the authority to act on behalf of the board possess requisite skills and expertise to fulfill their responsibilities in the management and governance of the SDR, have a clear understanding of their responsibilities, and exercise sound judgment about the SDR's affairs.[954] To the extent that a CCO is considered to be in senior management of an SDR, Rule 13n–4(c)(2)(iv) applies to the CCO, but even if the CCO is not in senior management, the Commission does not believe that it is necessary to prescribe competency standards for CCOs by rule, in part because it is most likely that an SDR already has business incentives to retain a competent CCO in light of the SDR's exposure to liability if its CCO fails to comply with his or her statutory and regulatory responsibilities. Additionally, the Commission believes that an SDR will be in a better position to determine what its own requirements and specific needs are with respect to a CCO's background and skills, both of which may change as the SBS market evolves.

2. Definitions (Rule 13n–11(b))

a. Proposed Rule

Proposed Rule 13n–11(b) defined the following terms: ''affiliate,'' ''board,'' ''director,'' ''EDGAR Filer Manual,'' ''material change,'' ''material compliance matter,'' and ''tag.''

independence and possibly mitigate the Commission's need to promulgate additional measures to adequately protect CCOs from undue influence or coercion).

940 *See* Barnard, *supra* note 19 (supporting the CCO's compensation to be specifically designed to avoid potential conflicts of interest with the CCO's compliance role).

941 The Commission is also revising the heading of Rule 13n–11 from the proposal to describe the scope of the rule more accurately. The proposed heading was ''Designation of chief compliance officer of security-based swap data repository.'' As revised, the heading is broader: ''Chief compliance officer of security-based swap data repository; compliance reports and financial reports.''

942 Proposing Release, 75 FR at 77341, *supra* note 2.

943 *See* Better Markets 1, *supra* note 19 (discussing independent board members); Barnard, *supra* note 19 (discussing independent public directors); *see also* Better Markets 3, *supra* note 19.

944 To the extent that an SDR has independent board members or independent public directors, the SDR may want to consider requiring the appointment, removal, or compensation of the CCO be approved by the majority of independent board members or independent public directors in addition to the majority of the board.

945 *See* Rule 38a–1(a)(4)(i) under the Investment Company Act of 1940 (''Investment Company Act''), 17 CFR 270.38a–1(a)(4)(i). The Commission also notes that CFTC Rule 49.22(c) requires the appointment, compensation, and removal of a CCO to be approved by either a swap data repository's board or senior officer. *See* 17 CFR 49.22(c).

946 Better Markets 3, *supra* note 19.

947 *See* Exchange Act Section 13(n)(6)(A), 15 U.S.C. 78m(n)(6)(A).

948 *See* Proposing Release, 75 FR at 77341, *supra* note 2.

949 *See* Exchange Act Section 13(n)(6)(B)(i), 15 U.S.C. 78m(n)(6)(B)(i).

950 *See* Barnard, *supra* note 19 (suggesting that the Commission ''restrict the CCO from serving as the General Counsel or other attorney within the legal department of the SDR''); Better Markets 1, *supra* note 19 (suggesting that ''the [SDR Rules] should preclude the General Counsel or a member of that office from serving as CCO, since those attorneys owe a duty of loyalty to the SDR itself that may not be compatible with the watchdog function of the CCO'').

951 As discussed in Section VI.D.3.c of this release, Rule 13n–4(c)(3)(i) requires each SDR to establish, maintain, and enforce written policies and procedures reasonably designed to identify and mitigate potential and existing conflicts of interest in the SDR's decision-making process on an ongoing basis.

952 *See* Better Markets 3, *supra* note 19.

953 *See* Item 15 of Form SDR.

954 *See* Section VI.D.3.b of the release discussing Rule 13n–4(c)(2)(iv).

b. Comments on the Proposed Rule

The Commission received no comments relating to the proposed definitions.

c. Final Rule

The Commission is adopting Rule 13n 11(b) substantially as proposed, with several modifications. Specifically, the Commission is adopting the definitions of ''board,'' ''director,'' ''EDGAR Filer Manual,'' ''material change,'' and ''material compliance matter'' as proposed. However, the Commission is not adopting the definition of ''affiliate'' because the term is not used in the final rule. To conform with adopted Rule 13n–11(f), as discussed below, the Commission is adding the definitions of ''Interactive Data Financial Report'' and ''official filing,'' both of which have the same meaning as set forth in Rule 11 of Regulation S–T, which sets forth the standards for electronic filing with the Commission.[955] For consistency, the Commission is revising the definition of ''tag'' (including the term ''tagged'') from the proposal to have the same meaning as set forth in Rule 11 of Regulation S–T.[956]

Moreover, the Commission is adopting the definition of ''senior officer'' to mean ''the chief executive officer or other equivalent officer.'' [957] Proposed Rule 13n–11 referenced the ''chief executive officer'' in lieu of the statutory references to the ''senior officer.'' [958] As adopted, Rule 13n–11 tracks the statutory references to ''senior officer'' and defines ''senior officer'' to include an SDR's CEO.

3. Enumerated Duties of Chief Compliance Officer (Rule 13n–11(c))

a. Proposed Rule

Proposed Rule 13n–11(c) incorporated the CCO's duties that are set forth in Exchange Act Section 13(n)(6).[959] Proposed Rule 13n–11(c) would require a CCO to (1) report directly to the board or to the SDR's CEO, (2) review the SDR's compliance with respect to its statutory and regulatory requirements and core principles, (3) in consultation with the board or the SDR's CEO, resolve any conflicts of interest that may arise, (4) be responsible for administering each policy and procedure that is required to be established pursuant to Exchange Act Section 13 and the rules and regulations thereunder, (5) ensure compliance with the Exchange Act and the rules and regulations thereunder relating to SBSs, (6) establish procedures for the remediation of noncompliance issues identified by the CCO through certain specified means, and (7) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

b. Comments on the Proposed Rule

Two commenters submitted comments relating to this proposed rule, expressing differing views.[960] As discussed below, one commenter suggested a more prescriptive approach [961] while the other suggested a less prescriptive approach, but with certain clarifications.[962]

Specifically, one commenter suggested that the Commission ''establish a meaningful role for'' an SDR's CCO.[963] The commenter believed that ''the rules should preclude the [g]eneral [c]ounsel or a member of that office from serving as CCO, since those attorneys owe a duty of loyalty to the SDR itself that may not be compatible with the watchdog function of the CCO.'' [964] The commenter also believed that ''the CCO should have a direct reporting line to the independent board members and should be required to meet with those independent members at least quarterly'' in order for ''independent members of the board to become effective partners with the CCO in promoting a culture of compliance within the SDR.'' [965]

The other commenter believed that as a general matter, ''SDRs should have some flexibility to implement the required compliance procedures in ways consistent with their structure and business.'' [966] The commenter ''agree[d] with the Commission that a robust internal compliance function[, including a CCO,] plays an important role in facilitating an SDR's monitoring of, and compliance with, the requirements of the Exchange Act (and rules thereunder) applicable to SDRs.'' [967] The commenter also ''fully support[ed] Commission efforts to require the highest standards of regulatory compliance at SDRs, and believe[d that] requiring each SDR to have a CCO is an effective way to ensure compliance.'' [968]

The commenter, however, believed that ''some of the enumerated responsibilities of [a CCO] require clarification in order to avoid an overly broad reading of those duties.'' [969] Specifically, the commenter suggested that the CCO's responsibilities should not, for instance, ''be read to encompass responsibilities beyond those traditionally understood to be part of a compliance function (*i.e.,* those issues that can as a matter of competence, and typically would be, handled by a compliance department).'' [970] The commenter further believed that ''the CCO should be responsible for establishing relevant compliance procedures, and monitoring compliance with those procedures and other applicable legal requirements'' and that ''the CCO should also participate in other aspects of the SDR's activities that implicate compliance or regulatory issues.'' [971] The commenter believed, however, that ''the CCO cannot be, and should not be, required to be responsible for the overall operation of the SDR's business.'' [972] The commenter stated that the Commission ''should recognize that oversight of certain aspects of SDR activities are principally (and, as a practical matter, need to be) within the purview of risk management and operations personnel. Although there may be a regulatory component to whether an SDR is meeting its operational readiness, service level or data security responsibilities for example, oversight of those aspects of the SDR business should remain with

[955] *See* Rules 13n–11(b)(4) and (b)(7). The terms ''Interactive Data Financial Report'' and ''official filing'' are used in new Rule 407 of Regulation S–T, as discussed in Section VI.J.5.c of this release.

[956] *See* Rule 13n–11(b)(9).

[957] *See* Rule 13n–11(b)(8). The term ''senior officer'' is used in Rules 13n–1(c)(1) and (c)(3), as discussed in Section VI.J.3 of this release. This definition is consistent with the definition proposed in the CCO rules for SBS dealers, major SBS participants, and clearing agencies. *See* Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 64766 (June 29, 2011), 76 FR 42396 (July 18, 2011) (proposing Rule 15Fk–1(e)); Clearing Agency Standards for Operations and Governance, Exchange Act Release No. 64017 (Mar. 3, 2011), 76 FR 14472 (Mar. 16, 2011) (proposing Rule 3Cj–1).

[958] *See* Exchange Act Section 13(n)(6)(B), 15 U.S.C. 78m(n)(6)(B).

[959] *See* 15 U.S.C. 78m(n)(6).

[960] *See* Better Markets 1, *supra* note 19; DTCC 2, *supra* note 19; *see also* Better Markets 2, *supra* note 19; Better Markets 3, *supra* note 19.

[961] *See* Better Markets 1, *supra* note 19.

[962] *See* DTCC 2, *supra* note 19.

[963] Better Markets 2, *supra* note 19; *see also* Better Markets 3, *supra* note 19 (''Ensuring that market participants have CCOs with real authority and autonomy to police a firm from within is one of the most efficient and effective tools available to regulators.'').

[964] Better Markets 1, *supra* note 19.

[965] Better Markets 1, *supra* note 19; *see also* Better Markets 3, *supra* note 19 (suggesting requirements that the CCO have direct access to the board and the CCO ''meet quarterly with the Audit Committee (if there is one or non-management members of the [b]oard if there is not), in addition to annual meetings with the board and senior management'').

[966] DTCC 2, *supra* note 19.

[967] DTCC 2, *supra* note 19.

[968] DTCC 2, *supra* note 19.

[969] DTCC 2, *supra* note 19.

[970] DTCC 2, *supra* note 19.

[971] DTCC 2, *supra* note 19.

[972] DTCC 2, *supra* note 19.

the relevant business areas, subject of course to oversight by senior management and ultimately the board of directors. While a CCO may have an important role to play in overall oversight and remediation of any problems, the Commission's rules should not be interpreted to impose on CCOs responsibility outside of their traditional core competencies.'' [973]

In suggesting that the Commission ''clarify what types of conflict of interest should be within the CCO's purview,'' the commenter noted that ''[s]ome issues, such as permissibility of dealings with related parties or entities, are properly within the CCO's functions. Other issues, such as restrictions on ownership and access, may be fundamental for the board of directors and senior management to address.'' [974] Additionally, the commenter stated that to the extent that the Commission's rule requires consultation with the board or senior management, ''some materiality threshold would be appropriate, as not every potential conflict of interest that might be addressed by a CCO (or his or her subordinates) would need such consultation.'' [975]

The commenter further suggested that the Commission ''clarify that the CCO's specific responsibilities related to conflicts are limited to compliance with the provisions of Exchange Act Section 13(n) and the final rules thereunder as they relate to the SBS operations of an SDR.'' [976] The commenter believed that ''[t]he Commission should not mandate compliance responsibilities with respect to other regulatory requirements to which an SDR may be subject; those responsibilities should be specified by the regulator imposing the other requirements.'' [977]

c. Final Rule

After considering the comments, the Commission is adopting Rule 13n–11(c) as proposed, with modifications. The final rule incorporates the duties of an SDR's CCO that are set forth in Exchange Act Section 13(n)(6) [978] and imposes additional requirements. Specifically, each CCO is required to comply with the following requirements: (1) Report directly to the board [979] or to the SDR's senior officer,[980] (2) review the compliance of the SDR with respect to the requirements and core principles described in Exchange Act Section 13(n) and the rules and regulations thereunder, (3) in consultation with the board or the SDR's senior officer,[981] take reasonable steps to resolve any material conflicts of interest that may arise, (4) be responsible for administering each policy and procedure that is required to be established pursuant to Exchange Act Section 13 and the rules and regulations thereunder, (5) take reasonable steps to ensure compliance with the Exchange Act and the rules and regulations thereunder relating to SBSs, including each rule prescribed by the Commission under Exchange Act Section 13, (6) establish procedures for the remediation of noncompliance issues identified by the CCO through any (a) compliance office review, (b) look-back, (c) internal or external audit finding, (d) self-reported error, or (e) validated complaint, and (7) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues. Consistent with one commenter's suggestion, the Commission believes that Rule 13n–11(c) establishes a meaningful role for CCOs.[982] However, because the Commission is not requiring SDRs to have independent directors, Rule 13n–11(c) does not, as the commenter suggested,[983] require a CCO to report directly to independent directors or meet with independent directors at least quarterly. To provide CCOs with greater flexibility in fulfilling their duties, the Commission is also not requiring, as the commenter suggested, CCOs to ''meet quarterly with the Audit Committee (if there is one or non-management members of the [b]oard if there is not), in addition to annual meetings with the board and senior management.'' [984] The Commission expects CCOs to meet with the board, the senior officer, and others, whenever necessary to fulfill their duties.

The Commission agrees with one commenter that, in general, SDRs should have flexibility to implement the required compliance procedures in ways consistent with their structure and business.[985] In response to a commenter's request for clarification,[986] the Commission notes that generally, an SDR's CCO is not responsible for the SDR's overall or day-to-day business operation, for example, with respect to risk management and operations; nor is the CCO responsible for the decisions and actions of every director, officer, and employee of the SDR. Instead, the CCO's statutory and regulatory responsibilities generally entail, among other things, administering the SDR's policies and procedures required under Exchange Act Section 13 and the rules and regulations thereunder, keeping the SDR's board or senior officer apprised of significant compliance issues, advising the board or senior officer of needed changes in the SDR's policies and procedures, generally overseeing compliance with the Exchange Act and the rules and regulations thereunder, as well as remediating noncompliance at the SDR. If, in the course of administering policies and procedures required under Exchange Act Section 13 and the rules and regulations thereunder, the CCO believes that operations or risk management personnel are not in compliance with such policies and procedures or the Exchange Act and the rules and regulations thereunder relating to SBSs (*e.g.,* with Rule 13n–9, which prohibits the misappropriation or misuse of material nonpublic information by employees), then the CCO is responsible for establishing and following procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

In the Proposing Release, the Commission stated that ''a CCO should review, on an ongoing basis, the SDR's service levels, costs, pricing, and operational reliability, with the view to preventing anticompetitive practices and discrimination, and encouraging innovation and the use of the SDR.'' [987] With respect to one commenter's remarks regarding the scope of the CCO's responsibilities,[988] the Commission continues to believe that the CCO's administration of an SDR's policies and procedures should include, among other things, a review of the SDR's service levels, costs, pricing, and operational reliability and a

[973] DTCC 2, *supra* note 19.

[974] DTCC 2, *supra* note 19.

[975] DTCC 2, *supra* note 19.

[976] DTCC 2, *supra* note 19.

[977] DTCC 2, *supra* note 19.

[978] *See* 15 U.S.C. 78m(n)(6).

[979] *See supra* note 549 (defining ''board'').

[980] The Commission is amending proposed Rule 13n–11(c)(1) by replacing ''chief executive officer'' with ''senior officer'' to track the language of Exchange Act Section 13(n)(6)(B)(i)), 15 U.S.C. 78m(n)(6)(B)(i).

[981] The Commission is amending proposed Rule 13n–11(c)(3) by replacing ''chief executive officer'' with ''senior officer'' to track the language of Exchange Act Section 13(n)(6)(B)(i)), 15 U.S.C. 78m(n)(6)(B)(i).

[982] *See* Better Markets 2, *supra* note 19; *see also* Better Markets 3, *supra* note 19 (''Ensuring that market participants have CCOs with real authority and autonomy to police a firm from within is one of the most efficient and effective tools available to regulators.'').

[983] *See* Better Markets 1, *supra* note 19.

[984] *See* Better Markets 3, *supra* note 19.

[985] *See* DTCC 2, *supra* note 19.

[986] *See* DTCC 2, *supra* note 19.

[987] Proposing Release, 75 FR at 77342, *supra* note 2.

[988] *See* DTCC 2, *supra* note 19 (stating that ''the CCO cannot be, and should not be, required to be responsible for the overall operation of the SDR's business.'').

determination that such service levels, costs, pricing, and operational reliability are reasonable.[989] The Commission recognizes, however, that oversight of certain aspects of an SDR's activities may overlap with or be within the purview of the SDR's risk management and operations personnel or other business personnel.[990] In that situation, the CCO may need to consult with business personnel to assess whether they have an appropriate justification for the reasonableness of such service levels, costs, pricing, and operational reliability.

As the Commission also noted in the Proposing Release, an SDR is not required to hire an additional person to serve as its CCO.[991] Instead, an SDR can designate an individual already employed with the SDR as its CCO. Given the critical role that a CCO is intended to play in ensuring an SDR's compliance with the Exchange Act and the rules and regulations thereunder,[992] the Commission believes that an SDR's CCO should be competent and knowledgeable regarding the federal securities laws, should be empowered with full responsibility and authority to develop and enforce appropriate policies and procedures for the SDR, as necessary, and should be responsible for monitoring compliance with the SDR's policies and procedures adopted pursuant to rules under the Exchange Act. However, the Commission will not substantively review a CCO's competency, and is not requiring any particular level of competency or business experience for a CCO.

To address a concern raised by one commenter,[993] the Commission is revising Rule 13n–11(c)(3) from the proposal to clarify that the CCO must, in consultation with the board or the senior officer of the SDR, take reasonable steps to resolve any material conflicts of interest (as opposed to all conflicts of interest) that may arise.[994] Recognizing that a CCO may not be in a position to resolve certain material conflicts of interest, as suggested by the commenter,[995] the Commission is revising the rule from the proposal to specify that CCOs must take reasonable steps to resolve such conflicts, which is intended to clarify that CCOs are not required to actually resolve such conflicts. These conflicts of interest may include, for example, general conflicts of interest identified in the Commission's Rule 13n–4(c)(3), as discussed in Section VI.D.3.c of this release.

Recognizing that a CCO cannot guarantee an SDR's statutory compliance, the Commission is also revising Rule 13n–11(c)(5) from the proposal to clarify that CCOs are not required to ensure compliance with the relevant Exchange Act provisions and the rules and regulations thereunder relating to SBSs, but rather to take reasonable steps to ensure such compliance. With respect to the comment that the CCO's specific responsibilities related to conflicts should be limited to compliance with the provisions of Exchange Act Section 13(n) and the final rules thereunder as they relate to the SBS operations of an SDR,[996] the Commission notes that the CCO's responsibilities go beyond the provisions of Exchange Act Section 13(n), as required by the Dodd-Frank Act.[997] For example, the CCO should take reasonable steps to ensure compliance with Exchange Act Section 10(b)'s antifraud requirements.[998] However, the CCO is required to take only reasonable steps to ensure compliance with relevant Exchange Act provisions and the rules and regulations thereunder ''relating to'' SBSs.

4. Compliance Reports (Rules 13n–11(d) and 13n–11(e))

a. Proposed Rule

An SDR's CCO is required, under Exchange Act Section 13(n)(6)(C)(i), to annually prepare and sign a report that contains a description of the SDR's compliance with respect to the Exchange Act and the rules and regulations thereunder and each policy and procedure of the SDR (including the SDR's code of ethics and conflicts of interest policies).[999] The Commission proposed Rule 13n–11(d)(1) to incorporate this requirement and to set forth minimum requirements for what must be included in each annual compliance report.

Under proposed Rule 13n–11(d)(2), an SDR would be required to file with the Commission a financial report, as discussed further in Section VI.J.5 of this release, along with a compliance report, which must include a certification that, under penalty of law, the compliance report is accurate and complete.[1000] The compliance report would also be required to be filed in a tagged data format in accordance with instructions contained in the EDGAR Filer Manual, as described in Rule 301 of Regulation S–T.[1001]

In addition, proposed Rule 13n–11(e) would require a CCO to submit the annual compliance report to an SDR's board for its review prior to the submission of the report to the Commission under proposed Rule 13n–11(d)(2).

b. Comments on the Proposed Rule

Two commenters submitted comments relating to this proposed rule.[1002] One commenter believed that an annual compliance report ''should be limited to compliance with the requirements of the Exchange Act and the policies and procedures of the SDR that relate to its activities as such with respect to SBSs (as opposed to policies and procedures that may address other regulatory requirements).'' [1003] Additionally, the commenter did ''not believe [that] it is appropriate to require the report to include a discussion of recommendations for material changes to the policies and procedures of the SDR as a result of the annual review (as well as the rationale for such recommendations and whether the policies or procedures will be modified as a result of such recommendations).'' [1004] The commenter believed that ''the inclusion of a description of any material changes to the SDR's policies and procedures, and any material compliance matters identified both since the date of the

[989] *See* Section VI.D.3.a of this release discussing an SDR's obligation to ensure that its fees are fair and reasonable and not unreasonably discriminatory.

[990] *See* DTCC 2, *supra* note 19 (stating that the Commission ''should recognize that oversight of certain aspects of SDR activities are principally (and, as a practical matter, need to be) within the purview of risk management and operations personnel'' and that ''[a]lthough there may be a regulatory component to whether an SDR is meeting its operational readiness, service level or data security responsibilities for example, oversight of those aspects of the SDR business should remain with the relevant business areas, subject of course to oversight by senior management and ultimately the board of directors'').

[991] Proposing Release, 75 FR at 77341, *supra* note 2.

[992] *See* Rules 13n–11(c)(4) and (5).

[993] *See* DTCC 2, *supra* note 19 (noting that some conflicts of interest are within a CCO's purview while other issues (*e.g.,* restrictions on ownership and access) may be fundamental for an SDR's board or senior management to address and that a CCO would not need to consult with the board every potential conflict of interest that might be addressed by a CCO).

[994] *See* Rule 13n–11(c)(3).

[995] *See* DTCC 2, *supra* note 19.

[996] *See* DTCC 2, *supra* note 19.

[997] *See* Exchange Act Section 13(n)(6)(B)(v), 15 U.S.C. 78m(n)(6)(B)(v), as added by Dodd-Frank Act Section 763(i) (requiring an SDR's CCO to ''ensure compliance with [the Exchange Act] (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under [Section 13(n)]'').

[998] 15 U.S.C. 78j(b).

[999] *See* 15 U.S.C. 78m(n)(6)(C)(i).

[1000] *See* proposed Rule 13n–11(d)(2).

[1001] *See id.; see also* 17 CFR 232.301.

[1002] *See* DTCC 2, *supra* note 19; Better Markets 1, *supra* note 19; *see also* Better Markets 3, *supra* note 19.

[1003] DTCC 2, *supra* note 19.

[1004] DTCC 2, *supra* note 19.

preceding compliance report, provide comprehensive information,'' and that ''requiring the CCO to detail every recommendation (whether or not accepted) may chill open communication between the CCO and other SDR management.'' [1005] The commenter ''firmly believe[d that] the annual report should be kept confidential by the Commission'' and explained that ''[g]iven the level of disclosure expected to be required . . . the report will likely contain confidential and proprietary business information.'' [1006]

The other commenter recommended that ''the review and reporting should be more frequent, at least semiannually or quarterly,'' and that ''the rules should expressly prohibit the board of an SDR from requiring the CCO to make any changes to the compliance reports.'' [1007] The commenter suggested that ''[a]ny edits or supplements to the report sought by the board may be submitted to the Commission along with—but not as part of—the CCO's report.'' [1008]

c. Final Rule

After considering the comments, the Commission is adopting Rules 13n–11(d) and 13n–11(e) as proposed, each with two modifications.[1009] Specifically, Rule 13n–11(d)(1) requires that an SDR's CCO annually prepare and sign a report that contains a description of the SDR's compliance with respect to the Exchange Act and the rules and regulations thereunder and each of the SDR's policies and procedures (including the SDR's code of ethics and conflicts of interest policies). One commenter suggested that the Commission limit the applicability of this rule to an SDR's activities relating to SBSs, but did not provide a rationale for such a limit.[1010] The Commission does not believe that there is a rationale for such a limit and has concluded that it is appropriate to adopt this rule, which essentially reiterates the statutory language.[1011] In addition, compliance issues at an SDR that are not related to SBSs may impact the SDR as a whole, of which the Commission should be kept apprised.

Additionally, Rule 13n–11(d)(1) requires each annual compliance report to contain, at a minimum, a description of: (1) The SDR's enforcement of its policies and procedures, (2) any material changes [1012] to the policies and procedures since the date of the preceding compliance report, (3) any recommendation for material changes to the policies and procedures as a result of the annual review, the rationale for such recommendation, and whether such policies and procedures were or will be modified by the SDR to incorporate such recommendation, and (4) any material compliance matters [1013] identified since the date of the preceding compliance report. These minimum disclosure requirements are substantially similar to the Commission's requirements for annual reports filed by CCOs of investment companies.[1014] Further, these disclosure requirements will provide important information to Commission staff regarding any material compliance issues at an SDR and material changes or recommendations for material changes to the SDR's policies and procedures. Among other things, such information will be useful to assist Commission staff in monitoring compliance by SDRs with the relevant provisions of the Exchange Act and the rules and regulations thereunder. Thus, the Commission believes that the minimum disclosure requirements are appropriate and disagrees with one commenter's remark that it is not appropriate to require a compliance report to include a description of any recommendation for material changes to an SDR's policies and procedures as a result of an annual review, the rationale for such recommendation, and whether such policies and procedures were or will be modified by the SDR to incorporate such recommendation.[1015]

To address a concern raised by the same commenter,[1016] the Commission notes that it is not ''requiring the CCO to detail every recommendation.'' [1017] The rule is limited to ''recommendations for material changes.'' [1018] The Commission believes that limiting the description required in an annual compliance report to recommendations for material changes to the SDR's policies and procedures appropriately addresses the commenter's concern. The Commission notes, however, that individual compliance matters may not be material when viewed in isolation, but may collectively suggest a material compliance matter. In addition, the Commission recognizes that this rule may ''chill open communication between the CCO and other SDR management,'' as one commenter suggested,[1019] but the Commission believes that the usefulness of the information in an SDR's annual compliance reports to the Commission, as discussed above, would justify any potential chilling of communications.

Consistent with the relevant statutory provision,[1020] the rule requires annual compliance reports. The Commission does not believe that it is necessary to require more frequent reports, as one commenter suggested, in order to assess an SDR's financial stability.[1021] CCOs, however, should consider the need for interim reviews of compliance at SDRs in response to significant compliance events, changes in business arrangements, and regulatory developments. For example, if there is an organizational restructuring of an SDR, then its CCO should consider evaluating whether its policies and procedures are adequate to guard against potential conflicts of interest. Additionally, if a new rule regarding SDRs is adopted by the Commission, then a CCO would need to take reasonable steps to ensure compliance with the rule, including reviewing the SDR's policies and procedures.

Under Rule 13n–11(d)(2), an SDR is required to file with the Commission a financial report along with the annual

[1005] DTCC 2, *supra* note 19.

[1006] DTCC 2, *supra* note 19.

[1007] Better Markets 1, *supra* note 19; *see also* Better Markets 3, *supra* note 19 (suggesting that the Commission require ''the board to review and comment on, but not edit, the CCO's annual report to the Commission'').

[1008] Better Markets 1, *supra* note 19.

[1009] To conform with Rule 13n–11's heading, as adopted, the Commission is revising the heading of paragraph (d) of the rule to specify that the paragraph pertains to ''[c]ompliance reports'' rather than ''[a]nnual reports.'' *See supra* note 941.

[1010] *See* DTCC 2, *supra* note 19.

[1011] *See* Exchange Act Section 13(n)(6)(C)(i), 15 U.S.C. 78m(n)(6)(C)(i).

[1012] The term ''material change'' is defined as a change that a CCO would reasonably need to know in order to oversee compliance of the SDR. *See* Rule 13n–11(b)(5).

[1013] The term ''material compliance matter'' is defined as any compliance matter that the board would reasonably need to know to oversee the compliance of the SDR and that involves, without limitation: (1) A violation of the federal securities laws by the SDR, its officers, directors, employees, or agents; (2) a violation of the policies and procedures of the SDR, by the SDR, its officers, directors, employees, or agents; or (3) a weakness in the design or implementation of the SDR's policies and procedures. *See* Rule 13n–11(b)(6).

[1014] *See* Investment Company Act Rule 38a–1(a)(4)(iii), 17 CFR 270.38a–1(a)(4)(iii).

[1015] *See* DTCC 2, *supra* note 19.

[1016] *See* DTCC 2, *supra* note 19 (stating that ''requiring the CCO to detail every recommendation (whether or not accepted) may chill open communication between the CCO and other SDR management'').

[1017] *But see* DTCC 2, *supra* note 19 (believing that it is not appropriate to require compliance reports to include a discussion of recommendations for material changes to an SDR's policies and procedures).

[1018] Rule 13n–11(d)(1)(iii).

[1019] *See* DTCC 2, *supra* note 19.

[1020] *See* Exchange Act Section 13(n)(6)(C)(i), 15 U.S.C. 78m(n)(6)(C)(i).

[1021] *See* Better Markets 1, *supra* note 19.

compliance report, and the compliance report must include a certification by the CCO that, to the best of his or her knowledge and reasonable belief,[1022] and under penalty of law, the compliance report is accurate and complete. The compliance report is also required to be filed in a tagged [1023] data format in accordance with instructions contained in the EDGAR Filer Manual,[1024] as described in Rule 301 of Regulation S–T.[1025]

Rule 13n–11(e) requires a CCO to submit the annual compliance report to the board for its review prior to the filing of the report with the Commission under Rule 13n–11(d)(2).[1026] Although the rule requires the compliance report to be submitted to the board once a year, a CCO should promptly bring serious compliance issues to the board's attention rather than wait until an annual compliance report is prepared. One commenter suggested that the Commission permit an SDR's board to submit edits or supplements to a CCO's annual compliance report, but not as part of the report.[1027] Rule 13n–11 does not prohibit a CCO from editing an annual compliance report to reflect the board's comments because the Commission believes that the CCO and the board should be working toward the same compliance goals and that prohibiting the CCO from taking the board's edits could create an adversarial atmosphere between them. As discussed above, however, an SDR could, pursuant to the conflicts of interest requirements set forth in Rule 13n–4(c)(3), consider prohibiting a board from requiring the CCO to make any changes to the report.[1028]

One commenter suggested that the Commission keep the annual compliance report confidential.[1029] The Commission is not providing, by rule, that the annual compliance reports are automatically granted confidential treatment, but an SDR may seek confidential treatment pursuant to Exchange Act Rule 24b–2. This approach is consistent with how the Commission generally treats the filings that it receives from its regulated entities, including exchanges and clearing agencies. The Commission may make filed annual compliance reports available on its Web site, except for information where confidential treatment is requested by the SDR and granted by the Commission.[1030]

5. Financial Reports and Filing of Reports (Exchange Act Rules 13n–11(f) and (g)/Rules 11, 305, and 407 of Regulation S–T)

a. Proposed Rule

Proposed Rule 13n–11(f) set forth a number of requirements relating to an SDR's financial report. First, the proposed rule would require each financial report to be a complete set of the SDR's financial statements that are prepared in conformity with U.S. generally accepted accounting principles (''GAAP'') for the SDR's most recent two fiscal years.[1031] Second, the proposed rule would provide that each financial report shall be audited in accordance with the standards of the Public Company Accounting Oversight Board (''PCAOB'') by a registered public accounting firm that is qualified and independent in accordance with Rule 2–01 of Regulation S–X.[1032] Third, each financial report would be required to include a report of the registered public accounting firm that complies with paragraphs (a) through (d) of Rule 2–02 of Regulation S–X.[1033] Fourth, if an SDR's financial statements contain consolidated information of a subsidiary of the SDR, then the SDR's financial statements must provide condensed financial information as prescribed by the Commission.[1034] Fifth, an SDR's financial reports would be required to be provided in XBRL consistent with Rules 405(a)(1), (a)(3), (b), (c), (d), and (e) of Regulation S–T.[1035]

Proposed Rule 13n–11(g) would further require that annual compliance reports and financial reports be filed within 60 days after the end of the fiscal year covered by such reports.

b. Comments on the Proposed Rule

The Commission received one comment relating to this proposed rule.[1036] Specifically, one commenter suggested harmonizing Rule 13n–11(f) with the CFTC's rule by eliminating proposed Rule 13n–11(f)(2)'s requirement that each financial report be audited in accordance with the PCAOB's standards by a registered public accounting firm that is qualified and independent unless the SDR is under a separate obligation to provide financial statements.[1037] The commenter believed that ''[t]his requirement imposes an additional burden for an [SDR] and is not justified in relation to the risks that an [SDR] would pose to its members.'' [1038] The commenter further suggested that the Commission ''consider adopting the CFTC's approach in its final [swap data repository] rules, which require [a swap data repository's] financial statements be prepared in conformity with . . . GAAP.'' [1039]

c. Final Rules

The Commission is adopting proposed Rules 13n–11(f) and (g) with modifications.[1040] Specifically, Rule 13n–11(f)(1) requires each financial report to be a complete set of the SDR's financial statements that are prepared in conformity with U.S. GAAP for the SDR's most recent two fiscal years.[1041]

[1022] The Commission is revising Rule 13n–11(d)(2) from the proposal to clarify that the certification must be made by the CCO and permit the certification to be based on the best of the CCO's knowledge and reasonable belief. *Accord* General Rule of Practice 153(b)(1)(ii), 17 CFR 201.153(b)(1)(ii) (requiring an attorney who signs a filing with the Commission to certify that ''to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law'').

[1023] *See supra* note 294 (defining ''tag'' (including the term ''tagged'')).

[1024] *See supra* note 294 (defining ''EDGAR Filer Manual'').

[1025] Rule 13n–11(d)(2); *see also* 17 CFR 232.301. The information in each compliance report will be tagged using an appropriate machine-readable, tagged data format to enable the efficient analysis and review of the information contained in the report.

[1026] The Commission is revising Rule 13n–11(e) from the proposal to refer to the ''submission'' of the annual compliance report ''to'' the Commission as the ''filing'' of the report ''with'' the Commission. The Commission believes that using the term ''filing'' is more precise than the term ''submission'' in this context.

[1027] Better Markets 1, *supra* note 19.

[1028] *Accord* Better Markets 3, *supra* note 19 (suggesting that the Commission require ''the board to review and comment on, but not edit, the CCO's annual report to the Commission'').

[1029] DTCC 2, *supra* note 19.

[1030] As discussed in Section VI.A.1.c of this release, the Commission is adopting technical amendments to Exchange Act Rule 24b–2 to clarify that the confidential portion of electronic filings by SDRs must be filed electronically and to require SDRs to request confidential treatment electronically. The Commission is also adopting technical amendments to Rule 101 of Regulation S–T to provide that, except as otherwise provided, all filings by SDRs, including any information with respect to which confidential treatment is requested, must be filed electronically.

[1031] Proposed Rule 13n–11(f)(1).

[1032] Proposed Rule 13n–11(f)(2).

[1033] Proposed Rule 13n–11(f)(3).

[1034] Proposed Rule 13n–11(f)(4).

[1035] Proposed Rule 13n–11(f)(5); *see also* 17 CFR 232.405 (imposing content, format, submission, and Web site posting requirements for an interactive data file, as defined in Rule 11 of Regulation S–T).

[1036] *See* DTCC 5, *supra* note 19.

[1037] DTCC 5, *supra* note 19.

[1038] DTCC 5, *supra* note 19 (noting that ''[u]nlike clearing agencies or other entities supervised by the Commission, an [SDR] does not have financial exposure to its users or participants that would justify the imposition of this requirement'').

[1039] DTCC 5, *supra* note 19.

[1040] To conform with the headings of Rule 13n–11 and paragraph (d) of the rule, as adopted, the Commission is revising the heading of paragraph (f) of the rule to refer to ''financial reports'' in a plural form.

[1041] This is generally consistent with CFTC Rule 49.25(f). *See* 17 CFR 49.25(f); DTCC 5, *supra* note

Rule 13n–11(f)(2) provides that each financial report must be audited in accordance with the PCAOB's standards by a registered public accounting firm [1042] that is qualified and independent in accordance with Rule 2–01 of Regulation S–X.[1043] Pursuant to Rule 13n–11(f)(3), each financial report is required to include a report of the registered public accounting firm that complies with paragraphs (a) through (d) of Rule 2–02 of Regulation S–X.[1044]

Rule 13n–11(f)(4) further provides that if an SDR's financial statements contain consolidated information of a subsidiary of the SDR, then the SDR's financial statements must provide condensed financial information, in a financial statement footnote, as to the financial position, changes in financial position and results of operations of the SDR, as of the same dates and for the same periods for which audited consolidated financial statements are required. Such financial information need not be presented in greater detail than is required for condensed statements by Rules 10–01(a)(2), (3), and (4) of Regulation S–X.[1045] Detailed footnote disclosure that would normally be included with complete financial statements may be omitted with the exception of disclosures regarding material contingencies, long-term obligations, and guarantees.[1046] Descriptions of significant provisions of the SDR's long-term obligations, mandatory dividend or redemption requirements of redeemable stocks, and guarantees of the SDR shall be provided along with a five-year schedule of maturities of debt.[1047] If the material contingencies, long-term obligations, redeemable stock requirements, and guarantees of the SDR have been separately disclosed in the consolidated statements, then they need not be repeated in this schedule.[1048] Rule 13n–11(f)(4) is substantially similar to Rule 12–04 of Regulation S–X, which pertains to condensed financial information of registrants.[1049]

The Commission is revising proposed Rule 13n–11(f)(5) to require an SDR's financial reports to be provided as an official filing [1050] in accordance with the EDGAR Filer Manual and include, as part of the official filing, an Interactive Data Financial Report [1051] filed in accordance with new Rule 407 of Regulation S–T. Finally, Rule 13n–11(g) provides that annual compliance reports and financial reports filed pursuant to Rules 13n–11(d) and (f) are required to be filed within 60 days after the end of the fiscal year covered by such reports.

Rule 407 of Regulation S–T

In conjunction with Rule 13n–11(f)(5), the Commission is adopting new Rule 407 of Regulation S–T, which stems from provisions in proposed Rule 13n–11(f). Rule 407 sets forth the requirements equivalent to those in Rules 405(a)(1) (except as to the requirement for Web site posting), (a)(2) (with modifications), (a)(3), (b), (c), (d)(1), and (e)(1) of Regulation S–T. With the exception of Rule 405(a)(2), these provisions were cross-referenced in proposed Rule 13n–11(f)(5). Thus, substantively, the requirements in new Rule 407 are the same as those proposed under proposed Rule 13n–11(f)(5), except as detailed below. The text of Rule 407 is also substantially the same as those provisions of Rule 405 that pertain to the content, format, and filing requirements of XBRL-formatted financial statements. Rule 407, however, applies to Interactive Data Financial Reports, whereas Rule 405 applies to Interactive Data Files. The Commission is adopting new Rule 407 to specify the content, format, and filing requirements for Interactive Data Financial Reports.

Although substantially similar, there are several differences between the provisions of Rule 405 that proposed Rule 13n–11(f) cross-referenced and the provisions of Rule 405 that are included in new Rule 407. As a general matter, these differences relate to modifications from the proposal that address the unique aspects of SDRs and the applicability of certain filing requirements to them.

Upon further consideration, the Commission is not adopting, in Rule 407, several provisions that the Commission had initially proposed applying to SDRs' financial reports. Rule 405(a)(1), which was cross-referenced in proposed Rule 13n–11(f)(5), requires compliance with the Web site posting requirements found elsewhere in Rule 405. As adopted, Rule 407 does not have Web site posting requirements because the Commission believes that it is not necessary to impose such requirements on SDRs in this context. No commenters have suggested otherwise. Additionally, this is consistent with the SDR Rules not imposing any Web site posting requirements on any other filings by SDRs. Rule 407 also does not require an SDR to file its financial reports consistent with Rules 405(d)(2), (3), and (4), all of which require detailed tagging of footnotes in financial statements. Additionally, Rule 407 does not require an SDR to file its financial reports consistent with Rule 405(e)(2), which requires detailed tagging of financial statement schedules. The Commission believes that block-text tags of complete footnotes and schedules in an SDR's financial reports [1052] will provide sufficient data structure for the Commission to assess and analyze effectively the SDR's financial and operational condition. Thus, the Commission believes that it is not necessary to impose additional costs on SDRs to provide detailed tagged footnotes and schedules in SDRs' financial reports. For these reasons, the Commission is not requiring SDRs to detail tag footnotes and schedules in their financial reports.

In addition, the provisions of Rule 405 that proposed Rule 13n–11(f) cross-referenced and the provisions of Rule 405 that are included in new Rule 407 differ in another way. New Rule 407(a)(2) specifies that Rule 407 applies only to SDRs filing financial reports.[1053]

19 (suggesting that the Commission adopt the CFTC's rule requiring a swap data repository's financial statements to be prepared in conformity with GAAP).

[1042] The term ''registered public accounting firm'' is defined in Exchange Act Section 3(a)(59) to have the same meaning as in Section 2 of the Sarbanes-Oxley Act of 2002. *See* 15 U.S.C. 78c(a)(59). Section 2 of the Sarbanes-Oxley Act defines ''registered public accounting firm'' as a public accounting firm registered with the PCAOB in accordance with the Sarbanes-Oxley Act.

[1043] Rule 13n–11(f)(2).

[1044] Rule 13n–11(f)(3).

[1045] Rule 13n–11(f)(4).

[1046] *Id.*

[1047] *Id.*

[1048] *Id.*

[1049] *See* 17 CFR 210.12–04.

[1050] ''Official filing'' has the same meaning as set forth in Rule 11 of Regulation S–T. Rule 13n–11(b)(7). Specifically, Rule 11 of Regulation S–T defines ''official filing'' as ''any filing that is received and accepted by the Commission, regardless of filing medium and exclusive of header information, tags and any other technical information required in an electronic filing; except that electronic identification of investment company type and inclusion of identifiers for series and class (or contract, in the case of separate accounts of insurance companies) as required by [R]ule 313 of Regulation S–T (§ 232.313) are deemed part of the official filing.''

[1051] ''Interactive Data Financial Report'' has the same meaning as set forth in Rule 11 of Regulation S–T. Rule 13n–11(b)(4). Specifically, the Commission is adding the definition of ''Interactive Data Financial Report'' in Rule 11 of Regulation S–T to mean ''the machine-readable computer code that presents information in eXtensible Business Reporting Language (XBRL) electronic format pursuant to § 232.407.'' This definition is substantially the same as the definition of ''Interactive Data File'' in Rule 11 of Regulation S–T. However, Interactive Data Financial Reports are not considered Interactive Data Files for purposes of Rule 405 or for other rules and regulations that reference to Rule 405.

[1052] *See* Rules 407(d) and (e) of Regulation S–T (requiring complete footnotes and schedules in financial statements to be block-text tagged).

[1053] Rule 405(a)(2), on the other hand, applies to other electronic filers either required or permitted to submit an Interactive Data File.

Specifically, new Rule 407(a)(2) states that an Interactive Data Financial Report must be filed only by an electronic filer that is required to file an Interactive Data Financial Report pursuant to Rule 13n–11(f)(5) as an exhibit to a filing of an SDR's financial report. Consistent with other documents required to be filed in a tagged data, or interactive, format,[1054] an SDR's financial report is required to be filed with the Commission in two formats. The first part of the official filing is the Related Official Financial Report Filing,[1055] which is in ASCII or HTML format. The second part of the official filing, the Interactive Data Financial Report, is an exhibit to the filing, which is required to be in XBRL format.[1056]

In addition to adopting new Rule 407 of Regulation S–T, the Commission is making a conforming amendment to Rule 305 of Regulation S–T to include Interactive Data Financial Reports among the list of filings to which Rule 305(a) does not apply.[1057] Rule 305(a) limits the number of characters and positions of tabular or columnar information of electronic filings with the Commission. By amending Rule 305, the Commission is treating Interactive Data Financial Reports in the same manner as it treats other XBRL filings in this context.

As mentioned above, Rule 13n–11(g) provides that annual compliance reports and financial reports are required to be filed within 60 days after the end of the fiscal year covered by such reports. The Commission anticipates developing an electronic filing system through which an SDR will be able to file annual compliance reports and financial reports shortly after the effective date of Rule 13n–11. The Commission anticipates that this electronic filing system will be through EDGAR and that it will be the same portal for SDRs to file Form SDR. If an SDR needs to file an annual compliance report and financial report prior to such time as the electronic filing system is available, then the SDR may file the reports in paper format with the Commission's Division of Trading and Markets at the Commission's principal office in Washington, DC. However, doing so does not relieve the SDR from compliance with the requirement in Rule 13n–11(d)(2) to file the annual compliance report ''in a tagged data format in accordance with the instructions contained in the EDGAR Filer Manual,'' or the requirement in Rule 13n–11(f)(5) to provide the financial report ''as part of an official filing in accordance with the EDGAR Filer Manual.'' Therefore, when the Commission's electronic filing system is available, the SDR should file electronically any such reports that previously had been filed in paper format.

The Commission is not providing, by rule, that the financial reports are automatically granted confidential treatment, but an SDR may seek confidential treatment of certain information pursuant to Exchange Act Rule 24b–2. As stated above, this approach is consistent with how the Commission generally treats the filings that it receives from its regulated entities, including exchanges. The Commission may make filed financial reports available on its Web site except for information where confidential treatment is requested by the SDR and granted by the Commission.[1058]

The Commission notes that with respect to its other filers, the Commission has required, at a minimum, the financial information discussed above[1059] and, in some instances, significantly more information.[1060] Additionally, as discussed in the Proposing Release, the Commission believes that it is necessary to obtain an audited annual financial report from each registered SDR to understand the SDR's financial and operational condition. It is particularly important for the Commission to have this understanding because SDRs are intended to play a pivotal role in improving the transparency and efficiency of the SBS market and because SBSs (whether cleared or uncleared) are required to be reported to a registered SDR.[1061] In its role as central recordkeeper, an SDR serves an important role as a source of data for regulators to monitor exposures, risks, and compliance with the Exchange Act and for market participants to access position information. Among other things, the Commission will need to know whether an SDR has adequate financial resources to comply with its statutory obligations or is having financial difficulties. If an SDR ultimately ceases doing business, then it could create a significant disruption in the OTC derivatives market.

With respect to one commenter's suggested deletion of the auditing requirement in Rule 13n–11(f)(2), the Commission disagrees with the commenter's view that the requirement imposes an additional burden for an SDR that is not justified in relation to the risks that an SDR would pose to its members.[1062] The Commission believes that the audit requirement will serve as an effective means to assure the reliability of the information in an SDR's financial report that is filed with the Commission. The Commission also believes that the filing of audited financial statements (as opposed to unaudited financial statements) is important because it would bolster market participants' confidence in the SDR and provide greater credibility to the accuracy of the information that the SDR files with the Commission.[1063] The Commission recognizes that because of the audit requirement in Rule 13n–11(f)(2), the rule may, in some instances, be more costly than the CFTC's requirement of quarterly unaudited financial statements.[1064] The Commission believes, however, that the additional burden, where it exists, is

[1054] *See* Rule 405 of Regulation S–T, 17 CFR 232.405.

[1055] The Commission is adding the definition of ''Related Official Financial Report Filing'' in Rule 11 of Regulation S–T to mean ''the ASCII or HTML format part of the official filing with which an Interactive Data Financial Report appears as an exhibit.''

[1056] The Commission's proposed Rule 13n–11(f) stated that an SDR's financial report must be provided in XBRL consistent with certain provisions in Rule 405. As adopted, Rule 407 is intended to clarify that it is only the exhibit to the filing of an SDR's financial report that must be in XBRL.

[1057] The Commission notes that Rule 305(a) of Regulation S–T does not apply to HTML documents. If a Related Official Financial Report Filing is filed in HTML format, then Rule 305(a) will not apply to that filing.

[1058] As discussed in Section VI.A.1.c of this release, the Commission is adopting technical amendments to Exchange Act Rule 24b–2 to clarify that the confidential portion of electronic filings by SDRs must be filed electronically and to require SDRs to request confidential treatment electronically. The Commission is also adopting technical amendments to Rule 101 of Regulation S–T to provide that, except as otherwise provided, all filings by SDRs, including any information with respect to which confidential treatment is requested, must be filed electronically.

[1059] *See, e.g.,* Exchange Act Rule 17a–5(d), 17 CFR 240.17a–5(d) (requiring broker-dealers to file annually audited financial statements); Article 3 of Regulation S–X, 17 CFR 210.3–01 *et seq.* (requiring certain financial statements to be audited by independent accountants).

[1060] *See, e.g.,* Exchange Act Rule 17a–5(a), 17 CFR 240.17a–5(a) (requiring broker-dealers to file monthly and quarterly Financial and Operational Combined Uniform Single (FOCUS) reports); Article 10–01(d) of Regulation S–X, 17 CFR 210.10–01(d) (requiring public companies to have their quarterly reports reviewed by independent public accountants).

[1061] Proposing Release, 75 FR at 77343, *supra* note 2; *see also* Exchange Act Section 13(m)(1)(G), 15 U.S.C. 78m(m)(1)(G).

[1062] *See* DTCC 5, *supra* note 19.

[1063] *See* Revision of the Commission's Auditor Independence Requirements, Securities Act Release No. 7919 (Nov. 21, 2000), 65 FR 76008 (Dec. 5, 2000) (discussing importance of auditor independence and audited financial statements).

[1064] *See* CFTC Rule 49.25, 17 CFR 49.25; DTCC 5, *supra* note 19 (suggesting that the Commission ''consider adopting the CFTC's approach in its final [swap data repository] rules,'' regarding financial statements).

justified by the aforementioned benefits of requiring audited financial statements.

6. Additional Rule Regarding Chief Compliance Officer (Rule 13n–11(h))

In the Proposing Release, the Commission asked whether it should prohibit any officers, directors, or employees of an SDR from, directly or indirectly, taking any action to coerce, manipulate, mislead, or fraudulently influence the SDR's CCO in the performance of his responsibilities.[1065] In response, one commenter recommended that the Commission adopt such a prohibition.[1066] After considering the commenter's recommendation, the Commission has decided to adopt Rule 13n–11(h), which states that ''[n]o officer, director, or employee of a security-based swap data repository may directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence the security-based swap data repository's chief compliance officer in the performance of his or her duties under [Rule 13n–11].'' This rule is intended to advance the goals of the statute's requirements by preventing others at the SDR from seeking to improperly affect the SDR's CCO in the performance of his or her responsibilities. This rule is also intended to promote the independence of an SDR's CCO while maintaining the CCO's effectiveness by mitigating the potential conflicts of interest between the CCO and the SDR's officers, directors, and employees.

K. Exemption From Requirements Governing SDRs for Certain Non-U.S. Persons (Rule 13n–12)

1. Proposed Rule

In the Cross-Border Proposing Release, the Commission proposed, pursuant to its authority under Exchange Act Section 36,[1067] an exemption from Exchange Act Section 13(n)[1068] and the rules and regulations thereunder (collectively, the ''SDR Requirements'') for non-U.S. persons that perform the functions of an SDR within the United States, subject to a condition.[1069] Specifically, the Commission proposed Rule 13n–12 (''SDR Exemption''), which provides: ''A non-U.S. person[1070] that performs the functions of a security-based swap data repository within the United States shall be exempt from the registration and other requirements set forth in Section 13(n) of the [Exchange] Act . . . and the rules and regulations thereunder, provided that each regulator with supervisory authority over such non-U.S. person has entered into a supervisory and enforcement memorandum of understanding or other arrangement with the Commission that addresses the confidentiality of data collected and maintained by such non-U.S. person, access by the Commission to such data, and any other matters determined by the Commission.''[1071]

2. Comments on the Proposed Rule

The Commission received several comment letters concerning the registration and regulation of SDRs in the cross-border context, most of which were submitted prior to the Commission's proposal of Rule 13n–12. As a general matter, commenters suggested that the Commission should apply principles of international comity.[1072]

One commenter expressed concern that ''the current asymmetry in the [proposed SDR Rules], when compared to existing international standards, will lead to fragmentation along regional lines and prohibit global services and global data provision, which will weaken the introduction of trade repositories as a financial markets reform measure.''[1073] The commenter stated that ''because of the onerous standards imposed on SDRs compared to the regulatory framework of other competitive jurisdictions, the U.S. will be less attractive than other locations for the purpose of storing full global data where SDRs are actively looking to service the global regulatory community.''[1074]

In addition, two commenters expressed concern about the potential impact of duplicative registration requirements imposed on SDRs.[1075] Specifically, one of these commenters remarked that the Commission's proposed rules governing SDRs ''would seem to force a non-resident SDR to be subject to multiple regimes and to the jurisdiction of several authorities'' and that the Proposing Release made no ''reference to equivalency of regulatory regimes or cooperation with the authorities of the country of establishment of the non-resident SDRs.''[1076] To address this concern, the commenter suggested that the Commission adopt a regime under which foreign SDRs would be deemed to comply with the SDR Requirements if the laws and regulations of the relevant foreign jurisdiction were equivalent to those of the Commission and an MOU has been entered into between the Commission and the relevant foreign authority.[1077] The commenter noted that the recommended ''regime would have the following advantages: i) Facilitating cooperation among authorities from different jurisdictions; ii) ensuring the mutual recognition of [SDRs]; and iii) establishing convergent regulatory and supervisory regimes which is necessary in a global market such as the OTC derivatives one.''[1078]

[1065] Proposing Release, 75 FR at 77341, *supra* note 2.

[1066] Better Markets 1, *supra* note 19; *see also* Better Markets 3, *supra* note 19 (suggesting ''[e]xplicit prohibitions against attempts by officers, directors, or employees to coerce, mislead, or otherwise interfere with the CCO'').

[1067] Exchange Act Section 36 authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from certain provisions of the Exchange Act or certain rules or regulations thereunder, by rule, regulation, or order, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. 15 U.S.C. 78mm.

[1068] 15 U.S.C. 78m(n).

[1069] Cross-Border Proposing Release, 78 FR at 31209, *supra* note 3.

[1070] Proposed Rule 13n–12(a)(1) defines ''non-U.S. person'' to mean any person that is not a U.S. person. Proposed Rule 13n–12(a)(2) defines ''U.S. person'' by cross-reference to the definition of ''U.S. person'' in proposed Rule 3a71–3(a)(7). *See* Cross-Border Proposing Release, 78 FR at 31209, *supra* note 3.

[1071] Proposed Rule 13n–12(b).

[1072] *See* DTCC 2, *supra* note 19 (urging the Commission, in its regulation of SDRs, to aim for regulatory comity as it has already been agreed to by ODRF and other international bodies such as CPSS and IOSCO); Foreign Banks SBSR, *supra* note 27 (recommending that the Commission work with foreign authorities to permit SDRs in all major jurisdictions to register with the appropriate regulators in each jurisdiction); *see also* Société Générale SBSR, *supra* note 27 (suggesting that the Commission consider international comity and public policy goals of derivatives regulation to limit its regulation of swap business and requesting that the Commission coordinate with its foreign counterparts, especially those based in Europe, to work toward an MOU on the jurisdictional reach of the derivatives rules of the U.S./European Market Infrastructure Regulation); ISDA SIFMA SBSR, *supra* note 27 (''The Commission should consult with foreign regulators before establishing the extra-territorial scope of the rules promulgated under Title VII.''). *See also* DTCC CB, *supra* note 26 (''Given the global nature of OTC swaps and SB swaps markets, the United States should continue to promote an approach to the regulation of the swaps markets that adheres to international comity and mitigates the risk of regulatory arbitrage in market decisions. Regulations among jurisdictions must be coordinated in a manner that promotes competition, transparency, and protects the safety and soundness of these global markets. At the same time, the Commission should remain vigilant that the international framework is efficient and does not unfairly disadvantage or concentrate systemic risk in the United States.'').

[1073] DTCC 2, *supra* note 19.

[1074] DTCC 2, *supra* note 19.

[1075] *See* US & Foreign Banks, *supra* note 24; ESMA, *supra* note 19.

[1076] ESMA, *supra* note 19.

[1077] ESMA, *supra* note 19.

[1078] ESMA, *supra* note 19 (noting that a similar regulatory regime is delineated in the ''European Commission's proposal for a Regulation on OTC

Continued

Recognizing that some SDRs would function solely outside of the United States and, therefore, would be regulated by an authority in another jurisdiction, commenters suggested possible approaches to the SDR registration regime. One commenter, for example, suggested that ''a non-U.S. SDR should not be subject to U.S. registration so long as it collects and maintains information from outside the U.S., even if such information is collected from non-U.S. swap dealer or [major security-based swap participant] registrants.'' [1079] Two commenters supported ''cross-registration'' of SDRs, whereby SDRs in all major jurisdictions may register with the appropriate regulators in each jurisdiction.[1080]

3. Final Rule

As stated above,[1081] the Commission believes that a non-U.S. person that performs the functions of an SDR within the United States is required to register with the Commission, absent an exemption.[1082] After considering comments, including those urging the Commission to take into consideration the principles of international comity and mitigate the risk of regulatory arbitrage in market decisions,[1083] the Commission is adopting Rule 13n–12 as proposed, with two modifications,[1084] to provide an exemption from the SDR Requirements for certain non-U.S. persons. This rule is intended to provide legal certainty to market participants and to address commenters' concerns regarding the potential for duplicative regulatory requirements.[1085] Specifically, Rule 13n–12 states as follows: ''A non-U.S. person [1086] that performs the functions of a security-based swap data repository within the United States shall be exempt from the registration and other requirements set forth in section 13(n) of the [Exchange] Act . . . and the rules and regulations thereunder, provided that each regulator with supervisory authority over such non-U.S. person has entered into a memorandum of understanding [1087] or other arrangement with the Commission that addresses the confidentiality of data collected and maintained by such non-U.S. person, access by the Commission to such data, and any other matters determined by the Commission.''

The Commission continues to believe that the SDR Exemption is necessary or appropriate in the public interest, and consistent with the protection of investors.[1088] Because the reporting requirements of Title VII and Regulation SBSR can be satisfied only if an SBS transaction is reported to an SDR that is registered with the Commission,[1089] the Commission continues to believe that the primary reason for a person subject to the reporting requirements of Title VII and Regulation SBSR to report an SBS transaction to an SDR that is not registered with the Commission would likely be to satisfy reporting obligations that it or its counterparty has under foreign law.[1090] Such person would still be required to fulfill its reporting obligations under Title VII and Regulation SBSR by reporting its SBS transaction to an SDR that is registered with the Commission, absent other relief from the Commission,[1091] even if the transaction were also reported to a non-U.S. person that is not registered with the Commission because it is relying on the SDR Exemption. The Commission believes that this approach to the SDR Requirements appropriately balances the Commission's interest in having access to data about SBS transactions involving U.S. persons, while addressing commenters' concerns regarding the potential for duplicative regulatory requirements [1092] as well as furthering the goals of the Dodd-Frank Act.

The SDR Exemption includes a condition that each regulator with supervisory authority over the non-U.S. person that performs the functions of an SDR within the United States enters into an MOU or other arrangement with the Commission, as specified in Exchange Act Rule 13n–12(b). The Commission anticipates that in determining whether to enter into such an MOU or other

derivatives, central counterparties and trade repositories'').

[1079] *See* US & Foreign Banks, *supra* note 24.

[1080] Foreign Banks SBSR, *supra* note 27 (''Cross-registration of SDRs is not only necessary given the global nature of the swaps market, it also reduces duplicative data reporting. Cross-registration would also facilitate the creation of uniform reporting rules and procedures that would enable easy comparison of transaction data from different jurisdictions. Cross-border information sharing and cross-registration, coupled with the new standard identification codes that will be required for reporting to SDRs, would provide regulators and market participants with a comprehensive picture, thus enabling more robust surveillance and supervision of the global swaps market.''); BofA SBSR, *supra* note 27 (noting that the Commission can ensure that it retains access to data reported to foreign SDRs by establishing a regime for cross-registration of SDRs in multiple jurisdictions).

[1081] *See* Section III.B of this release discussing persons performing the functions of an SDR within the United States that must register with the Commission.

[1082] *See* Cross-Border Proposing Release, 78 FR at 31042, *supra* note 3. *See also* Exchange Act Section 13(n)(1), 15 U.S.C. 78m(n)(1) (requiring persons that, directly or indirectly, make use of the mails or any means or instrumentality of interstate commerce to perform the functions of an SDR, to register with the Commission). The Commission recognizes that some non-U.S. persons that perform the functions of an SDR may do so entirely outside the United States, and thus, are not required to register with the Commission.

[1083] *See* DTCC 2, *supra* note 19; DTCC CB, *supra* note 26; Foreign Banks SBSR, *supra* note 27; Société Générale SBSR, *supra* note 27; and ISDA SIFMA SBSR, *supra* note 27.

[1084] *See infra* note 1086 (discussing technical revision) and *infra* note 1087 (discussing MOU requirement).

[1085] *See* US & Foreign Banks, *supra* note 24; ESMA, *supra* note 19.

[1086] Exchange Act Rule 13n–12(a)(1), as adopted, defines ''non-U.S. person'' to mean any person that is not a U.S. person. Exchange Act Rule 13n–12(a)(2) defines ''U.S. person'' by cross-reference to the definition of ''U.S. person'' in Exchange Act Rule 3a71–3(a)(4)(i), 17 CFR 240.3a71–3(a)(4)(i). *See* Cross-Border Adopting Release, 79 FR at 47371, *supra* note 11 (adopting Exchange Act Rule 3a71–3(a)(4)(i)). As proposed, Rule 13n–12(a)(2) cross-referenced to ''§ 240.3a71–3(a)(7).'' For consistency in how cross-references are formatted in the SDR Rules, the Commission is revising from the proposal the format of the cross-reference to ''Rule 3a71–3(a)(4)(i) (§ 240.3a71–3(a)(4)(i)).''

[1087] Upon further consideration, the Commission is revising the proposed rule to require an MOU rather than a more specific ''supervisory and enforcement'' MOU. Requiring an MOU provides the Commission with the flexibility to negotiate a broad range of terms, conditions, and circumstances under which information can be shared with other relevant authorities.

[1088] *See* Cross-Border Proposing Release, 78 FR at 31043, *supra* note 3.

[1089] The Commission believes that the SDR Exemption addresses one commenter's view that ''a non-U.S. SDR should not be subject to U.S. registration so long as it collects and maintains information from outside the U.S.'' *See* US & Foreign Banks, *supra* note 24; *see also* Section III.B of this release (discussing when SDRs that are non-U.S. persons must register with the Commission). The Commission notes, however, that a non-U.S. person that performs the functions of an SDR outside the United States may choose to register with the Commission as an SDR to enable that person to accept data from persons that are reporting an SBS pursuant to the reporting requirements of Title VII and Regulation SBSR. *See* Exchange Act Sections 13(m)(1)(G) and 13A(a)(1), 15 U.S.C. 78m(m)(1)(G) and 78m–1(a)(1), as added by Dodd-Frank Act Sections 763(i) and 766(a); Regulation SBSR Adopting Release, *supra* note 13 (Rule 901 requiring all SBSs to be reported to a registered SDR or, if no SDR will accept the SBSs, the Commission). This approach is consistent with commenters' views supporting cross-registration of SDRs. *See* Foreign Banks SBSR, *supra* note 27 (suggesting cross-registration of SDRs); BofA SBSR, *supra* note 27 (suggesting cross-registration of SDRs). The Commission may consider also granting, pursuant to its authority under Exchange Act Section 36, 15 U.S.C. 78mm, exemptions to such non-U.S. person that registers with the Commission from certain of the SDR Requirements on a case-by-case basis. In determining whether to grant such an exemption, the Commission may consider, among other things, whether there are overlapping requirements in the Exchange Act and applicable foreign law.

[1090] *See* Cross-Border Proposing Release, 78 FR at 31043, *supra* note 3.

[1091] *See* Cross-Border Proposing Release, 78 FR at 31043, *supra* note 3 (discussing Regulation SBSR and substituted compliance); *see also* Regulation SBSR Adopting Release, *supra* note 13 (adopting Rule 908(c) allowing for the possibility of substituted compliance).

[1092] *See* US & Foreign Banks, *supra* note 24; ESMA, *supra* note 19.

arrangement with a relevant authority, the Commission will consider whether the relevant authority can keep confidential requested data that is collected and maintained by the non-U.S. person that performs the functions of an SDR within the United States [1093] and whether the Commission will have access to data collected and maintained by such non-U.S. person.[1094] The Commission anticipates that it will consider other matters, including, for example, whether the relevant authority agrees to provide the Commission with reciprocal assistance in securities matters within the Commission's jurisdiction and whether an MOU or other arrangement would be in the public interest.[1095] The Commission believes that, in lieu of requiring every non-U.S. person that performs the functions of an SDR within the United States to register with the Commission, the condition in the SDR Exemption is appropriate to address the Commission's interest in having access to SBS data involving U.S. persons and U.S. market participants that is maintained by non-U.S. persons that perform the functions of an SDR within the United States and protecting the confidentiality of such SBS data involving U.S. persons and U.S. market participants.[1096]

With respect to one commenter's concern about ''the current asymmetry in the [proposed SDR Rules] when compared to existing international standards'' and ''onerous standards imposed on SDRs compared to regulatory framework of other competitive jurisdictions,'' the Commission believes that the SDR Exemption is intended to encourage international cooperation, and thereby mitigate to some extent the concern of data fragmentation and regulatory arbitrage.[1097] The commenter, which was submitted prior to the Commission's proposal of Rule 13n–12, did not provide specific examples of international standards or regulatory frameworks for comparison with the SDR Rules, but, as discussed in Section I.D above, the Commission has taken into consideration recommendations by international bodies; Commission staff also has consulted and coordinated with foreign regulators through bilateral and multilateral discussions.[1098]

VII. Paperwork Reduction Act

Certain provisions of the SDR Rules[1099] and Form SDR impose new ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[1100] In accordance with 44 U.S.C. 3507 and 5 CFR 1320.11, the Commission submitted the provisions to the Office of Management and Budget (''OMB'') for review when it issued the Proposing Release. The title of the new collection of information is ''Form SDR and Security-Based Swap Data Repository Registration, Duties, and Core Principles.'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB assigned control number 3235–0719 to the new collection of information.

In the Proposing Release, the Commission solicited comment on the collection of information requirements and the accuracy of the Commission's statements.[1101] The Commission received three comments noting the importance of confidentiality.[1102] The Commission received one comment generally discussing the burden of Rule 13n–11(f)(2), which is discussed below.[1103]

The Commission also received one comment recommending that ''the Commission should generally seek to avoid any divergence from the CFTC's and international regulators' frameworks that is likely to give rise to undue costs or burdens.''[1104] The commenter believed that ''divergence is generally warranted only if the rule adopted by the Commission is more flexible than those adopted by others (and therefore would not preclude the voluntary adoption of consistent practices by market participants).''[1105]

None of the commenters specifically addressed the burden estimates in the Proposing Release related to the collection of information. The Commission has, however, revised the burden associated with completing Form SDR to reflect some additional material incorporated from Form SIP to accommodate SDRs' registration as SIPs and to reflect a revision to the disclosure of business affiliations.[1106] The Commission has also made a change to correct a calculation error.[1107] Other than these changes, the Commission's estimates remain unchanged from the Proposing Release.

A. Summary of Collection of Information

1. Registration Requirements, Form SDR, and Withdrawal From Registration

Rule 13n–1(b) requires an SDR to apply for registration with the

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[1093] The Commission contemplates that the relevant authority will keep requested data that is collected and maintained by such non-U.S. person confidential in a manner that is consistent with Exchange Act Section 24 and Rule 24c–1 thereunder. *See* 15 U.S.C. 78x and 17 CFR 240.24c–1.

[1094] The Commission contemplates that the Commission's access to data collected and maintained by such non-U.S. person will be in a manner that is consistent with Exchange Act Section 13(n)(5)(D) and Rule 13n–4(b)(5) thereunder. *See* Exchange Act Section 13(n)(5)(D), 15 U.S.C. 78m(n)(5)(D).

[1095] The Commission has entered numerous cooperative agreements with foreign authorities. *See* Cooperative Arrangements with Foreign Regulators, *available at http://www.sec.gov/about/offices/oia/oia_cooparrangements.shtml.* Based on the Commission's experience with negotiating MOUs and other agreements with foreign authorities, the Commission believes that the MOU or agreement described in Rule 13n–12(b) could, in many cases, be negotiated in a timely manner so that the exemption provided under Rule 13n–12(b) should be available before the registration of an SDR seeking to claim the exemption would otherwise be required.

[1096] *Accord* Société Générale SBSR, *supra* note 27 (requesting that the Commission coordinate with its foreign counterparts, especially those based in Europe, to work toward an MOU on the jurisdictional reach of the derivatives rules of the U.S./European Market Infrastructure Regulation).

[1097] *See* DTCC 2, *supra* note 19.

[1098] Senior representatives of authorities with responsibility for regulation of OTC derivatives have met on a number of occasions to discuss international coordination of OTC derivatives regulations. *See, e.g.,* Report of the OTC Derivatives Regulators Group (ODRG) on Cross-Border Implementation Issues (Mar. 31, 2014), *available at http://www.cftc.gov/ucm/groups/public/@internationalaffairs/documents/file/odrgreport033114.pdf.*

[1099] As noted above, ''SDR Rules'' means, collectively, Rules 13n–1 to 13n–12.

[1100] 44 U.S.C. 3501 *et seq.*

[1101] *See* Proposing Release, 75 FR at 77354, *supra* note 2.

[1102] One commenter emphasized that regulators should provide confidential treatment to the annual compliance reports that SDRs provide to the Commission. DTCC 2, *supra* note 19. Consistent with its treatment of filings that it receives from other registrants, the Commission is not providing, by rule, that annual compliance reports are automatically granted confidential treatment, but SDRs may request confidential treatment. *See* Section VI.J.4.c of this release. One commenter to the Temporary Rule Release emphasized the importance of the Commission protecting information furnished to it under the rules in that release. Deutsche Temp Rule, *supra* note 28. A second commenter reiterated that regulators should provide confidential treatment to SBS data provided by SDRs. ESMA, *supra* note 19. The Commission anticipates that it will keep reported data that SDRs submit to the Commission confidential, subject to the provisions of applicable law. Pursuant to Commission rules, confidential treatment can be sought for information submitted to the Commission. *See* 17 CFR 200.83 (regarding confidential treatment procedures under FOIA).

[1103] *See* Section VIII.D.6.c of this release discussing economic alternatives to Rule 13n–11(f)(2).

[1104] IIB CB, *supra* note 26.

[1105] IIB CB, *supra* note 26.

[1106] *See* Section VII.D.1 of this release discussing the burdens associated with SDRs' registration requirements.

[1107] The calculation of the burden on non-resident SDRs under Rule 13n–1(f) has been revised to correct a calculation error, which slightly reduces the burden hours incurred by non-resident SDRs. *See infra* note 1136 and the accompanying text.

Commission by filing Form SDR electronically in tagged data format in accordance with the instructions contained on the form. Under Rule 13n–1(e), each SDR is required to both designate and authorize on Form SDR an agent in the United States, other than a Commission member, official, or employee, to accept notice or service of process, pleadings, or other documents in any action or proceedings brought against the SDR to enforce the federal securities laws and the rules and regulations thereunder. Rule 13n–1(f) requires a non-resident SDR to (i) certify on Form SDR that the SDR can, as a matter of law, and will provide the Commission with prompt access to the SDR's books and records and can, as a matter of law, and will submit to onsite inspection and examination by the Commission and (ii) provide an opinion of counsel that the SDR can, as a matter of law, provide the Commission with prompt access to the SDR's books and records and can, as a matter of law, submit to onsite inspection and examination by the Commission. Under Rule 13n–3(a), in the event that an SDR succeeds to and continues the business of a registered SDR, the successor SDR may file an application for registration on Form SDR (and the predecessor SDR is required to file a withdrawal from registration with the Commission) within 30 days after the succession in order for the registration of the predecessor to be deemed to remain effective as the registration of the successor. Also, under Rule 13n–11(a), an SDR is required to identify on Form SDR a person who has been designated by the board to serve as a CCO of the SDR.

Rule 13n–1(d) requires SDRs to file an amendment on Form SDR annually as well as when any information provided in items 1 through 17, 26, and 48 on Form SDR is or becomes inaccurate for any reason. Under Rule 13n–3(b), if an SDR succeeds to and continues the business of a registered SDR and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor SDR is permitted, within 30 days after the succession, to amend the registration of the predecessor SDR on Form SDR to reflect these changes.

Rule 13n–2(b) permits a registered SDR to withdraw from registration by filing a withdrawal from registration on Form SDR electronically in a tagged data format. The SDR must designate on Form SDR a person to serve as custodian of its books and records. When filing a withdrawal from registration on Form SDR, the SDR must update any inaccurate information.

2. SDR Duties, Data Collection and Maintenance, and Direct Electronic Access

Rule 13n–4(b) sets out a number of duties for SDRs. Under Rules 13n–4(b)(2) and (4), SDRs are required to accept data as prescribed in Regulation SBSR [1108] and maintain that data, as required in Rule 13n–5, for each SBS reported to the SDRs. SDRs are required, pursuant to Rule 13n–4(b)(5), to provide direct electronic access to the Commission or its designees.[1109] SDRs are required, pursuant to Rule 13n–4(b)(6), to provide information in such form and at such frequency as required by Regulation SBSR. The Commission anticipates that it will propose for public comment detailed specifications of acceptable formats and taxonomies for the purposes of direct electronic access. Until such time as the Commission adopts any format or taxonomy, SDRs may provide direct electronic access to the Commission to data in the form in which SDRs maintain such data.

SDRs have an obligation under Rule 13n–4(b)(3) to confirm, as prescribed in Rule 13n–5, with both counterparties the accuracy of the information submitted to the SDRs. Under Rule 13n–4(b)(7), at such time and in such manner as may be directed by the Commission, an SDR is required to establish automated systems for monitoring, screening, and analyzing SBS data.[1110]

Rule 13n–5 establishes rules regarding SDR data collection and maintenance. Rule 13n–5(b)(1) requires every SDR to (1) establish, maintain, and enforce written policies and procedures reasonably designed for the reporting of complete and accurate transaction data to the SDR;[1111] (2) accept all transaction data reported to it in accordance with those policies and procedures; (3) accept all data provided to it regarding all SBSs in an asset class if the SDR accepts data on any SBS in that particular asset class; and (4) establish, maintain, and enforce written policies and procedures reasonably designed to satisfy itself that the transaction data that has been submitted to the SDR is complete and accurate, and clearly identifies the source for each trade side, and the pairing method (if any) for each transaction in order to identify the level of quality of the transaction data. An SDR is also required under Rule 13n–5(b)(1)(iv) to promptly record transaction data it receives.

In addition, Rule 13n–5(b) requires every SDR to establish, maintain, and enforce written policies and procedures reasonably designed: (1) to calculate positions [1112] for all persons with open SBSs for which the SDR maintains records; (2) to ensure that the transaction data and positions that it maintains are complete and accurate; and (3) to prevent any provision in a valid SBS from being invalidated or modified through the procedures or operations of the SDR.

Rule 13n–5(b)(4) requires that every SDR maintain the transaction data and related identifying information for not less than five years after the applicable SBS expires and historical positions for not less than five years. This data is required to be maintained in a place and format that is readily accessible and usable to the Commission and other persons with authority to access or view the information. SDRs must also maintain this data in an electronic format that is non–rewritable and non–erasable. Under Rule 13n–5(b)(7), the SDR's obligation to preserve, maintain, and make accessible the transaction data and historical positions extends to the periods required under Rule 13n–5 even if the SDR ceases to do business or to be registered pursuant to Exchange Act Section 13(n). Rule 13n–5(b)(8) requires every SDR to make and keep current a plan to ensure that the transaction data and positions that are recorded in the SDR continue to be maintained in accordance with Rule 13n–5(b)(7), including procedures for transferring the transaction data and positions to the Commission or its designee (including another registered SDR).

Rule 13n–6 establishes rules regarding SDR automated systems. Rule 13n–6 requires that every SDR, with respect to those systems that support or are integrally related to the performance of its activities, establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its systems provide adequate levels of capacity, integrity, resiliency, availability, and security.

3. Recordkeeping

Rule 13n–7 requires every SDR to make and keep records, in addition to those required under Rules 13n–4(b)(4) and 13n–5. Specifically, every SDR is

[1108] *See* Regulation SBSR Adopting Release, *supra* note 13.

[1109] *See also* Rule 13n–4(a)(5) (defining ''direct electronic access'').

[1110] The Commission is not requiring SDRs to monitor, screen, and analyze SBS data maintained by the SDR at this time. *See* Section VI.D.2.c.iii of this release.

[1111] ''Transaction data'' is defined in Rule 13n–5(a)(3).

[1112] ''Position'' is defined in Rule 13n–5(a)(2).

required, under Rule 13n–7(a)(1), to make and keep current a record for each office listing, by name or title, each person at that office who, without delay, can explain the types of records the SDR maintains at that office and the information contained in those records. Every SDR is also required, under Rule 13n–7(a)(2), to make and keep current a record listing each officer, manager, or person performing similar functions of the SDR responsible for establishing policies and procedures that are reasonably designed to ensure compliance with the Exchange Act and the rules and regulations thereunder. Rule 13n–7(b) requires every SDR to keep and preserve at least one copy of all documents made or received by it in the course of its business as such. These records are required to be kept for a period of not less than five years, the first two years in a place that is immediately available to representatives of the Commission for inspection and examination. Upon the request of any representative of the Commission, pursuant to Rule 13n–7(b)(3), an SDR is required to furnish promptly to such representative copies of any documents required to be kept and preserved by the SDR pursuant to Rules 13n–7(a) and (b). Under Rule 13n–7(c), the SDR's recordkeeping obligation is extended to the periods required under Rule 13n–7 even if the SDR ceases to do business or to be registered pursuant to Exchange Act Section 13(n).

SDRs are also required to make available the books and records required by Rules 13n–1 through 13n–11 upon request by Commission representatives for inspection and examination.[1113]

4. Reports

Under Rule 13n–8, SDRs are required to promptly report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines necessary or appropriate for the Commission to perform its duties.

5. Disclosure

Rule 13n–10 describes disclosures that SDRs are required to provide to a market participant before accepting any SBS data from that market participant or upon a market participant's request. The information required in the disclosure document includes: (1) the SDR's criteria for providing others with access to services offered and data maintained by the SDR, (2) the SDR's criteria for those seeking to connect to or link with the SDR, (3) a description of the SDR's policies and procedures regarding its safeguarding of data and operational reliability, as described in Rule 13n–6, (4) a description of the SDR's policies and procedures reasonably designed to protect the privacy of any and all SBS transaction information that the SDR receives from an SBS dealer, counterparty, or any registered entity, as described in Rule 13n–9(b)(1), (5) a description of the SDR's policies and procedures regarding its non–commercial and/or commercial use of the SBS transaction information that it receives from a market participant, any registered entity, or any other person, (6) a description of the SDR's dispute resolution procedures involving market participants, as described in Rule 13n–5(b)(6), (7) a description of all the SDR's services, including any ancillary services, (8) the SDR's updated schedule of any dues; unbundled prices, rates, or other fees for all of its services, including any ancillary services; any discounts or rebates offered; and the criteria to benefit from such discounts or rebates, and (9) a description of the SDR's governance arrangements.

6. Chief Compliance Officer; Compliance Reports and Financial Reports

Rule 13n–4(b)(11) requires an SDR and Rule 13n–11(a) requires the board of an SDR to designate a CCO to perform the duties identified in Rule 13n–11. Under Rules 13n–11(c)(6) and (7), the CCO is responsible for, among other things, establishing procedures for the remediation of noncompliance issues identified by the CCO and establishing and following appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

The CCO is also required under Rules 13n–11(d), (e), and (g) to prepare and submit annual compliance reports to the SDR's board for review before they are filed with the Commission. The annual compliance reports must contain, at a minimum, a description of the SDR's enforcement of its policies and procedures, any material changes to the policies and procedures since the date of the preceding compliance report, any recommendation for material changes to the policies and procedures, and any material compliance matters identified since the date of the preceding compliance report. The compliance reports must be filed in a tagged data format in accordance with the instructions contained in the EDGAR Filer Manual.[1114]

Rules 13n–11(f) and (g) require that financial reports be prepared and filed annually with the Commission. These financial reports must, among other things, be prepared in conformity with GAAP for the most recent two fiscal years of the SDR, audited by a registered public accounting firm that is qualified and independent in accordance with Rule 2–01 of Regulation S–X, and audited in accordance with standards of the Public Company Accounting Oversight Board. The financial reports must be provided as an official filing in accordance with the EDGAR Filer Manual and include, as part of the official filing, an Interactive Data Financial Report filed in accordance with Rule 407 of Regulation S–T.[1115]

7. Other Provisions Relevant to the Collection of Information

Rule 13n–4(c)(1) sets forth the requirements for SDRs related to market access to services and data. Among other things, an SDR must: (1) establish, monitor on an ongoing basis, and enforce clearly stated objective criteria that would permit fair, open, and not unreasonably discriminatory access to services offered and data maintained by the SDR, as well as fair, open, and not unreasonably discriminatory participation by market participants, market infrastructures, venues from which data can be submitted to the SDR, and third party service providers that seek to connect to or link with the SDR; and (2) establish, maintain, and enforce written policies and procedures reasonably designed to review any prohibition or limitation of any person with respect to services offered or data maintained by the SDR and to grant that person access to those services or data if the person has been discriminated against unfairly.

Rule 13n–4(c)(2)(iv) requires each SDR to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that the SDR's senior management and each member of the board or committee that has the authority to act on behalf of the board possesses requisite skills and expertise to fulfill their responsibilities in the management and governance of the SDR, have a clear understanding of their responsibilities, and exercise sound judgment about the SDR's affairs.

Rule 13n–4(c)(3) sets forth the conflicts of interest controls required of SDRs. In particular, SDRs must establish and enforce written policies and procedures reasonably designed to minimize conflicts of interest, including establishing, maintaining, and enforcing written policies and procedures

[1113] *See, e.g.,* Rules 13n–4(b)(1) and 13n–7(b)(3).

[1114] *See* 17 CFR 232.301.

[1115] *See* Section VI.J.5.c of this release discussing Rule 407 of Regulation S–T.

reasonably designed to identify and mitigate potential and existing conflicts of interest in the SDR's decision–making process on an ongoing basis and written policies and procedures regarding the SDR's non–commercial and commercial use of the SBS transaction information that it receives.

Rule 13n–5(b)(6) requires SDRs to establish procedures and provide facilities reasonably designed to effectively resolve disputes over the accuracy of the transaction data and positions that are recorded in the SDR.

Rules 13n–4(b)(8) and 13n–9 relate to the privacy requirements for SDRs. Rule 13n–4(b)(8) requires SDRs to maintain the privacy of any and all SBS transaction information that the SDR receives from a SBS dealer, counterparty, or any registered entity as prescribed in Rule 13n–9. Rule 13n–9(b)(1) requires each SDR to establish, maintain, and enforce written policies and procedures reasonably designed to protect the privacy of any and all SBS transaction information that the SDR receives from any SBS dealer, counterparty, or any registered entity. Rule 13n–9(b)(2) requires each SDR to establish and maintain safeguards, policies, and procedures reasonably designed to prevent the misappropriation or misuse of any confidential information received by the SDR, material, nonpublic information, and/or intellectual property. At a minimum, these policies and procedures must address limiting access to such information and intellectual property, standards pertaining to the trading by persons associated with the SDR for their personal benefit or the benefit of others, and adequate oversight.

B. Use of Information

1. Registration Requirements, Form SDR, and Withdrawal From Registration

As discussed above, Rules 13n–1 and 13n–3 generally require SDRs to register on Form SDR and make amendments on Form SDR when specified information on the form becomes inaccurate, as well as annually. The information collected in Form SDR is used to enhance the ability of the Commission to monitor SDRs and oversee their compliance with the federal securities laws and the rules and regulations thereunder, as well as understand their operations and organizational structure. The information will also be used to make determinations of whether to grant or institute proceedings to determine whether registration should be granted or denied.

As discussed above, Rule 13n–2 generally permits a registered SDR to withdraw from registration by filing Form SDR electronically in a tagged data format, designating a custodian of its books and records, and updating any inaccurate information contained in its most recently filed Form SDR. The information collected from an SDR withdrawing from registration is used by the Commission to monitor and oversee SDRs by ensuring that the Commission has an accurate record of registered SDRs and access to an SDR's books and records after the SDR withdraws from registration.

Also, under Rule 13n–11(a), an SDR is required to identify on Form SDR a person who has been designated by the board to serve as a CCO of the SDR. This information will help the Commission identify SDRs' CCOs.

2. SDR Duties, Data Collection and Maintenance, and Direct Electronic Access

As discussed above, Rules 13n–4(b), 13n–5, and 13n–6 specify the duties of SDRs, require SDRs to collect and maintain specific data and provide that data to certain entities.[1116] The information that is collected under these provisions will help ensure an orderly and transparent SBS market as well as provide the Commission and other relevant authorities with tools to help oversee this market.

3. Recordkeeping

As discussed above, Rule 13n–7 requires an SDR to make and keep books and records relating to its business (except for the transaction data and positions collected and maintained pursuant to Rule 13n–5) for a prescribed period.[1117] The information collected under these provisions is necessary for Commission representatives to inspect and examine an SDR and to facilitate the Commission's efforts to evaluate the SDR's compliance with the federal securities laws and the rules and regulations thereunder.

4. Reports

As discussed above, Rule 13n–8 requires SDRs to provide certain reports to the Commission.[1118] The Commission will use the information collected under this provision to assist in its oversight of SDRs, which will help ensure an orderly and transparent SBS market.

5. Disclosure

As discussed above, Rule 13n–10 requires SDRs to provide certain specific disclosures to a market participant before accepting any data from that market participant or upon a market participant's request.[1119] These disclosures will help market participants understand the potential risks and costs associated with using an SDR's services, as well as the protections and services available to them.

6. Chief Compliance Officer; Compliance Reports and Financial Reports

As discussed above, Rule 13n–11 requires an SDR's CCO to establish certain procedures relating to the remediation of noncompliance issues as well as prepare and sign an annual compliance report, which is filed with the Commission.[1120] Rule 13n–11 also requires that a financial report be prepared and filed with the Commission as an official filing in accordance with the EDGAR Filer Manual and include, as part of the official filing, an Interactive Data Financial Report filed in accordance with Rule 407 of Regulation S–T. The information collected under this rule will help ensure compliance by SDRs with the federal securities laws and the rules and regulations thereunder as well as assist the Commission in overseeing SDRs.

7. Other Provisions Relevant to the Collection of Information

As discussed above, Rule 13n–4(c)(1) requires SDRs to comply with certain requirements relating to market access to services and data, including establishment of certain policies and procedures and clearly stated objective criteria. Rule 13n–4(c)(2)(iv) requires SDRs to establish, maintain, and enforce policies and procedures regarding the skills and expertise, understanding of responsibilities, and sound judgment of the SDRs' senior management and members of the board or committee that has the authority to act on behalf of the board. Rule 13n–4(c)(3) requires SDRs to establish and enforce written conflicts of interest policies and procedures; to establish, maintain, and enforce written policies and procedures reasonably designed to identify and mitigate conflicts of interest on an ongoing basis; and to establish, maintain, and enforce

[1116] *See* Sections VI.D.2.c, VI.E, and VI.F.3 of this release discussing Rules 13n–4(b), 13n–5, and 13n–6, respectively.

[1117] *See* Section VI.G of this release discussing Rule 13n–7.

[1118] *See* Section VI.H.3 of this release discussing Rule 13n–8.

[1119] *See* Section VI.I.2.c of this release discussing Rule 13n–10.

[1120] *See* Section VI.J of this release discussing Rule 13n–11.

written policies and procedures regarding their noncommercial and commercial use of transaction information. Rule 13n–5(b)(6) requires SDRs to establish procedures and provide facilities reasonably designed to effectively resolve disputes regarding the accuracy of the transaction data and positions that are recorded in the SDRs. Rules 13n–4(b)(8) and 13n–9 require SDRs to establish, maintain, and enforce policies, procedures, and safeguards regarding privacy and misappropriation or misuse of certain information.[1121] The information collected pursuant to these provisions will help ensure a transparent and orderly SBS market, protect market participants' privacy, and facilitate Commission oversight of SDRs.

C. Respondents

1. Registration Requirements, Form SDR, and Withdrawal From Registration

As discussed above, the registration requirements of Rules 13n–1, 13n–2, 13n–3, 13n–11(a), and Form SDR apply to every U.S. person performing the functions of an SDR and every non–U.S. person performing the functions of an SDR within the United States, absent an exemption.[1122] Commission staff is aware of seven persons that have, to date, filed applications for registration with the CFTC as swap data repositories, three of which have withdrawn their applications and four of which are provisionally registered with the CFTC. It is reasonable to estimate that a similar number of persons provisionally registered with the CFTC may seek to register with the Commission as SDRs. Therefore, the Commission continues to estimate, for PRA purposes, that ten persons may register with the Commission as SDRs. The Commission also continues to estimate, for PRA purposes, that three of the ten respondents may be non–resident SDRs subject to the additional requirements of Rule 13n–1(f). The Commission received no comments on its estimate of the number of non–resident SDRs and continues to believe that this estimate is reasonable. Although non–resident SDRs may be able to take advantage of the SDR Exemption, the Commission conservatively estimates for PRA purposes that none of the three would rely on the exemption.

2. SDR Duties, Data Collection and Maintenance, and Direct Electronic Access

The duties, data collection and maintenance, and direct electronic access requirements of Rules 13n–4(b), 13n–5, and 13n–6 as a general matter, apply to all SDRs, absent an exemption. Thus, for these provisions, the Commission estimates that there will be 10 respondents.

3. Recordkeeping

The recordkeeping requirements of Rule 13n–7 apply to all SDRs, absent an exemption. Thus, for this rule, the Commission estimates that there will be 10 respondents.

4. Reports

The report requirement of Rule 13n–8 applies to all SDRs, absent an exemption. Thus, for this rule, the Commission estimates that there will be 10 respondents.

5. Disclosure

The disclosure requirements of Rule 13n–10 apply to all SDRs, absent an exemption. Thus, for this rule, the Commission estimates that there will be 10 respondents.

6. Chief Compliance Officer; Compliance Reports and Financial Reports

The provisions regarding CCOs set forth in Rule 13n–11 apply to all SDRs, absent an exemption. Thus, for this rule, the Commission estimates that there will be 10 respondents.

7. Other Provisions Relevant to the Collection of Information

The remaining requirements of the SDR Rules [1123] relevant to the collection of information, specifically Rules 13n–4(c), 13n–5(b)(6), and 13n–4(b)(8) and 13n–9, apply to all SDRs, absent an exemption. Thus, for these provisions, the Commission estimates that there will be 10 respondents.

As stated above, no commenters addressed any of these estimates.[1124]

D. Total Annual Reporting and Recordkeeping Burden

The Commission received no comments on any of the estimates provided in the Proposing Release. The Commission has, however, revised the burden associated with completing Form SDR to reflect some additional material incorporated from Form SIP to accommodate SDRs' registration as SIPs and to reflect a revision to the disclosure of business affiliations. The Commission has also made a change to correct a calculation error.[1125] Other than these changes, the Commission's estimates remain unchanged from the Proposing Release.

1. Registration Requirements, Form SDR, and Withdrawal From Registration

Rule 13n–1(b) and Rule 13n–3(a) (which relates to successor SDRs as described above) require SDRs to apply for registration using Form SDR and file the form electronically in tagged data format with the Commission in accordance with the instructions to the form.[1126] Further, Rule 13n–1(e) requires SDRs to designate an agent for service of process on Form SDR, and Rule 13n–11(a) requires SDRs to identify their CCOs on Form SDR. For purposes of the PRA, the Commission initially estimated that it would take an SDR approximately 400 hours to complete the initial Form SDR with the information required, including all exhibits to Form SDR.[1127] The Commission based this estimate on the number of hours necessary to complete Form SIP because Form SDR was based on Form SIP and incorporated many of the provisions of Form SIP.[1128] The Commission continues to estimate, based on Form SIP, that it will initially take an SDR 400 hours to complete the proposed portions of Form SDR with the information required, including all exhibits thereto,[1129] and now estimates that it will take an SDR an additional 81 hours to complete Form SDR to reflect the additional burden hours discussed below.

As noted above, the Commission has revised Form SDR to incorporate certain provisions from Form SIP to allow SDRs to register as both SDRs and SIPs using

[1121] *See* Section VI.I.1.c of this release discussing Rule 13n–9.

[1122] *See* Section VI.K of this release discussing Rule 13n–12 (''SDR Exemption'').

[1123] As noted above, ''SDR Rules'' means Rules 13n–1 to 13n-12.

[1124] *See* Section VII of this release discussing comments related to the collection of information.

[1125] In one minor respect, the calculation of the burden on non-resident SDRs under Rule 13n–1(f) has been revised to correct a calculation error, which slightly reduces the burden hours incurred by non-resident SDRs. *See infra* note 1136 and the accompanying text.

[1126] *See* Sections VI.A and VI.C.3 of this release discussing Rule 13n–1(b) and Rule 13n–3(a), respectively.

[1127] *See* Proposing Release, 75 FR at 77348, *supra* note 2.

[1128] *See* Proposing Release, 75 FR at 77348, *supra* note 2.

[1129] The Commission calculated in 2011 that Form SIP would take 400 hours to complete. *See* Submission for OMB Review; Comment Request, 76 FR 30984 (May 27, 2011) (outlining the Commission's most recent calculations regarding the PRA burdens for Form SIP) (''SIP PRA Filing''). While the requirements of Form SIP and Form SDR are not identical, the Commission believes that there is sufficient similarity for PRA purposes that the burden will be roughly equivalent.

Form SDR.[1130] The Commission believes that the burden of filing Form SDR should be adjusted to reflect these revisions. Because of the overlap between Form SDR and Form SIP, the Commission initially estimated that SDRs would need only one-quarter of the time to complete Form SIP, or 100 hours, when registering with the Commission as SIPs separately on Form SIP.[1131] The Commission believes that this estimate of the burden of an SDR to register as a SIP using Form SDR should be reduced to 80 hours because (1) SDRs will not have to process and file two separate forms; (2) SDRs will not have to provide duplicate information in two forms; and (3) SDRs will not have to prepare and file duplicate exhibits to two forms. The Commission believes that 80 hours represents a reasonable estimate of the additional burden hours that SDRs will incur in responding to the provisions incorporated from Form SIP into Form SDR.

Moreover, as discussed above, the Commission is revising Form SDR from the proposal by requiring disclosure of business affiliations in the ''derivatives industry'' rather than the ''OTC derivatives industry'' for an applicant's designated CCO, officers, directors, governors, and persons performing functions similar to any of the foregoing, and the members of all standing committees.[1132] The Commission believes that SDRs will incur an additional burden in replying to this disclosure, which may require disclosure of more business affiliations than would have been disclosed under Form SDR, as proposed. The Commission believes that 1 hour represents a reasonable estimate of the additional burden hours that each SDR will incur in responding to the revised disclosure requirement.

As noted above, the Commission estimates that 10 respondents will be subject to this burden.[1133] Accordingly, the Commission estimates that the one-time initial registration burden for all SDRs is approximately 4810 burden hours.[1134] The Commission believes that SDRs will, as a general matter, prepare Form SDR internally, except as otherwise discussed below. In the Proposing Release, the Commission solicited comments as to whether SDRs would outsource this requirement, but the Commission did not receive any comments in this regard.[1135]

Under Rule 13n–1(f), a non-resident SDR must (i) certify that the SDR can, as a matter of law, and will provide the Commission with prompt access to the SDR's books and records and can, as a matter of law, and will submit to onsite inspection and examination by the Commission and (ii) provide an opinion of counsel that the SDR can, as a matter of law, provide the Commission with access to the books and records of such SDR and can, as a matter of law, submit to onsite inspection and examination by the Commission. This creates an additional burden for non-resident SDRs. The Commission estimates, based on similar requirements of Form 20–F, that this additional burden will add 1 hour and $900 in outside legal costs per respondent.[1136] As stated above, the Commission believes that there will be three respondents to this collection, for a total additional burden of 3 hours and $2,700 for non-resident SDRs to comply with Rule 13n–1(f).[1137]

SDRs are also required to amend Form SDR pursuant to Rule 13n–1(d) annually as well as when information in certain items is or becomes inaccurate. Amendments are also permitted in certain situations involving successor SDRs pursuant to Rule 13n–3(b).[1138] The Commission believes that these amendments represent the ongoing annual burdens of Form SDR and Rules 13n–1(d) and 13n–3(b).[1139] The Commission estimates that the ongoing annualized burden for complying with these registration amendment requirements will be approximately 12 burden hours for each SDR per amendment[1140] and approximately 120 burden hours for all SDRs per amendment. Rule 13n–1(d) requires one annual amendment on Form SDR as well as interim amendments on Form SDR when certain reported information therein is or becomes inaccurate or, under Rule 13n–3(b), in certain circumstances involving successor

[1130] *See* Section VI.A.1.c of this release discussing Form SDR. *See also supra* note 220 discussing changes to proposed Form SDR to incorporate the additional information requested on Form SIP of applicants for registration as a SIP.

[1131] *See* Regulation SBSR Proposing Release, 75 FR at 75260, *supra* note 8 (''Any entity that is required to complete proposed Form SDR also would have to complete Form SIP. Because of the substantial overlap in the forms, much of the burden for completing Form SIP would be subsumed in completing proposed Form SDR. Therefore, the Commission preliminarily estimates that, having completed a proposed Form SDR, an entity would need only one-quarter of the time to then complete Form SIP, or 100 hours (specifically, 37.5 hours of legal compliance work and 62.5 hours of clerical compliance work).'').

[1132] *See* Section VI.A.1.c of this release discussing Form SDR.

[1133] *See* Section VII.C.1 of this release discussing respondents to the registration requirements and Form SDR.

[1134] The Commission derived its estimate from the following: (400 hours for the burden of Form SDR, as proposed) + (80 hours for the burden of responding to additional provisions incorporated from Form SIP) + (1 hour for the burden of responding to the revised disclosure of business affiliations) × 10 SDRs = 4810.

[1135] *See* Proposing Release, 75 FR at 77348, *supra* note 2.

[1136] Foreign Bank Exemption from the Insider Lending Prohibition of Exchange Act Section 13(k), Exchange Act Release No. 49616 (Apr. 26, 2004), 69 FR 24016, 24022 (Apr. 30, 2004) (outlining the Commission's calculations regarding the PRA burdens resulting from having to provide a legal opinion and additional disclosure required by Instruction 3 to Item 7.B to Form 20–F). The Commission calculates that the certification and opinion of counsel would result in an additional burden to non-resident SDRs of 3.25 hours, of which approximately 1 hour would be incurred by the non-resident SDRs themselves and 2.25 hours would be incurred by outside legal counsel, which would cost approximately $900 ($900 = 2.25 hours (portion of estimated burden incurred by outside legal counsel) × $400 (hourly rate for an outside attorney)). The Commission continues to estimate the hourly rate for an outside attorney at $400 per hour, based on industry sources. *See* Registration of Municipal Advisors, Exchange Act Release No. 70462 (Sep. 20, 2013), 78 FR 67468, 67593 n.1538 (Nov. 12, 2013) (estimating the cost of an outside attorney to be $400 per hour). In the Proposing Release, the Commission mistakenly estimated the burden to be 3 hours incurred by each non-resident SDR (in addition to $900 incurred by each SDR in connection with hiring outside legal counsel). Proposing Release, 75 FR at 77348, *supra* note 2.

[1137] *See* Section VII.C.1 of this release discussing respondents to the registration requirements and Form SDR. The base burden of 4,000 hours includes resident and non-resident SDRs. The 3 hour and $2700 figures are the additional costs as a result of Rule 13n–1(f) for non-resident SDRs not already accounted for in the 4,000 hour figure.

[1138] *See* Section VI.C.3 of this release discussing Rule 13n–3(b).

[1139] When estimating the burden associated with Form SIP, the Commission did not separately estimate the burden associated with amendments on Form SIP because the Commission believed that the annual burden of Form SIP encompassed the burden of amending Form SIP. SIP PRA Filing, 76 FR 30984, *supra* note 1129 (''This annual reporting and recordkeeping burden does not include the burden hours or cost of amending a Form SIP because the Commission has already overstated the compliance burdens by assuming that the Commission will receive one initial registration pursuant to Rule 609 on Form SIP a year.'') Although the Commission is basing its estimate of the burden of Form SDR on its estimate of the burden of Form SIP, the Commission is separately estimating the burden of amendments on Form SDR.

[1140] When amendments to Form ADV were proposed in 2008, the Commission estimated the hour burden for amendments to be roughly 3% of the initial burden. Amendments to Form ADV, Investment Advisers Act Release No. 2711 (Mar. 3, 2008), 73 FR 13958, 13979 (Mar. 14, 2008). In that proposal, the initial burden was calculated to be 22.25 hours per respondent and 0.75 hours per respondent for amendments. The Commission believes that a similar ratio will apply to filers of Form SDR because filers of Form ADV, like filers of Form SDR, are required to file amendments annually as well as when certain information on Form ADV becomes inaccurate. *See* Form ADV: General Instructions, *available at http://www.sec.gov/about/forms/formadv-instructions.pdf*. Thus, the Commission estimates that the annual burden of filing one amendment on Form SDR will be 3% of the 400 hour initial burden, or 12 hours.

SDRs, as discussed above.[1141] When Form ADV was amended in 2010, the Commission estimated that there were 2 amendments per year for that form.[1142] The Commission believes that 2 amendments will be a reasonable estimate for the number of amendments per year to correct inaccurate information or in situations involving successor SDRs because amendments on Form ADV, like amendments on Form SDR, are required annually as well as when certain information on Form ADV becomes inaccurate.[1143] Thus, the Commission estimates that respondents will be required to file on average a total of 3 amendments per year, 2 amendments plus the required annual amendment. Therefore, the Commission estimates that each respondent will have an average annual burden of 36 hours for a total estimated average annual burden of 360 hours.[1144] The Commission believes that SDRs will conduct this work internally.

SDRs may withdraw from registration by filing a withdrawal from registration on Form SDR electronically in a tagged data format. An SDR withdrawing from registration must designate on Form SDR a person to serve as the custodian of the SDR's books and records. An SDR must also update any inaccurate information. The Commission believes that an SDR's withdrawal from registration on Form SDR will be substantially similar to its most recently filed Form SDR. The Form SDR being filed in this circumstance will therefore already be substantially complete and as a result, the burden will not be as great as the burden of filing an application for registration on Form SDR. Rather, the Commission believes that the burden of filing a withdrawal from registration on Form SDR will be akin to filing an amendment on Form SDR. Thus, the Commission estimates that the one-time burden of filing a Form SDR to withdraw from registration will be approximately 12 burden hours for each SDR and approximately 120 burden hours for all SDRs.

2. *SDR Duties, Data Collection and Maintenance, and Direct Electronic Access*

As discussed above, Rules 13n–4(b)(2) and (4), and 13n–5 require SDRs to accept and maintain data, including transaction data, received from third parties and to calculate and maintain positions.[1145] Rule 13n–4(b)(5) requires SDRs to provide direct electronic access to the Commission or its designees. Rules 13n–4(b)(3) and 13n–5(b)(1)(iii) require SDRs to confirm the accuracy of the data submitted and to establish, maintain, and enforce written policies and procedures reasonably designed to satisfy themselves that the transaction data that has been submitted to the SDRs is complete and accurate. In addition, Rule 13n–5(b)(4) requires SDRs to maintain the transaction data and related identifying information for not less than five years after the applicable SBS expires and historical positions for not less than five years.[1146] This obligation would continue even if an SDR ceases to be registered or ceases doing business.[1147] SDRs are required to make and keep current a plan to ensure compliance with this requirement.[1148]

The Commission estimates that the average one-time start-up burden per SDR of establishing systems compliant with all of the requirements described in this section, including the SBS data maintenance requirements of Rules 13n–5(b)(4), (7), and (8), will be 42,000 hours and $10 million in information technology costs. Based on the expected number of respondents, the Commission estimates a total start-up cost of 420,000 hours and $100 million in information technology costs. The Commission further estimates that the average ongoing annual costs of these systems to be 25,200 hours and $6 million per respondent or a total of 252,000 hours and $60 million for a total ongoing annual burden.

Each SDR is also required to establish, maintain, and enforce written policies and procedures, reasonably designed: (1) Under Rule 13n–5(b)(1), for the reporting of complete and accurate transaction data to the SDR and to satisfy itself that such information is complete and accurate; (2) under Rule 13n–5(b)(2), to calculate positions for all persons with open SBSs for which the SDR maintains records; (3) under Rule 13n–5(b)(3), to ensure transaction data and positions that the SDR maintains are complete and accurate; (4) under Rule 13n–5(b)(5), to prevent any provision in a valid SBS from being invalidated or modified through the procedures or operations of the SDR; and (5) under Rule 13n–6, with respect to those systems that support or are integrally related to the performance of the SDR's activities, to ensure that those systems provide adequate levels of capacity, integrity, resiliency, availability, and security. While these policies and procedures will vary in exact cost, the Commission estimates that they will require an average of 210 hours per respondent per policy and procedure to prepare and implement. The Commission further estimates that these policies and procedures will require a total of $100,000 for outside legal costs per SDR.[1149] In sum, the Commission estimates the initial burden for all respondents to be 10,500 hours and $1,000,000 for outside legal costs.[1150] The Commission based these estimates upon those estimates the Commission used with regards to establishing policies and procedures regarding Regulation NMS.[1151] Once these policies and procedures are established, the Commission estimates that it will take, on average, 60 hours annually to maintain each of these policies and procedures per respondent, with a total estimated average annual burden of 3,000 hours for all respondents.[1152] The Commission

[1141] *See* Sections VI.A.4.c and VI.C.3 of this release discussing Rule 13n–1(d) and Rule 13n–3(b), respectively.

[1142] Amendments to Form ADV, Investment Advisers Act Release No. 3060 (July 28, 2010), 75 FR 49234, 49257 (Aug. 12, 2010). Although this information is based upon investment adviser statistics, the Commission believes that, for PRA purposes, the differences between investment advisers and SDRs are minimal.

[1143] *See* Form ADV: General Instructions, *available at http://www.sec.gov/about/forms/formadv-instructions.pdf.*

[1144] The 36 hour figure is the result of the estimated burden hour per SDR per amendment (12) times the estimated number of amendments per year (3). The 360 hour figure is the result of the estimated burden per SDR (36) times the number of SDRs (10).

[1145] *See* Sections VI.D.2.c, VI.E, and VI.F.3 of this release discussing Rules 13n–4(b)(2) and (4), 13n–5, and 13n–6, respectively.

[1146] This data is required to be maintained in a place and format that is readily accessible and usable to the Commission and other persons with authority to access or view the information and is also required to be maintained in an electronic format that is non-rewritable and non-erasable.

[1147] Rule 13n–5(b)(7).

[1148] Rule 13n–5(b)(8).

[1149] This figure is the result of an estimated $400 an hour cost for outside legal services (as discussed in *supra* note 1136) times 50 hours of outside legal consulting per policy and procedure, times 5 policies and procedures.

[1150] The 10,500 hour figure is the result of the number of hours per policy and procedure (210) times the number of policies and procedures required by these provisions (5), times the number of respondents (10). The $1,000,000 figure is the result of the outside dollar cost per respondent ($100,000) times the number of respondents (10).

[1151] Regulation NMS, Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37577 (June 29, 2005) (''Regulation NMS Adopting Release''). The Commission based these estimates on those for non-SRO trading centers rather than for SRO trading centers because the Commission believes that, for PRA purposes, non-SRO trading centers' burdens are more like those that SDRs will face under the SDR Rules. Like non-SRO trading centers, SDRs are not SROs and handle data regarding trades.

[1152] The 3,000 hour figure is the result of the estimated average hourly burden to maintain each policy and procedure (60), times the total number of policies and procedures required under this requirement (5), times the total number of SDRs (10).

believes that SDRs will conduct this maintenance work internally.

As discussed above, the Commission is not adopting the more specific requirements of proposed Rule 13n–6(b)(1), but is instead adopting the core policies and procedures requirement.[1153] The Commission continues to believe, however, that the 210 hour per respondent estimate for adopting policies and procedures is applicable because Rule 13n–6 continues to require SDRs to adopt policies and procedures. The Commission believes that the 210 hour estimate is a reasonable estimate because the estimate is used in other contexts to estimate the burdens of creating policies and procedures and the Commission expects that the policies and procedures required by Rule 13n–6 would result in a comparable burden to SDRs.[1154] Also as discussed above, the Commission is not adopting proposed Rules 13n–6(b)(3) and (4).[1155] Thus, the Commission is no longer including the estimated burden of those proposed rules in the overall burdens discussed in this release.

3. Recordkeeping

Every SDR is required, under Rule 13n–7(a)(1), to make and keep current a record for each office listing, by name or title, each person who, without delay, can explain the types of records the SDR maintains at that office. Also, under Rule 13n–7(a)(2), every SDR is required to make and keep current a record listing officers, managers, or persons performing similar functions with responsibility for establishing the policies and procedures of the SDR that are reasonably designed to ensure compliance with the Exchange Act and the rules and regulations thereunder. The Commission estimates that these records will create an initial burden, at a maximum, of 1 hour per respondent, for a total initial burden of 10 hours. The Commission estimates that the ongoing annual burden will be 0.17 hours (10 minutes) per respondent to keep these records current and to store these documents based on the Commission's estimates for similar requirements for broker-dealers.[1156] This results in a total ongoing annual burden of 1.7 hours. The Commission believes that SDRs will conduct this work internally.

Rule 13n–7(b) requires each SDR to keep and preserve at least one copy of all documents made or received by it in the course of its business as such, other than the transaction data and positions collected and maintained pursuant to Rule 13n–5. These records are required to be kept for a period of not less than five years, the first two years in a place that is immediately available to representatives of the Commission for inspection and examination.[1157] Upon the request of any representative of the Commission, an SDR is required to furnish promptly documents required to be kept and preserved by it pursuant to Rules 13n–7(a) or (b) to such a representative. As discussed above, Rule 13n–7(b) is intended to set forth the recordkeeping obligations of SDRs and thereby facilitate implementation of the inspection and examination of SDRs by representatives of the Commission.[1158] Based on the Commission's experience with recordkeeping costs and consistent with prior burden estimates for similar provisions,[1159] the Commission estimates that this requirement will create an initial burden of 345 hours and $1800 in information technology costs per respondent, for a total initial burden of 3450 hours and $18,000 for all respondents. The Commission further estimates that the ongoing annual burden will be 279 hours per respondent and a total ongoing annual burden of 2790 hours for all respondents.

4. Reports

Under Rule 13n–8, SDRs are required to report promptly to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines necessary or appropriate for the Commission to perform the duties of the Commission. For PRA purposes only, the Commission estimates that it will request these reports a maximum of once per year, per respondent. For PRA purposes only, the Commission estimates that these reports will be limited to information that will have been already compiled under the SDR Rules and thus require only 1 hour per response to compile and transmit. Thus, the Commission estimates, for PRA purposes only, that the total annual burden for these reports to be 10 hours for all respondents. The Commission believes that SDRs will conduct this work internally.

As discussed above, the Commission is not adopting proposed Rule 13n–6(b)(2).[1160] Thus, the Commission is no longer including the estimated burden of that proposed rule in the overall burdens discussed in this release.

5. Disclosure

As discussed above, pursuant to Rule 13n–10, SDRs are required to provide certain disclosures to certain market participants.[1161] The Commission estimates that the average one-time start-up burden per SDR of preparing this disclosure document is 97.5 hours and $4,400 of external legal costs and $5,000 of external compliance consulting costs, resulting in a total initial burden of 975 hours and $94,000 for all respondents. This estimate reflects the Commission's experience with and burden estimates for similar disclosure document requirements applied to investment advisers with 1000 or fewer employees and as a result of its discussions with market participants.[1162] Because the Commission expects that SDRs will be able to provide this disclosure document electronically, the Commission expects that this requirement will result in an average annual burden, after the initial creation of the disclosure document, of 1 hour per respondent, with a total annual burden of 10 hours for all respondents. The Commission believes that SDRs will conduct this ongoing annual work internally.

6. Chief Compliance Officer; Compliance Reports and Financial Reports

Under Rules 13n–11(c)(6) and (7), an SDR's CCO is responsible for, among other things, establishing procedures for the remediation of noncompliance issues identified by the CCO, and establishing and following appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues. Based on the Commission's estimates regarding Regulation

[1153] *See* Section VI.F.3 of this release discussing Rule 13n–6.

[1154] *See supra* note 1151 discussing Regulation NMS.

[1155] *See* Section VI.F.3 of this release discussing Rule 13n–6.

[1156] *See* Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934, Exchange Act Release No. 44992 (Oct. 26, 2001), 66 FR 55818, 55836 (Nov. 2, 2001) (regarding the collection of information pursuant to Rules 17a–3(a)(21) and (22)).

[1157] This obligation will continue even if an SDR withdraws from registration or ceases doing business. *See* Rule 13n–7(c).

[1158] *See* Section VI.G.2.c of this release discussing Rule 13n–7(b).

[1159] *See* Amendments to Rules for Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 59342 (Feb. 2, 2009), 74 FR 6456, 6472 (Feb. 9, 2009).

[1160] *See* Section VI.F.3 of this release discussing Rule 13n–6.

[1161] *See* Section VI.I.2.c of this release discussing Rule 13n–10.

[1162] *See* Amendments to Form ADV, Investment Advisers Act Release No. 3060 (July 28, 2010), 75 FR 49234, 49255–49256 (Aug. 12, 2010) (finding that average initial annual burden associated with Form ADV for each medium-sized investment adviser, meaning an adviser with between 11 and 1,000 employees, to be 97.5 hours).

NMS,[1163] it estimates that on average these two provisions will require 420 hours to implement and 120 hours to administer per year per respondent, for a total burden of 4200 hours initially and, on average, 1200 hours annually for all respondents.[1164] Also based on the estimates regarding Regulation NMS, the Commission estimates that SDRs will incur a total of $40,000 in initial outside legal costs to establish the required procedures as a result of this burden per respondent, for a total outside cost burden of $400,000 for all respondents.[1165]

A CCO is also required under Rules 13n–11(d), (e), and (g) to prepare and submit annual compliance reports to the SDR's board for review before the annual compliance reports are filed with the Commission. Based upon the Commission's estimates for similar annual reviews by CCOs of investment companies,[1166] the Commission estimates that these reports will require on average 5 hours per respondent per year. Thus, the Commission estimates a total annual burden of 50 hours for all respondents. The Commission believes that these costs will be internal costs.

Rules 13n–11(f) and (g) require that financial reports be prepared and filed with the Commission as an official filing in accordance with the EDGAR Filer Manual and include, as part of the official filing, an Interactive Data Financial Report filed in accordance with Rule 407 of Regulation S–T. The Commission estimates, based on its experience with entities of similar size to the respondents to this collection, that preparing and filing the financial reports will generally require on average 500 hours per respondent and cost $500,000 for independent public accounting services. Thus, the Commission estimates a total annual burden of 5000 hours and $5,000,000 for all respondents.

One commenter suggested that ''[i]n an attempt to harmonize final [SDR] rules with the CFTC's final [swap data repository] rules, the Commission should consider removing Proposed Rule 240.13n–11(f)(2)'s requirement that each financial report filed with a compliance report is audited in accordance with the standards of the Public Company Accounting Oversight Board by a registered public accounting firm that is qualified and independent unless the [SDR] is under a separate obligation to provide financial statements.'' [1167] The commenter believed that ''[t]his requirement imposes an additional burden for an [SDR] and is not justified in relation to the risks that an [SDR] would pose to its members'' and that ''[u]nlike clearing agencies or other entities supervised by the Commission, an [SDR] does not have financial exposure to its users or participants that would justify the imposition of this requirement.'' [1168] The commenter suggested that the Commission consider ''adopting [instead] the CFTC's approach in its final [swap data repository] rules, which require [a swap data repository's] financial statements be prepared in conformity with generally accepted accounting principles. . . .'' [1169]

As discussed further below, although the Commission understands that SDRs will incur costs in hiring and retaining qualified public accounting firms, the Commission believes that obtaining audited financial reports from SDRs is important given the significant role the Commission believes that SDRs will play in the SBS market.[1170] Given this significant role, the Commission believes that it is important to obtain audited financial reports from SDRs in order to determine whether or not they have sufficient financial resources to continue operations. While the Commission recognizes that Rule 13n–11(f)(2) may, in some cases, be more costly than the CFTC's requirement of quarterly unaudited financial statements, the Commission believes that the additional burden, where it exists, is justified by the benefits of requiring audited financial statements.

The compliance reports and financial reports filed with the Commission are required to be filed in a tagged data format. The compliance reports must be filed in a tagged data format in accordance with the instructions contained in the EDGAR Filer Manual,[1171] and the financial reports must be provided as an official filing in accordance with the EDGAR Filer Manual and include, as part of the official filing, an Interactive Data Financial Report filed in accordance with Rule 407 of Regulation S–T.[1172] These requirements will create an additional burden on respondents beyond the preparation of these reports. The Commission estimates, based on its experience with other tagged data initiatives, that these requirements will add a burden of an average of 54 hours and $22,772 in outside software and other costs per respondent per year, creating an estimated total annual burden of 540 hours and $227,720 for all respondents to tag the data for both the compliance reports and financial reports that are required under Rule 13n–11.

7. Other Provisions Relevant to the Collection of Information

Rule 13n–4(c)(1)(iii) requires an SDR to establish, monitor on an ongoing basis, and enforce clearly stated objective criteria that would permit fair, open, and not unreasonably discriminatory access to services offered and data maintained by the SDR as well as fair, open, and not unreasonably discriminatory participation by market participants and others that seek to connect to or link with the SDRs. For PRA purposes only, the Commission believes that this should be a lesser burden than for written policies and procedures because such criteria may not need to be as detailed or intricate as written policies and procedures. Thus, the Commission estimates that this provision will require 157.5 hours to implement, with an associated outside legal cost of $15,000 per respondent.[1173] This results in an estimate of an initial burden for this requirement for all respondents of 1575 hours and

[1163] *See* Regulation NMS Adopting Release, *supra* note 1151.

[1164] The 420 hour figure is the result of the estimated average burden hours to create one policy and procedure (210) times the 2 policies and procedures required by these provisions. The 120 hour figure is the result of the estimated average burden hours to administer one policy and procedure (60) times the 2 policies and procedures required by these provisions. The 4200 hour figure is the result of the estimated average burden hours per respondent to create these policies and procedures (420) times the number of SDRs (10). The 1200 hour figure is the result of the estimated average burden hours per respondent to maintain these policies and procedures (120) times the number of SDRs (10).

[1165] $400,000 figure is the result of an estimated $400 an hour cost for outside legal services (as discussed in *supra* note 1136) times 50 hours per policy and procedure, times 2 policies and procedures, times the number of SDRs (10).

[1166] *See* Compliance Programs of Investment Companies and Investment Advisers, Investment Company Act Release No. 25925 (Feb. 5, 2003), 68 FR 7038, 7047 (Feb. 11, 2003).

[1167] DTCC 5, *supra* note 19.

[1168] DTCC 5, *supra* note 19.

[1169] DTCC 5, *supra* note 19.

[1170] *See* Section VIII.D.6.c of this release discussing economic alternatives to Rule 13n–11(f)(2).

[1171] *See* 17 CFR 232.301.

[1172] *See* Section VI.J.5.c of this release discussing Rule 407 of Regulation S–T.

[1173] These numbers are based on 75% of the 210 hour and $20,000 (50 hours of outside legal costs at $400 an hour) estimates to create one set of written policies and procedures under Regulation NMS for non-SRO trading centers. *See* Regulation NMS Adopting Release, *supra* note 1151. This is based on an estimate that this requirement will create 75% of the burden of creating written policies and procedures under Regulation NMS. The Commission believes that the 75% assumption is appropriate because the Commission believes that Rule 13n–4(c)(1)(iii) imposes a lesser burden than the written policies and procedures required by other SDR Rules because it requires only written criteria and not full policies and procedures.

$150,000. The Commission estimates that the average annual burden will be 45 hours per respondent, for a total estimated average annual burden of 450 hours for all respondents.[1174] The Commission believes that SDRs will conduct this work internally.

Rule 13n–4(c)(1)(iv) requires an SDR to establish, maintain, and enforce written policies and procedures reasonably designed to review any prohibition or limitation of any person with respect to access to services offered, directly or indirectly, or data maintained by the SDR and to grant such person access to such services or data if such person has been discriminated against unfairly. Based on the Commission's estimates regarding Regulation NMS,[1175] it estimates that, on average, this provision will require 210 hours to implement and 60 hours to administer per year per respondent, for a total burden of 2100 hours initially and 600 hours on average, annually. The Commission also estimates, based on this earlier estimate, that SDRs will incur a total of $20,000 in initial outside legal costs to establish the required policies and procedures as a result of this provision per respondent for a total outside cost burden of $200,000 for all respondents.[1176]

Rule 13n–4(c)(2)(iv) requires an SDR to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that the SDR's senior management and each member of the board or committee that has the authority to act on behalf of the board possess requisite skills and expertise to fulfill their responsibilities in the management and governance of the SDR, to have a clear understanding of their responsibilities, and to exercise sound judgment about the SDR's affairs. Based on the Commission's estimates regarding similar requirements in Regulation NMS,[1177] it estimates that, on average, this provision will require 210 hours to implement and 60 hours to administer per year per respondent, for a total burden of 2100 hours initially and 600 hours on average, annually. The Commission also estimates, based on this earlier estimate, that SDRs will initially incur a total of $20,000 in outside legal costs to establish the required policies and procedures as a result of this provision per respondent for a total outside cost burden of $200,000 for all respondents.[1178] The Commission believes that SDRs will conduct the ongoing administration of this provision internally.

Rule 13n–4(c)(3) addresses the conflict of interest requirements governing SDRs. In particular, each SDR is required to establish and enforce written policies and procedures reasonably designed to minimize conflicts of interest. This includes establishing, maintaining, and enforcing written policies and procedures reasonably designed to identify and mitigate potential and existing conflicts of interest in the SDR's decision-making process on an ongoing basis. It also includes establishing, maintaining, and enforcing written policies and procedures regarding the SDR's non-commercial and commercial use of the SBS transaction information that it receives. Based on the Commission's estimates regarding Regulation NMS,[1179] it estimates that on average these two requirements will require 420 hours to implement and 120 hours to administer per year per respondent, for a total burden of 4200 hours initially and 1200 hours on average annually.[1180] Also based on the Regulation NMS estimates regarding policies and procedures, the Commission estimates that SDRs will incur a total of $40,000 in initial outside legal costs to establish the required policies and procedures as a result of this provision per respondent for a total outside cost burden of $400,000 for all respondents.[1181]

Rule 13n–5(b)(6) requires that every SDR establish procedures and provide facilities reasonably designed to effectively resolve disputes over the accuracy of the transaction data and positions that are recorded in the SDR. For PRA purposes only, the Commission believes that this is a greater burden than that for written policies and procedures alone because SDRs will also be required to provide facilities. Thus, the Commission estimates that Rule 13n–5(b)(6) will require 315 hours for each respondent to implement.[1182] There will likely be a need for a respondent to consult with outside legal counsel, which the Commission estimates will cost $30,000 per respondent.[1183] Thus, the Commission estimates a total initial burden for all respondents of 3150 hours and $300,000 in outside costs. The Commission estimates the ongoing average annual burden of this requirement to be 90 hours per respondent for a total of 900 hours for the estimated total annual burden for all respondents.[1184] The

[1174] These numbers are 75% of the 60 hour estimates of the ongoing burden regarding one set of written policies and procedures under Regulation NMS for non-SRO trading centers. *See* Regulation NMS Adopting Release, *supra* note 1151. This is based on an estimate that this requirement will create 75% of the ongoing burden of written policies and procedures under Regulation NMS. The Commission believes that the 75% assumption is appropriate because the Commission believes that Rule 13n–4(c)(1)(iii) imposes a lesser burden than the written policies and procedures required by other SDR Rules because it requires only written criteria and not full policies and procedures.

[1175] *See* Regulation NMS Adopting Release, *supra* note 1151. These estimates are based on 100% of the 210 hour estimate to create one set of written policies and procedures and 100% of the 60 hour estimate of the ongoing burden regarding one set of written policies and procedures under Regulation NMS for non-SRO trading centers. The Commission believes that the 100% assumption is appropriate because Rule 13n–4(c)(1)(iv) requires written policies and procedures.

[1176] This figure is the result of an estimated $400 an hour cost for outside legal services (as discussed in *supra* note 1136) times 50 hours per policy and procedure, times 1 policy and procedure, times the number of SDRs (10). The Commission believes that SDRs will use outside counsel to initially create these policies and procedures because SDRs just beginning operations may not have sufficient in-house legal staff.

[1177] *See* Regulation NMS Adopting Release, *supra* note 1151.

[1178] This figure is the result of an estimated $400 an hour cost for outside legal services (as noted in *supra* note 1136) times 50 hours per policy and procedure, times 1 policy and procedure, times the number of SDRs (10).

[1179] *See* Regulation NMS Adopting Release, *supra* note 1151.

[1180] The 420 hour figure is the result of the estimated average burden hours to create one policy and procedure (210) times the 2 policies and procedures required by these provisions. The 120 hour figure is the result of the estimated average burden hours to administer one policy and procedure (60) times the 2 policies and procedures required by these provisions. The 4200 hour figure is the result of the estimated average burden hours per respondent to create these policies and procedures (420) times the number of SDRs (10). The 1200 hour figure is the result of the estimated average burden hours per respondent to maintain these policies and procedures (120) times the number of SDRs (10).

[1181] This $400,000 figure is the result of an estimated $400 an hour cost for outside legal services (as discussed in *supra* note 1136) times 50 hours, times 2 policies and procedures, times the number of SDRs (10).

[1182] This number is 150% of the 210 hour estimate to create one set of written policies and procedures under Regulation NMS for non-SRO trading centers. *See* Regulation NMS Adopting Release, *supra* note 1151. This is based on an estimate that Rule 13n–5(b)(6) will create 150% of the burden of creating written policies and procedures under Regulation NMS because, in addition to establishing procedures, SDRs will also be required to provide facilities reasonably designed to effectively resolve disputes over the accuracy of the transaction data and positions that are recorded in the SDR.

[1183] This number is 150% of the estimate of outside legal costs (50 hours) to create one set of written policies and procedures under Regulation NMS for non-SRO trading centers, at an estimate of $400 per hour. *See* Regulation NMS Adopting Release, *supra* note 1151. This is based on an estimate that Rule 13n–5(b)(6) will create 150% of the burden of creating written policies and procedures under Regulation NMS because, in addition to establishing procedures, SDRs will also be required to provide facilities reasonably designed to effectively resolve disputes over the accuracy of the transaction data and positions that are recorded in the SDR.

[1184] These numbers are based on 150% of the 60 hour estimate of the ongoing burden regarding one set of written policies and procedures under Regulation NMS for non-SRO trading centers. *See*

Commission believes that SDRs will conduct this ongoing work internally.

Rules 13n–4(b)(8) and 13n–9 address privacy requirements for SDRs. Rule 13n–4(b)(8) requires SDRs to maintain the privacy of any and all SBS transaction information that the SDR receives from a SBS dealer, counterparty, or any registered entity as prescribed in Rule 13n–9. Rule 13n–9(b)(1) requires each SDR to establish, maintain, and enforce written policies and procedures reasonably designed to protect the privacy of any and all SBS transaction information that the SDR receives from any SBS dealer, counterparty, or any registered entity. Based on the Commission's estimates regarding Regulation NMS,[1185] it estimates that, on average, these provisions will require 420 hours to implement and 120 hours to administer per year per respondent, for a total burden of 4200 hours initially and 1200 hours on average, annually.[1186] Also based on the Regulation NMS estimates,[1187] the Commission estimates that SDRs will incur a total of $40,000 in initial outside legal costs to establish the required policies and procedures as a result of these provisions per respondent for a total outside cost burden of $400,000 for all respondents.[1188]

Rule 13n–9(b)(2) requires each SDR to establish and maintain safeguards, policies, and procedures reasonably designed to prevent the misappropriation or misuse, directly or indirectly, of (1) any confidential information received by the SDR, (2) material, nonpublic information, and/or (3) intellectual property. At a minimum, these safeguards, policies and procedures must address limiting access to that information and intellectual property, standards pertaining to the trading by persons associated with the SDR for their personal benefit or the benefit of others, and adequate oversight. Based on the Commission's estimates regarding Regulation NMS,[1189] it estimates that on average this provision will require 210 hours to implement and 60 hours to administer per year per respondent, for a total burden of 2100 hours initially and 600 hours on average, annually. Also based on the Regulation NMS estimates,[1190] the Commission estimates that SDRs will incur a total of $20,000 in initial outside legal costs to establish the required policies and procedures as a result of this provision per respondent for a total outside cost burden of $200,000 for all respondents.[1191]

E. Collection of Information Is Mandatory

1. Registration Requirements, Form SDR, and Withdrawal From Registration

The collection of information relating to registration requirements, Form SDR, and withdrawal from registration is mandatory for all SDRs when registering with the Commission, amending their applications for registration, or withdrawing from registration.

2. SDR Duties, Data Collection and Maintenance, and Direct Electronic Access

The collection of information relating to SDR duties, data collection and maintenance, and direct electronic access is mandatory for all SDRs, absent an exemption.[1192]

3. Recordkeeping

The collection of information relating to recordkeeping is mandatory for all SDRs, absent an exemption.

4. Reports

The collection of information relating to reports is mandatory for all SDRs, absent an exemption.

5. Disclosure

The collection of information relating to disclosure is mandatory for all SDRs, absent an exemption.

6. Chief Compliance Officer; Compliance Reports and Financial Reports

The collection of information relating to CCOs is mandatory for all SDRs, absent an exemption.

7. Other Provisions Relevant to the Collection of Information

The collection of information relating to other relevant provisions is mandatory for all SDRs, absent an exemption.

F. Confidentiality

As discussed above, the Commission expects that it will make any information filed on, or in an exhibit or attachment to, an application for registration on Form SDR available on its Web site, except in cases where confidential treatment is requested by the applicant and granted by the Commission.[1193]

As discussed above, the Commission may make any information filed on, or in an exhibit or attachment to, an amendment on Form SDR available on its Web site, except in cases where confidential treatment is requested by the applicant and granted by the Commission.[1194]

As discussed above, the Commission may make any information filed on, or in an exhibit or attachment to, withdrawals on Form SDR available on its Web site, except in cases where confidential treatment is requested by the applicant and granted by the Commission.[1195]

Pursuant to Rules 13n–11(d), (f), and (g), SDRs must file an annual compliance report and financial report with the Commission. One commenter believed that the Commission should keep the annual compliance report confidential.[1196] As discussed above, the Commission is not providing, by rule, that the annual compliance reports and financial reports are automatically granted confidential treatment, but an SDR may seek confidential treatment

Regulation NMS Adopting Release, *supra* note 1151. This is based on an estimate that Rule 13n–5(b)(6) will create 150% of the ongoing burden of written policies and procedures under Regulation NMS because, in addition to establishing procedures, SDRs will also be required to provide facilities reasonably designed to effectively resolve disputes over the accuracy of the transaction data and positions that are recorded in the SDR.

[1185] *See* Regulation NMS Adopting Release, *supra* note 1151.

[1186] The 420 hour figure is the result of the estimated average burden hours to create one policy and procedure (210) times the 2 policies and procedures required by these provisions. The 120 hour figure is the result of the estimated average burden hours to administer one policy and procedure (60) times the 2 policies and procedures required by these provisions. The 4200 hour figure is the result of the estimated average burden hours per respondent to create these policies and procedures (420) times the number of SDRs (10). The 1200 hour figure is the result of the estimated average burden hours per respondent to maintain these policies and procedures (120) times the number of SDRs (10).

[1187] *See* Regulation NMS Adopting Release, *supra* note 1151.

[1188] This $400,000 figure is the result of an estimated $400 an hour cost for outside legal services (as discussed in *supra* note 1136) times 50 hours per policy and procedure, times 2 policies and procedures, times the number of SDRs (10).

[1189] *See* Regulation NMS Adopting Release, *supra* note 1151.

[1190] *See* Regulation NMS Adopting Release, *supra* note 1151.

[1191] This figure is the result of an estimated $400 an hour cost for outside legal services (as discussed in *supra* note 1136) times 50 hours per policy and procedure, times 1 policy and procedure, times the number of SDRs (10).

[1192] *See* Section VI.K of this release discussing the SDR Exemption.

[1193] *See* Section VI.A.1.c of this release discussing Form SDR.

[1194] *See* Section VI.A.4.c of this release discussing amendments on Form SDR.

[1195] *See* Section VI.B.3 of this release discussing withdrawal from registration.

[1196] DTCC 2, *supra* note 19 (''DTCC firmly believes [that] the annual [compliance] report should be kept confidential by the Commission'' and explained that ''[g]iven the level of disclosure expected to be required . . . the report will likely contain confidential and proprietary business information.'').

pursuant to Exchange Act Rule 24b–2.[1197] The Commission may make filed annual compliance reports and financial reports available on its Web site, except in cases where confidential treatment is requested by the SDR and granted by the Commission.

G. Retention Period of Recordkeeping Requirements

Rule 13n–5(b)(4) requires that SDRs maintain the transaction data and related identifying information for not less than five years after the applicable SBS expires and historical positions for not less than five years. This data is required to be maintained in a place and format that is readily accessible and usable to the Commission and other persons with authority to access or view the information and is also required to be maintained in an electronic format that is non-rewritable and non-erasable.

Pursuant to Rule 13n–7(b), an SDR is required to preserve at least one copy of all documents as shall be made or received by it in the course of its business as such, including all records required under the Exchange Act and the rules and regulations thereunder, other than the transaction data and positions collected and maintained pursuant to Rule 13n–5. These records are required to be kept for a period of not less than five years, the first two years in a place that is immediately available to representatives of the Commission for inspection and examination.

VIII. Economic Analysis

A. Introduction

The Commission has considered the economic implications of the SDR Rules and Form SDR as well as comments regarding the costs and benefits of the SDR Rules and Form SDR.[1198] The Commission is sensitive to the economic consequences and effects of the SDR Rules and Form SDR, including their costs and benefits. In adopting the SDR Rules and Form SDR, the Commission has analyzed their costs and benefits, as set forth below, and has been mindful of the economic consequences of its policy choices. The SDR Rules and Form SDR fulfill the mandate of the Dodd-Frank Act that the Commission adopt rules governing the registration, duties, and core principles of SDRs.

As discussed above, the SBS market developed as an opaque OTC market without centralized trading venues or dissemination of pre- or post-trade pricing and volume information.[1199] SBS dealers, as intermediaries in SBS transactions, observe order flow and have access to pricing and volume information that is generally not available to other market participants. With such access, SBS dealers generally have an informational and competitive advantage over non-dealer counterparties, granting SBS dealers some degree of market power, which may enable them to extract economic rents in transactions with those counterparties. This informational advantage may result in increased transaction costs for less-informed counterparties relative to a market where all participants have competitive access to information.

In addition to the advantages that an opaque SBS market may give to SBS dealers, the opacity of the SBS market as described above may also affect current participation levels in the SBS market.[1200] Certain market participants, including speculative traders who rely on proprietary trading strategies, may wish to keep their trades anonymous and may prefer to operate in an opaque SBS market. Hedgers and other market participants that do not benefit from opacity, however, may be dissuaded from participating in the SBS market by higher transaction costs and their disadvantageous informational position.

Opacity in the SBS market also limits the ability of market participants to form broad views of financial market conditions. In capital markets, pricing and volume information provide signals about liquidity and the quality of investments, including investments in reference entities underlying derivatives. In the SBS market, where pricing and volume information is not readily available, market participants may have difficulty assessing investment opportunities as well as the state of the broader market, or must form assessments with a narrower set of information than SBS dealers. In an opaque SBS market, difficulty in assessing investment opportunities and the state of the SBS market may inhibit participation in the SBS market.

While opacity may generally confer a competitive advantage to SBS dealers who observe the largest share of order flow and limit participation in the SBS market, some features of the market and market participants may offset these effects. For example, large market participants that often transact with many SBS dealers are aware of the potential information asymmetries in the market. Furthermore, by virtue of their high trading volume, these participants may also observe a large share of the market, reducing the information advantage afforded to SBS dealers. SBS dealers may wish to compete for SBS business with the largest counterparties, and these participants may be able to obtain access to competitive pricing.[1201] Nevertheless, the Commission generally expects that market participants with proprietary access to information—in the case of SBS markets, SBS dealers who observe order flow—can benefit from opacity and earn economic rents from their less-informed counterparties.[1202]

It is in this context that the Commission analyzes the economic effects of the SDR Rules and Form SDR. The Commission envisions that registered SDRs will become an essential part of the infrastructure of the SBS market. Persons that meet the definition of an SDR will be required by the SDR Rules to maintain policies and procedures relating to data accuracy and maintenance, and will be further required by Regulation SBSR to publicly disseminate transaction-level data, thereby promoting post-trade transparency in the SBS market. Transparency stemming from the SDR Rules and Regulation SBSR should reduce the informational advantage of SBS dealers and promote competition among SBS dealers and other market participants.[1203] This could reduce implicit transaction costs and attract liquidity from those market participants that do not benefit from opacity, providing more opportunities for market participants with hedging needs to manage their risks and providing more opportunities for market participants to

[1197] *See* Section VI.J.4.c of this release discussing compliance reports.

[1198] *See* Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, Securities Act Release No. 9338 (July 18, 2012), 77 FR 48208, 48332 (Aug. 13, 2012) (noting that ''[t]he programmatic costs and benefits associated with substantive rules applicable to [SBSs] under Title VII are being addressed in more detail in connection with the applicable rulemakings implementing Title VII'').

[1199] *See* Section II.A of this release discussing limited information currently available to market participants.

[1200] *See* Section II.B of this release.

[1201] As described in the Cross-Border Proposing Release, the non-dealer market participants transact with four counterparties on average. Cross Border Proposing Release, 78 FR at 31126 n.1329, *supra* note 3. However, the largest market participants transact with as many as 50 counterparties, suggesting that dealers compete for business with these participants.

[1202] *See, e.g.*, Richard C. Green, Burton Hollifield, and Norman Schurhoff, *Financial Intermediation and the Costs of Trading in an Opaque Market*, 20 Review of Financial Studies 275 (2007) (estimating that, prior to the introduction of transparency measures in the municipal bond market, dealers exercised substantial market power, but that market power decreases with the size of the trade).

[1203] *See* Section II.A of this release.

access liquidity. Similarly, public dissemination of SBS pricing and volume information by SDRs pursuant to Regulation SBSR may allow market participants to incorporate information from the SBS market into their assessments of SBS and non-SBS investment opportunities, thereby promoting price efficiency and efficient capital allocation.

At the same time, increased quality and quantity of pricing and volume information and other information available to the Commission about the SBS market may enhance the Commission's ability to respond to market developments. As discussed above, DTCC–TIW voluntarily provides to the Commission data on individual CDS transactions in accordance with an agreement between the DTCC–TIW and the ODRF. In conjunction with Regulation SBSR, the SDR Rules should assist the Commission in fulfilling its regulatory mandates and legal responsibilities such as detecting market manipulation, fraud, and other market abuses by providing it with greater access to SBS information than that provided under the voluntary reporting regime. In particular, without an SDR, data on SBS transactions could be dispersed and might not be readily available to the Commission and others. SDRs may be especially critical during times of market turmoil, both by giving the Commission information to monitor risk exposures taken by individual entities or to particular referenced entities, and by promoting stability through enhanced transparency. Additionally, more available data about the SBS market should give the Commission better insight into how regulations are affecting, or may affect, the SBS market, which may allow the Commission to better craft regulations to achieve desired goals, and therefore, increase regulatory effectiveness.

In adopting the SDR Rules and Form SDR, the Commission has attempted to balance different goals. For example, data fragmentation resulting from multiple SDRs may make it more difficult for the Commission and to the extent that SBS data is made public, the public, to aggregate SBS data from multiple SDRs. The Commission could have resolved issues related to data fragmentation by designating one SDR as the recipient of the information from all other SDRs in order to provide the Commission with a consolidated location from which to access SBS data for regulatory monitoring and oversight purposes. Designating one SDR as the data consolidator, however, could discourage new market entrants, and interfere with competition. Designating one SDR as data consolidator may also impose an additional cost on market participants to cover the SDR's cost for acting as the data consolidator. Similarly, the SDR Exemption,[1204] which allows certain non-U.S. persons to perform the functions of an SDR within the United States without registering with the Commission, may reduce potentially duplicative registration and operating costs by allowing these persons to continue to receive data reported pursuant to the reporting requirements of a foreign jurisdiction. The SDR Exemption, however, also increases the risk of data fragmentation to the extent that reporting requirements differ across jurisdictions and relevant authorities have difficulty accessing data across jurisdictions. The Commission has attempted to balance the considerations of competition, data fragmentation, and avoidance of potentially duplicative registration and operating costs in adopting the SDR Rules.

In assessing the economic impact of the SDR Rules and Form SDR, the Commission refers to the broader costs and benefits associated with the application of the rules and interpretations as ''programmatic'' costs and benefits. These include the costs and benefits of applying the substantive Title VII requirements to the reporting of transactions by market participants, as well as to the functions performed by market infrastructures, including SDRs, in the global SBS market. The Commission's analysis also takes into consideration ''assessment costs,'' which arise from current and future market participants expending effort to determine whether they are subject to the SDR Rules. Current and future market participants could incur expenses in making this determination even if they ultimately are not subject to the SDR Rules. Finally, the Commission's analysis considers ''compliance costs,'' which are the costs that SDRs will incur in registering and complying with the SDR Rules.

B. General Comments on the Costs and Benefits of the SDR Rules

The Commission received two comments regarding the general costs and benefits of the SDR Rules.[1205]

One commenter offered general observations about the application of the SDR Rules to non-resident SDRs, maintaining that the costs of an extraterritorial application of U.S. law would be significant and not estimable beforehand, and that the Commission should consider comity and conflict with non-U.S. regulatory requirements when weighing the costs and benefits of the SDR Rules.[1206] The Commission agrees that determining the costs and benefits of the application of the SDR Rules to non-resident SDRs is difficult; nevertheless, the Commission has analyzed the economic effects of the SDR Rules below.

A second commenter recommended that ''the Commission should generally seek to avoid any divergence from the CFTC's and international regulators' frameworks that is likely to give rise to undue costs or burdens.'' [1207] The commenter believed that ''divergence is generally warranted only if the rule adopted by the Commission is more flexible than those adopted by others (and therefore would not preclude the voluntary adoption of consistent practices by market participants).'' [1208] The Commission acknowledges that there are concerns regarding divergent regulatory frameworks. The economic effects that could result from divergent regulatory frameworks, as well as other comments regarding the costs and benefits of specific rules, are discussed below. The Commission notes, however, that the SDR Rules are largely consistent with the CFTC's rules. Furthermore, the Commission has consulted and coordinated with foreign regulators through bilateral and multilateral discussions and has taken these discussions into consideration in developing the SDR Rules and Form SDR.

C. Consideration of Benefits, Costs, and the Effect on Efficiency, Competition, and Capital Formation

The potential economic effects stemming from the SDR Rules can be grouped into several categories. In this section, the Commission first discusses assessment costs relating to the SDR Rules. The Commission then discusses the SDR Rules' programmatic costs and benefits, highlighting broader and more comprehensive economic effects that result when the SDR Rules are considered as a part of other rules resulting from Title VII of the Dodd Frank Act. Next, the Commission discusses the effects of the SDR Rules on efficiency, competition, and capital formation. In the next section, the Commission discusses the compliance costs relating to certain of the SDR Rules.

[1204] *See* Section VI.K of this release discussing Rule 13n–12.

[1205] *See* US & Foreign Banks, *supra* note 24; IIB CB, *supra* note 26.

[1206] *See* US & Foreign Banks, *supra* note 24.

[1207] IIB CB, *supra* note 26.

[1208] IIB CB, *supra* note 26.

1. Assessment Costs

The Commission believes that persons will incur assessment costs in determining whether they fall within the statutory definition of an SDR. The Commission believes that the statutory definition in Exchange Act Section 3(a)(75) describes the core services or functions of an SDR. Whether a person falls within the statutory definition of an SDR is fact-specific. The Commission believes that at least 10 persons [1209] will make the assessment of whether they fall within the statutory definition of an SDR, which may result in a cost of $15,200 per person, for a total cost of $152,000 for all persons.[1210]

The Commission believes that certain non-U.S. persons may incur assessment costs in determining whether they can rely on the SDR Exemption. Under the Commission's approach, certain non-U.S. persons that perform the functions of an SDR may incur certain assessment costs in determining whether they fall within the statutory definition of an SDR, and, if so, whether they perform the functions of an SDR within the United States. If so, they may incur certain assessment costs in determining whether they can rely on the SDR Exemption.[1211]

With respect to determining the availability of the SDR Exemption for a non-U.S. person performing the function of an SDR within the United States, the Commission believes that costs would arise from confirming whether the Commission and each regulator with supervisory authority over such non-U.S. person have entered into an MOU or other arrangement. The Commission believes that because this information generally should be readily available,[1212] the cost involved in making such assessment should not exceed one hour of in-house legal or compliance staff's time or $380 per person,[1213] for an aggregate one-time cost of $7,600.[1214]

Assessment costs may also result from determining whether existing policies and procedures will satisfy the requirements of the SDR Rules. An SDR may have existing policies and procedures that it may use to comply with the SDR Rules. In order to use such policies and procedures to comply with the SDR Rules, the SDR will first have to assess whether the policies and procedures will result in compliance with the SDR Rules.

2. Programmatic Costs and Benefits

a. SDR Registration, Duties, and Core Principles

Rules 13n–1 through 13n–3 and Form SDR establish the mechanism by which SDRs must register as such pursuant to Exchange Act Section 13(n), absent an exemption. Rules 13n–4 through 13n–10 set forth the duties and core principles of SDRs. Rule 13n–11 sets forth the requirements for an SDR's CCO, annual compliance reports, and financial reports. Finally, Rule 13n–12 provides an exemption from registration and other requirements in certain circumstances.

The Commission believes that it and market participants will enjoy a number of programmatic benefits from the SDR Rules. For example, because the final SDR Rules require SDRs to register with and provide data to the Commission and require SDRs to take steps to facilitate accurate data collection and retention with respect to SBSs, the SDR Rules will increase the availability of SBS data relative to that in the existing voluntary disclosure system.[1215] The data provided by SDRs will provide a window into SBS transactions and allow the Commission to oversee the SBS market beyond that which is currently available. Further, the SDR Rules requiring SDRs to provide information to market participants about the nature and costs of SDRs' services are intended to provide transparency about the costs of reporting, thereby enabling market participants to make informed choices among competing SDRs. Finally, by requiring SDRs to register with the Commission, provide the Commission with access to their books and records, and submit to inspections and examinations by representatives of the Commission, the SDR Rules will allow the Commission to evaluate SDRs' compliance with the Exchange Act and the rules and regulations thereunder.

Persons that meet the definition of an SDR will also be required to comply with the public dissemination requirements of Regulation SBSR. Public dissemination is a core component of post-trade transparency in the SBS market. As discussed below, enhanced transparency should produce market-wide benefits in terms of a reduction in SBS dealers' market power. Enhanced transparency could also lead to reduced trading costs if competitive access to information and reduced SBS dealers' market power reduce the premium that SBS dealers are able to charge for intermediating SBS transactions.[1216] Indeed, post-trade transparency has been shown to reduce implicit trading costs (*i.e.,* the difference between the price at which a market participant can trade a security and the fundamental value of that security) in other securities markets. For example, post-trade transparency that followed the introduction of TRACE and trade reporting in the corporate bond market has been shown to lower implicit costs of trading corporate bonds.[1217] While there are differences between SBSs and corporate bonds, there are similarities to how the markets are structured—both markets evolved as dealer-centric OTC markets with limited pre- or post-trade transparency. Thus, the Commission expects that some of the benefits that result from transparency in the corporate bond market may extend to SBS markets as well.

[1209] At a minimum, the Commission estimates that the same persons who will register with the Commission as SDRs will make an assessment as to whether they fall within the statutory definition of an SDR. Therefore, the Commission estimates that at least 10 persons will make this assessment. *See* Section VII.C.1 of this release discussing the number of respondents to the registration requirements and Form SDR.

[1210] This estimate is based on an estimated 40 hours of in-house legal or compliance staff's time to assess whether a person falls within the statutory definition of an SDR. The Commission estimates that a person will assign these responsibilities to an Attorney. Data from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, suggest that the cost of an Attorney is $380 per hour. Thus, the total one-time estimated dollar cost is $15,200 per person and $152,000 for all persons, calculated as follows: (Compliance Attorney at $380 per hour for 40 hours) × 10 persons = $152,000.

[1211] The Commission recognizes that some non-U.S. persons that perform the functions of an SDR may do so entirely outside the United States, and thus, may determine that they do not need to incur any assessment costs related to the Commission's approach.

[1212] The Commission provides a list of MOUs and other arrangements on its public Web site, which are available at this link: *http://www.sec.gov/about/offices/oia/oia_cooparrangements.shtml.*

[1213] This estimate is based on an estimated one hour of in-house legal or compliance staff's time to confirm whether the Commission and each regulator with supervisory authority over such non-U.S. person have entered into an MOU or other arrangement. The Commission estimates that an SDR will assign these responsibilities to an Attorney. Thus, the total one-time estimated dollar cost is $380 per person, calculated as follows: (Attorney at $380 per hour for 1 hour) = $380.

[1214] This total is based on the assumption that as many as 20 non-U.S. persons that perform the functions of an SDR would use in-house legal or compliance staff, specifically, an Attorney, to determine whether an applicable MOU or other arrangement is in place. Thus, the total one-time estimated dollar cost for all 20 non-U.S. persons is $7,600, calculated as follows: (Attorney at $380 per hour for 1 hour) × 20 non-U.S. persons = $7,600.

[1215] *See* Section II.B of this release discussing data that is currently available to regulators and market participants.

[1216] *See* Section VIII.C.3 of this release discussing the potential effects on competition, efficiency, and capital formation.

[1217] *See supra* note 58.

Nevertheless, the extent to which trading cost reductions are realized could be mitigated by additional factors. Trade reporting, public dissemination, and providing direct electronic access are costly in terms of establishing and maintaining infrastructure necessary to report and store large volumes of trade-level transaction data. SDRs may be able to pass the costs of complying with the SDR Rules and public dissemination requirements onto reporting parties—*e.g.,* SBS dealers—who, in turn, may be able to pass costs on to their customers. Therefore, the infrastructure costs associated with transparency may partially offset the trade cost benefits that could accrue through the reduction in asymmetric information and SBS dealers' market power.

Enhanced transparency could produce additional market-wide benefits by promoting stability in the SBS market, particularly during periods of market turmoil,[1218] and it should indirectly contribute to improved stability in related financial markets, including equity and bond markets.[1219] In conjunction with Regulation SBSR, the SDR Rules should assist the Commission in fulfilling its regulatory mandates and legal responsibilities such as detecting market manipulation, fraud, and other market abuses by providing it with greater access to SBS information.[1220] In particular, without an SDR, data on SBS transactions would be dispersed and would not be readily available to the Commission and others. SDRs may be especially critical during times of market turmoil, both by giving the Commission information to monitor risk exposures taken by individual entities or to particular referenced entities, and by promoting stability through enhanced transparency. Additionally, more available data about the SBS market should give the Commission a better idea of how regulations are affecting, or may affect, the SBS market, which may allow the Commission to better craft regulation to achieve desired goals, and therefore, increase regulatory effectiveness.

The Commission believes that U.S. persons performing the functions of an SDR will play a key role in collecting and maintaining information regarding SBS transactions, and making available such information to the Commission and the public, all of which may affect the transparency of the SBS market within the United States.[1221] Requiring such U.S. persons to comply with the SDR Requirements will help ensure that they maintain data and make it available in a manner that advances the benefits that the requirements are intended to produce.

The information provided by SDRs to the Commission pursuant to the SDR Rules may assist it in advancing the goals of the Dodd-Frank Act. The Dodd-Frank Act was designed, among other things, to promote the financial stability of the United States by improving accountability and transparency in the financial system and the SDR Rules, which implement the statute, are a necessary and important component of implementing this goal.[1222] As discussed above, an SBS transaction involves ongoing financial obligations between counterparties during the life of the transaction, which can typically span several years, and counterparties bear credit and market risk until the transaction is terminated or expires. Because large market participants may have ongoing obligations with many different counterparties, financial markets may be particularly vulnerable to instability resulting from the financial distress of a large market participant being transmitted to counterparties and others through connections in the SBS market. In extreme cases, the default of a large market participant could lead to financial distress among the counterparties to SBSs, which could introduce the potential for sequential counterparty failure and create uncertainty in the SBS market, thereby reducing the willingness of market participants to extend credit. A reduction in credit may result in liquidity and valuation difficulties that could spill over into the broader financial market.

Thus, disruptions in the SBS market could potentially affect other parts of the financial system. Increasing the availability and reliability of information about the SBS market will improve the Commission's ability to oversee and regulate this market. A more complete understanding of activity in the SBS market, including information on risk and connections between counterparties, should help the Commission assess the risk in these markets and evaluate appropriate regulatory responses to market developments. Appropriate and timely regulatory responses to market developments could enhance investor protection and confidence, which may encourage greater investor participation in the SBS market.[1223]

b. Registration Requirements in the Cross-Border Context

The Commission believes that there are a number of programmatic benefits to requiring non-U.S. persons that perform the functions of an SDR within the United States to register with the Commission and to comply with the SDR Requirements. These requirements are intended to help ensure that all persons that perform the functions of an SDR within the United States function in a manner that will increase the transparency and further other goals of the Dodd-Frank Act.[1224] The SDR Requirements, including requirements that SDRs register with the Commission, retain complete records of SBS transactions, maintain the integrity and confidentiality of those records, and disseminate appropriate information to the public are intended to help ensure that the data held by SDRs is reliable and that the SDRs provide information that contributes to the transparency of the SBS market while protecting the confidentiality of information provided by market participants.[1225]

[1218] *See* Proposing Release, 75 FR at 77307, *supra* note 2 (''SDRs may be especially critical during times of market turmoil, both by giving relevant authorities information to help limit systemic risk and by promoting stability through enhanced transparency. By enhancing stability in the SBS market, SDRs may also indirectly enhance stability across markets, including equities and bond markets.'').

[1219] *See* Darrell Duffie, Ada Li, and Theo Lubke, *Policy Perspectives of OTC Derivatives Market Infrastructure,* Federal Reserve Bank of New York Staff Report No. 424 (Jan. 2010, as revised Mar. 2010) (''Transparency can have a calming influence on trading patterns at the onset of a potential financial crisis, and thus act as a source of market stability to a wider range of markets, including those for equities and bonds.'').

[1220] *See* Proposing Release, 75 FR at 77307, *supra* note 2 (''The enhanced transparency provided by an SDR is important to help regulators and others monitor the build-up and concentration of risk exposures in the SBS market.''); *see also* DTCC 1*, *supra* note 20 (''A registered SDR should be able to provide (i) enforcement agents with necessary information on trading activity; (ii) regulatory agencies with counterparty-specific information about systemic risk based on trading activity; (iii) aggregate trade information for publication on market-wide activity; and (iv) a framework for real-time reporting from swap execution facilities and derivatives clearinghouses.'').

[1221] *See* Proposing Release, 75 FR at 77356, *supra* note 2; Cross-Border Proposing Release, 78 FR at 31184, *supra* note 3.

[1222] *See* Dodd-Frank Act, Public Law 111–203 at Preamble.

[1223] *See* Section II.A of this release discussing broad economic considerations.

[1224] *See* Proposing Release, 75 FR at 77354, *supra* note 2 (noting that ''the proposed SDR rules will lead to a more robust, transparent environment for the market for SBSs''); Cross-Border Proposing Release, 78 FR at 31183, *supra* note 3 (discussing programmatic benefits to requiring non-U.S. persons that perform the functions of an SDR within the United States to register with the Commission and to comply with the SDR Requirements). *See also* Dodd-Frank Act, Public Law 111–203 at Preamble.

[1225] *See* Proposing Release, 75 FR at 77307, *supra* note 2 (noting that SDRs ''are intended to play a key role in enhancing transparency in the SBS market''

Continued

Non-U.S. persons performing the functions of an SDR within the United States also may affect the transparency of the SBS market within the United States, even if transactions involving U.S. persons or U.S. market participants are being reported to such non-U.S. persons in order to satisfy the reporting requirements of a foreign jurisdiction (and not those of Title VII). The Commission believes that, to the extent that non-U.S. persons are performing the functions of an SDR within the United States, they will likely receive data relating to transactions involving U.S. persons and other U.S. market participants. Ensuring that such data is maintained and made available in a manner consistent with the SDR Requirements would likely contribute to the transparency of the U.S. market and reduce potential confusion that may arise from discrepancies in transaction data due to, among other things, differences in the operational standards governing persons that perform the functions of an SDR in other jurisdictions (or the absence of such standards for any such persons that are not subject to any regulatory regime). Moreover, given the sensitivity of reported SBS data and the potential for market abuse and subsequent loss of liquidity in the event that a person performing the function of an SDR within the United States fails to maintain the privacy of such data,[1226] the Commission believes that requiring non-U.S. persons that perform the functions of an SDR within the United States to register with the Commission will help ensure that data relating to transactions involving U.S. persons or U.S. market participants is handled in a manner consistent with the confidentiality protections applicable to such data, thereby reducing the risk of the loss or disclosure of proprietary or other sensitive data and of market abuse arising from the misuse of such data.

As noted above, the Commission is adopting Exchange Act Rule 13n–12 to provide an exemption from the SDR Requirements for non-U.S. persons that perform the functions of an SDR within the United States, provided that each regulator with supervisory authority over any such non-U.S. person has entered into an MOU or other arrangement with the Commission that addresses the confidentiality of data collected and maintained by such non-U.S. person, access by the Commission to such data, and any other matters determined by the Commission.

The Commission believes that this SDR Exemption will not significantly reduce the programmatic benefits associated with the SDR Requirements. Although the approach could potentially reduce the number of persons performing the functions of an SDR that are registered with the Commission,[1227] the Commission believes that there will be little impact on reporting of transactions involving U.S. persons because data relating to transactions involving U.S. persons and U.S. market participants would still be required to be reported, pursuant to Regulation SBSR, to an SDR registered with the Commission and subject to all SDR Requirements, absent other exemptive relief from the Commission.[1228] Moreover, the SDR Exemption may have the benefit of reducing the incentive for non-U.S. persons performing the functions of an SDR within the United States to restructure their operations to avoid registration with the Commission.

Moreover, the SDR Exemption is conditioned on an MOU or other arrangement with each regulator with supervisory authority over the non-U.S. person that seeks to rely on the SDR Exemption. This MOU or arrangement will address the Commission's interest in having access to SBS data involving U.S. persons and other U.S. market participants that is maintained by non-U.S. persons that perform the functions of an SDR within the United States and in protecting the confidentiality of such data. Further, Rule 13n–12 should not impair the integrity and accessibility of SBS data. The Commission, therefore, believes that exempting certain non-U.S. persons performing the functions of an SDR within the United States, subject to the condition described above, will likely not significantly affect the programmatic benefits that the SDR Requirements are intended to achieve.[1229]

Registering with the Commission and complying with the SDR Requirements will impose certain costs on an SDR.[1230] The Commission believes that the SDR Exemption is likely to reduce the costs for certain non-U.S. persons performing the functions of an SDR within the United States without reducing the expected benefits of the SDR Requirements.[1231] As discussed in Section VI.K.3 of this release, the Commission believes that such persons will likely be performing the functions of an SDR in order to permit persons to satisfy reporting requirements under foreign law. The exemption, if available, will allow these non-U.S. persons to continue to perform this function within the United States without incurring the costs of compliance with the SDR Rules; such non-U.S. persons may pass along their cost savings to U.S. market participants that report to the non-U.S. persons pursuant to the market participants' reporting obligations under foreign law. Additionally, the exemption may reduce the incentive for non-U.S. persons performing the functions of an SDR within the United States to restructure their operations to avoid registration with the Commission.

The Commission recognizes that conditioning the SDR Exemption may delay the availability of the SDR Exemption to certain non-U.S. persons. In some cases, the Commission may be unable to enter into an MOU or other arrangement with each regulator with supervisory authority over a non-U.S. person performing the functions of an SDR within the United States. The

and thus ''it is important that SDRs are well-run and effectively regulated'').

[1226] *See* Proposing Release, 75 FR at 77307, *supra* note 2 (''The inability of an SDR to protect the accuracy and integrity of the data that it maintains or the inability of an SDR to make such data available to regulators, market participants, and others in a timely manner could have a significant negative impact on the SBS market.'').

[1227] As of November 2014, there were several non-U.S. persons performing the functions of an SDR or intending to do so in the future. *See* OTC Derivatives Market Reforms Eighth Progress Report on Implementation, Financial Stability Board (Nov. 2014), *available at http://www.financialstabilityboard.org/wp-content/uploads/r_141107.pdf.* The Commission, however, does not possess data regarding how many, if any, of these persons perform the functions of an SDR within the United States.

[1228] *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 908(c) setting forth ''substituted compliance'' regime).

[1229] The Commission also anticipates that non-U.S. persons that avail themselves of the SDR Exemption will be subject to the regulatory requirements of one or more foreign jurisdictions. The SDR Exemption will help ensure that such persons do not incur costs of compliance with duplicative regulatory regimes while also ensuring, through the condition that each regulator with supervisory authority enter into an MOU or other arrangement with the Commission, that they are subject to regulatory requirements that will prevent them from undermining the transparency and other purposes of the SDR Requirements by, for example, failing to protect the confidentiality of data relating to U.S. persons and other U.S. market participants.

[1230] *See* Cross-Border Proposing Release, 78 FR at 31184–31185, *supra* note 3 (discussing programmatic costs of SDRs registering with the Commission and complying with the SDR Requirements).

[1231] As noted above, the data currently available to the Commission does not indicate how many non-U.S. persons performing the functions of an SDR perform such functions within the United States. *See supra* note 1227. However, even if persons with reporting obligations under Regulation SBSR report their transactions to a non-U.S. person that performs the functions of an SDR within the United States, but is exempt from registration, they will still be required to report transactions under Regulation SBSR to an SDR registered with the Commission, absent other exemptive relief from the Commission. *See* Regulation SBSR Adopting Release, *supra* note 13 (Rule 908(c) setting forth ''substituted compliance'' regime).

resulting delay or unavailability of the SDR Exemption may lead some of these non-U.S. persons to exit the U.S. market by, for example, restructuring their business so that they perform the functions of an SDR entirely outside the United States, potentially resulting in business disruptions in the SBS market. Despite the potential business disruptions in the SBS market that could result from the delay or unavailability of the SDR Exemption, the Commission believes that conditioning the SDR Exemption on an MOU or other arrangement with each regulator with supervisory authority over the non-U.S. person that seeks to rely on the exemption is important because it will help ensure the Commission's access to SBS data involving U.S. persons and other U.S. market participants that may be maintained by such non-U.S. person.

Finally, in developing its approach to the application of the SDR Requirements to non-U.S. persons that perform the functions of an SDR within the United States, the Commission considered, as an alternative to Rule 13n–12, requiring such non-U.S. persons to comply with the SDR Requirements, including registering with the Commission, as well as other requirements applicable to SDRs registered with the Commission.[1232] In such a scenario, a non-U.S. person performing the functions of an SDR within the United States would be required to register as an SDR and incur the costs associated with the SDR Requirements, as well as other requirements applicable to SDRs registered with the Commission.[1233] The Commission believes that the benefit of requiring all non-U.S. persons that perform the functions of an SDR within the United States to register with the Commission, even where similar objectives could be achieved through an exemption conditioned on an MOU or other arrangement with each regulatory authority with supervisory authority over such non-U.S. persons, would be marginal, particularly in light of the costs that such non-U.S. persons would incur in complying with the SDR Requirements, as well as other requirements applicable to SDRs registered with the Commission.[1234]

3. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

In developing its approach to the registration, duties, and implementation of the core principles of SDRs, the Commission has focused on meeting the goals of Title VII, including promoting financial stability and transparency in the United States financial system.[1235] The Commission has also considered the effects of its policy choices on competition, efficiency, and capital formation as mandated under Exchange Act Section 3(f).[1236] That section requires the Commission, whenever it engages in rulemaking pursuant to the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In addition, Exchange Act Section 23(a)(2) requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[1237] Section 23(a)(2) also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[1238]

In Section II of this release, the Commission described the baseline used to evaluate the economic impact of the SDR Rules, including the impact on efficiency, competition, and capital formation. In particular, the Commission noted that the current SBS market is characterized by information asymmetries that confer a competitive advantage on SBS dealers relative to their non-dealer counterparties who may be less informed. The Commission also noted that the opacity of the SBS market may lead to certain inefficiencies in the market relative to a transparent market, including higher transaction costs and wider spreads. Finally, the Commission noted that some of the effects described below, such as the effects on capital formation, are measured relative to a world without public dissemination requirements. That is, in evaluating the effect of the SDR Rules on capital formation, the Commission discusses how the final SDR Rules may enhance or diminish capital formation relative to the current opaque SBS market environment.

a. Potential Effects on Efficiency

Two important economic characteristics of SDRs are the high fixed costs and increasing economies of scale. Compliance with the SDR Rules necessitates large investments in information technology infrastructure, including storage infrastructure and technology for electronic reporting and access to data, which results in high fixed costs for SDRs. The Commission believes, however, that once the infrastructure for operating as an SDR and compliance with the SDR Rules is in place, the SDR's costs of accepting transactions are minimal. Consequently, an SDR exhibits increasing economies of scale in that the average total cost to the SDR per transaction reported, which includes fixed costs, diminishes with the increase in volume of trades reported as high fixed costs are spread over a larger number of trades.

As a result, viewed in terms of minimizing the average SDR-related cost per transaction, it may be efficient to limit the total number of SDRs to one per asset class. In such a case, the SDR chosen for each asset class would receive reports of all transactions in that asset class, reducing inefficient duplication of fixed costs and potentially giving that SDR a large number of transactions over which the SDR could spread its high fixed costs. Furthermore, limiting the number of SDRs to one per asset class would reduce the potential difficulties that may arise when consolidating and aggregating data from multiple SDRs.[1239] While such a limitation would resolve many of the challenges involved in aggregating SBS data, the Commission is not limiting the number of SDRs.[1240] There are competitive benefits to having multiple SDRs, as discussed below. Furthermore, the existence of multiple SDRs may reduce operational risks, such as the risk that a catastrophic event or the failure of an SDR leaves no registered SDR to which transactions can be reported, impeding the functioning of the SBS market.

Nevertheless, the Commission believes that multiple SDRs may result in certain inefficiencies relative to a market with a single SDR per asset class,

[1232] *See* Cross-Border Proposing Release, 78 FR at 31185–31186, *supra* note 3 (discussing alternatives to proposed SDR Exemption).

[1233] *See* Cross-Border Proposing Release, 78 FR at 31185–31186, *supra* note 3.

[1234] *See* Cross-Border Proposing Release, 78 FR at 31185–31186, *supra* note 3.

[1235] Dodd-Frank Act, Public Law 111–203 at Title VII.

[1236] 15 U.S.C. 78c(f).

[1237] Exchange Act Section 23(a)(2), 15 U.S.C. 78w(a)(2).

[1238] Exchange Act Section 23(a)(2), 15 U.S.C. 78w(a)(2).

[1239] As discussed above, some commenters suggested limiting the number of SDRs to one per asset class. However, their suggestions concerning average total cost and data fragmentation extend to one SDR that serves the entire SBS market. *See* Section IV of this release discussing number of SDRs.

[1240] *See* Section IV of this release discussing number of SDRs.

as explained above.[1241] In particular, the potential reporting of transaction data to multiple SDRs may create a need to aggregate that data by the Commission and other interested parties. If aggregation of data is made difficult because identifiers or data field definitions used by different SDRs are not compatible, then the cost and time required by the Commission or any other interested party to aggregate the data would increase, and the Commission's oversight of the SBS market would be less efficient. The complications associated with aggregation could be particularly costly when aggregation is required across the same asset class and related transactions reside in different SDRs.

On the other hand, by allowing the creation of multiple SDRs, Exchange Act Section 13(n)[1242] and the SDR Rules may result in positive effects for market participants. Competition among SDRs may lead to better services and may reduce the costs of those services for market participants. As discussed above, there are currently four swap data repositories for equity or credit swaps that are provisionally registered with the CFTC and that may choose to register with the Commission as SDRs. While some swap data repositories may ultimately choose not to register and operate as an SDR, either because of regulatory requirements that govern SDRs or for other reasons, the Commission is not limiting the number of SDRs per asset class.

Furthermore, the Commission believes that the SDR Exemption may have positive effects on operational efficiency for SDRs, in terms of cost savings relative to a scenario where the SDR Exemption does not exist. The Commission believes that the exemption will allow certain non-U.S. persons to continue to receive data reported pursuant to the reporting requirements of a foreign jurisdiction without registering with the Commission as an SDR, subject to a condition that helps ensure that the privacy of the data and the Commission's access to the data is maintained. The SDR Exemption may also reduce the incentives for SDRs to restructure their operations to avoid triggering registration requirements, thereby reducing potentially negative effects on efficiency.[1243] In particular, some persons may restructure solely for the purposes of avoiding registration; in such restructurings, persons expend resources that could potentially be put to more productive uses.

Viewed in the context of the broader transparency goals of Title VII, the SDR Rules may provide additional informational (or price) efficiency benefits in terms of asset valuation.[1244] That is, by improving the flow of information about SBSs and the reference entities underlying SBSs, the SDR Rules may result in a market where prices of SBSs and their underlying reference entities more accurately reflect their fundamental value. The SDR Rules, together with the reporting and public dissemination requirements of Regulation SBSR, should also promote the process by which market participants seek the best available price. Increased availability of information may lead to a reduction in the spread between the price at which market participants can enter into an SBS and the fundamental value of that SBS (referred to as implicit trading costs in this release).[1245] Real-time transaction pricing and volume information provide signals to market participants about the value of their investments. Market participants may use these signals to update their assessment of the value of an investment opportunity. In contrast to an opaque market, information revealed through trades that are reported and publicly disseminated allows market participants to make more-informed assessments of asset valuations, promoting informational efficiency. This should be true for the underlying assets or reference entities as well. That is, information from SBS transactions provides signals not only about SBS valuation, but also about the value of reference assets underlying SBSs.

b. Potential Effects on Competition

The Commission believes that by allowing multiple SDRs to provide data collection, maintenance, and recordkeeping services, the SDR Rules should promote competition among SDRs. The Commission notes that, in an analogous setting, there are currently four swap data repositories provisionally registered with the CFTC, suggesting that multiple SDRs competing in the SBS market is a likely outcome.[1246] Increased competition may lower costs for users of SDR services.

The Commission believes that because the SDR Rules do not preclude an SDR from registering with the Commission and other foreign relevant authorities, non-resident SDRs generally can take steps to comply with both their home country requirements and the SDR Rules, and therefore can register with the Commission. The Commission recognizes that a non-resident SDR will incur additional burdens in making the certification or providing the opinion of counsel required by Exchange Act Rule 13n–1(f), and that these burdens may place non-resident SDRs at a competitive disadvantage relative to resident SDRs.[1247] The Commission believes that by subjecting non-resident SDRs to the same requirements as resident SDRs in all other respects—*e.g.,* requiring all SDRs to provide prompt access to books and records and submit to onsite inspection and examination—the SDR Rules do not give a significant competitive advantage to either resident or non-resident SDRs. As a result, the Commission believes that the SDR Rules should promote competition among SDRs both domestically and internationally.

The Commission recognizes that there may be competitive effects due to the jurisdictional divide between the CFTC and the Commission with respect to swaps and SBSs. Swap data repositories that are registered only with the CFTC may compete against SDRs that are registered only with the Commission, and vice versa, for acceptance of mixed swaps. As noted by commenters, divergent regulatory frameworks could lead to ''undue costs or burdens'' for SDRs and SBS market participants.[1248] To the extent that the SDR Rules contain provisions that are more burdensome than the CFTC's rules, the SDR Rules could hinder (1) an SDR registered with only the Commission from competing against a swap data repository registered with only the CFTC for acceptance of mixed swaps, and (2) an SDR registered with both the Commission and the CFTC from competing against a swap data repository registered with only the CFTC for acceptance of CFTC-regulated swaps. On the other hand, if the SDR Rules are less burdensome than the CFTC's rules, then an SDR registered with only the Commission may enjoy a competitive advantage relative to (1) a swap data repository registered with only the CFTC for acceptance of mixed swaps, and (2) an SDR registered with both the Commission and the CFTC for acceptance of SBSs.

[1241] *See* Sections II.A and IV of this release.

[1242] 15 U.S.C. 78m(n).

[1243] *See* Section VI.K of this release discussing the SDR Exemption.

[1244] Informational or price efficiency refers to the degree to which asset prices reflect available information about the value of the asset. *See, e.g.,* Eugene Fama, *Efficient Capital Market II,* 46(5) Journal of Finance 1575 (1991).

[1245] *See* Section II.A of this release.

[1246] *See* Section II.B of this release.

[1247] *See* Section VIII.D.1.b of the release discussing cost of certification and opinion of counsel.

[1248] *See* IIB CB, *supra* note 26.

As stated above, the Commission believes that the SDR Rules and the CFTC's final rules governing swap data repositories' registration, duties, and core principles are largely consistent.[1249] Indeed, the Commission believes that, on the whole, the SDR Rules are substantially similar to those adopted by the CFTC for swaps, and that any differences are not significant enough to reduce the ability of SEC-registered SDRs to compete against CFTC-registered swap data repositories for acceptance of mixed swaps.[1250] Thus, the Commission does not believe that the SDR Rules, as a result of the jurisdictional divide between the Commission and the CFTC, will negatively affect competition in the market for acceptance of mixed swaps.

Finally, in addition to affecting competition among SDRs, the SDR Rules have implications for competition among market participants. As discussed above, by observing order flow, SBS dealers may have access to information not available to the broader market, and therefore may enjoy a competitive advantage over their non-dealer counterparties.[1251] Because price and volume information (revealed to SBS dealers through their observation of order flow) contains signals about the value of investment opportunities, SBS dealers are able to use private information about order flow to derive more-informed assessments of current market values, allowing them to extract economic rents from less-informed counterparties.[1252] Impartial access to pricing and volume information should allow market participants to derive more-informed assessments of asset valuations, reducing SBS dealers' market power over other market participants. Additionally, price transparency should also promote competition among SBS dealers. The Commission expects that, as in other securities markets, quoted bids and offers should form and adjust according to reported, executed trades.

c. Potential Effects on Capital Formation

The Commission believes that compliance with the SDR Rules will promote data collection, maintenance, and recordkeeping. In conjunction with Regulation SBSR, including its public dissemination requirements, the SDR Rules will likely have a positive effect on transparency in credit markets by increasing information about the SBS market. In particular, the definition of an SDR, which identifies persons that may be required to register with the Commission and thereby required to comply with the public dissemination requirements of Regulation SBSR, and the data accuracy and maintenance requirements in the SDR Rules, should have a positive effect by making comprehensive, accurate information available to all market participants. The increased availability of information should enable persons that rely on the SBS market to meet their hedging objectives to make better decisions about capital formation in general, which may positively affect capital formation in the broader capital market. In particular, improved transparency in the SBS market should improve the quality and quantity of price information available in the SBS market, so that SBS prices more accurately reflect fundamental value and risk. Improved insight into the relationship between price and risk could attract hedgers and other market participants that do not benefit from opacity, improving liquidity and increasing opportunities for market participants to diversify and share risks through trading SBS.[1253]

Similarly, the Commission expects increased transparency in the SBS market to benefit the broader economy. Similar to the derivatives markets providing signals about the valuation of underlying reference entities, transparent SBS prices provide signals about the quality of a reference entity's business investment opportunities. Because market prices incorporate information about the value of underlying investment opportunities, market participants can use their observations of price and volume to derive assessments of the profitability of a reference entity's business and investment opportunities. Furthermore, business owners and managers can use information gleaned from the SBS market—both positive and negative—to make more-informed investment decisions in physical assets and capital goods, as opposed to investment in financial assets, thereby promoting efficient resource allocation and capital formation in the real economy. Finally, transparent SBS prices may also make it easier for firms to obtain new financing for business opportunities, by providing information and reducing uncertainty about the value and profitability of a firm's investments.[1254]

The SDR Rules are intended to help the Commission perform its oversight functions in a more effective manner. For example, a more complete picture of the SBS market, including information on risk exposures and asset valuations, should allow the Commission to better assess risk in the SBS market and evaluate the effectiveness of the Commission's regulation of the SBS market. Appropriate and timely regulatory responses to market developments could enhance investor protection, and could encourage greater participation in the SBS market, thereby improving risk-sharing opportunities and efficient capital allocation. In addition, the SBS data provided by SDRs to the Commission should help it advance the goals of the Dodd-Frank Act, thereby promoting stability in the overall capital markets. Increased overall stability in the capital markets could promote investor participation, thereby increasing liquidity and capital formation.

Finally, to the extent that the SDR Rules promote competition among SDRs, as discussed above, the SDR Rules may lower costs for users of SDR services.[1255] Decreased costs may promote capital formation by increasing the amount of capital available for investment by users of SDR services.

D. Costs and Benefits of Specific Rules

1. Registration Requirements, Form SDR, and Withdrawal From Registration

Rule 13n–1 and Form SDR describe the information that a person must file to register as an SDR and also provide for interim amendments and required annual amendments that must be filed within 60 days after the end of each fiscal year of the SDR and that these filings must be in a tagged data format. Each non-resident SDR is required to (i) certify on Form SDR that the SDR can, as a matter of law, and will provide the Commission with prompt access to the SDR's books and records and can, as a matter of law, and will submit to onsite inspection and examination by the Commission and (ii) provide an opinion of counsel that the SDR can, as a matter

[1249] *See* Section I.D of this release.

[1250] *See* DTCC 2, *supra* note 19 (stating that ''[t]he Commission's proposed required practices are generally consistent with those of'' the commenter's trade repository).

[1251] *See* Section II.A of this release.

[1252] *See* Martin D.D. Evans and Richard K. Lyons, *Exchange Rate Fundamentals and Order Flow,* NBER Working Paper No. 13151 (June 2007), *available at: http://128.97.165.17/media/files/evans_lyons.pdf* (finding evidence, based on data regarding end-user currency trades, that transaction flows forecast future macroeconomic variables such as output growth, money growth, and inflation).

[1253] *See* Section II.A of this release discussing transparency in the SBS market.

[1254] *See* Philip Bond, Alex Edmans, and Itay Goldstein, *The Real Effects of Financial Markets,* 4 Annual Review of Financial Economics 339 (2012) (reviewing the theoretical literature on the feedback between financial market prices and the real economy).

[1255] *See* Section VIII.C.3.a of this release discussing the effect of competition between SDRs on the prices of SDR services.

of law, provide the Commission with access to the books and records of such SDR and can, as a matter of law, submit to onsite inspection and examination by the Commission. Rule 13n–2 sets forth the process by which a registered SDR would withdraw its registration or have its registration revoked or cancelled.[1256] Rule 13n–3 sets forth the registration process for a successor to a registered SDR.[1257] These rules and Form SDR are adopted pursuant to the Commission's rulemaking authority under Exchange Act Section 13(n).[1258]

a. Benefits

The rules and Form SDR described in this section provide for the registration of SDRs, withdrawal from registration, revocation and cancellation of the registration, and successor registration of SDRs. Congress enacted the new registration requirements as part of the Dodd-Frank Act in order to increase the transparency in the SBS market. The registration process will further the Dodd-Frank Act's goals by assisting the Commission in overseeing and regulating the SBS market. The requirement that a non-resident SDR (i) certify that the SDR can, as a matter of law, and will provide the Commission with prompt access to the SDR's books and records and can, as a matter of law, and will submit to onsite inspection and examination by the Commission and (ii) provide an opinion of counsel that it can, as a matter of law, provide the Commission with access to the SDR's books and records and can, as a matter of law, submit to inspection and examination will allow the Commission to evaluate an SDR's ability to meet the requirements for registration and to conduct ongoing oversight.

The information required to be provided in Form SDR is necessary to enable the Commission to assess whether an applicant has the capacity to perform the duties of an SDR and to comply with the duties, core principles, and other requirements imposed on SDRs pursuant to Exchange Act Section 13(n) and the rules and regulations thereunder.

The requirement that SDRs file Form SDR in a tagged data format will facilitate review and analysis of registration materials by Commission staff and, to the extent such materials are made public, the public This requirement is consistent with the Commission's longstanding efforts to increase transparency and the usefulness of information by requiring the data tagging of information contained in electronic filings in order to improve the accuracy of submitted information, including financial information, and facilitate its analysis.[1259]

The Commission solicited comments on the benefits associated with the registration-related rules and Form SDR.[1260] The Commission did not receive any comments specifically addressing these benefits.

b. Costs

The Commission anticipates that the primary costs to SDRs from the registration-related rules and Form SDR result from the requirement to complete Form SDR and any amendments thereto.

As discussed above, the Commission estimates that the average initial paperwork cost of SDR registration will be 481 hours per SDR and the average ongoing paperwork cost of interim and annual updated Form SDR will be 36 hours for each registered SDR.[1261] Assuming a maximum of ten SDRs, the aggregate one-time estimated dollar cost will be $793,840[1262] and the aggregate ongoing estimated dollar cost per year will be $55,440[1263] to comply with the rule.

As discussed above, the Commission estimates that the average initial paperwork cost of filing a Form SDR to withdraw from registration will be 12 hours per SDR.[1264] Assuming that, at most, one SDR per year would withdraw, the aggregate one-time estimated dollar cost will be $4,008[1265] to comply with the rule.

As discussed above, the Commission estimates that the average initial paperwork cost for each non-resident SDR to (i) certify on Form SDR that the SDR can, as a matter of law, and will provide the Commission with prompt access to the SDR's books and records and can, as a matter of law, and will submit to onsite inspection and examination by the Commission and (ii) provide an opinion of counsel that the SDR can, as a matter of law, provide the Commission with prompt access to the SDR's books and records can, as a matter of law, and submit to onsite inspection and examination will be 1 hour and $900 per SDR.[1266] Assuming a maximum of three non-resident SDRs,[1267] the aggregate one-time estimated dollar cost will be $3,840.[1268]

The Commission believes that the costs of filing Form SDR in a tagged data format beyond the costs of collecting the required information, will be minimal. The Commission does not believe that these costs will be significant, as large-scale changes will likely not be necessary for most modern data management systems to output structured data files, particularly for widely used file formats such as XML. XML is a widely used file format, and

[1256] *See* Sections VI.B of this release discussing Rule 13n–2.

[1257] *See* Sections VI.C of this release discussing Rule 13n–3.

[1258] *See* 15 U.S.C. 78m(n).

[1259] *See* Regulation S–T, 17 CFR 232; *see also* Electronic Filing and Revision of Form D, Securities Act Release No. 8891 (Feb. 6, 2008), 73 FR 10592 (Feb. 27, 2008); Interactive Data to Improve Financial Reporting, Securities Act Release No. 9002 (Jan. 30, 2009), 74 FR 6776 (Feb. 10, 2009); Interactive Data for Mutual Fund Risk/Return Summary, Securities Act Release No. 9006 (Feb. 11, 2009), 74 FR 7748 (Feb. 19, 2009); Amendments to Rules for National Recognized Statistical Rating Organizations, Exchange Act Release No. 61050 (Nov. 23, 2009), 74 FR 63832 (Dec. 4, 2009); Money Market Fund Reform, Investment Company Release No. 29132 (Feb. 23, 2010), 75 FR 10060 (Mar. 4, 2010).

[1260] *See* Proposing Release, 75 FR at 77355, *supra* note 2.

[1261] *See* Section VII.D.1 of this release discussing the cost of SDR registration.

[1262] The Commission estimates that an SDR will assign these responsibilities to a Compliance Attorney and a Compliance Clerk. Data from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, suggest that the cost of a Compliance Clerk is $64 per hour. Thus, the total one-time estimated dollar cost of complying with the initial registration-related requirements is $79,384 per SDR and $793,840 for all SDRs, calculated as follows: (Compliance Attorney at $334 per hour for 180 hours) + (Compliance Clerk at $64 per hour for 301 hours) × (10 registrants) = $793,840.

[1263] The Commission estimates that an SDR will assign these responsibilities to a Compliance Attorney and a Compliance Clerk. Thus, the total estimated dollar cost of complying with the ongoing registration-related requirements is $5,544 per year per SDR and $55,440 per year for all SDRs, calculated as follows: (Compliance Attorney at $334 per hour for 12 hours) + (Compliance Clerk at $64 per hour for 24 hours) × (10 registrants) = $55,440.

[1264] *See* Section VII.D.1 of this release discussing the cost of filing Form SDR to withdraw from registration.

[1265] The Commission estimates that an SDR will assign these responsibilities to a Compliance Attorney. Thus, the total estimated dollar cost of complying with the requirements related to withdrawal from registration is $4,008 per year per SDR and $4,008 per year for all SDRs, calculated as follows: (Compliance Attorney at $334 per hour for 12 hours) × (1 SDR withdrawing) = $4,008.

[1266] *See* Section VII.D.1 of this release discussing the cost of non-resident SDRs' certification on Form SDR and opinion of counsel.

[1267] *See* Section VII.C.1 of this release discussing the number of non-resident SDRs.

[1268] The Commission estimates that an SDR will assign these responsibilities to an Attorney. Data from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, suggest that the cost of an Attorney is $380 per hour. Thus, the total estimated dollar cost of complying with the requirements of Rule 13n–1(f) is $1,280 per year per SDR and $3,840 per year for all SDRs, calculated as follows: ($900 for outside legal services + (Attorney at $380 per hour for 1 hour)) × (3 non-resident registrants) = $3,840.

based on the Commission's understanding of current practices, it is likely that most reporting persons and third party service providers have systems in place to accommodate the use of XML.

The Commission solicited comment on the estimated costs associated with the registration-related rules and Form SDR.[1269] The Commission specifically requested comment on the estimated number of respondents that would be filing Form SDR and the initial costs associated with completing the registration form and the ongoing annual costs of completing the required amendments.[1270]

One commenter expressed concern about non-resident SDRs being subject to a stricter regime than resident SDRs because of the non-resident SDRs' obligation to provide a certification and opinion of counsel under Rule 13n–1(f).[1271] The Commission acknowledges that non-resident SDRs may incur costs in providing the certification and opinion of counsel. The Commission believes, however, that these costs may be avoided to the extent that non-resident SDRs are able to take advantage of the SDR Exemption.

The Commission did not receive any other comments on the estimated costs associated with the registration-related rules and Form SDR.[1272]

c. Alternatives

Following one commenter's suggestion, the Commission considered requiring an SDR applicant to submit its rulebook [1273] with its initial Form SDR. As discussed above, the Commission has not adopted this approach because an SDR is already required to provide policies and procedures on Form SDR, and the Commission believes that most of the information that would be contained in a rulebook would be filed as part of an SDR's policies and procedures.[1274] If an SDR's rulebook is broader than its policies and procedures, however, an SDR may submit its rulebook to the Commission to assist the Commission in better understanding the context of the SDR's policies and procedures or how the policies and procedures relate to one another.

In accordance with one commenter's suggestion,[1275] the Commission amended Form SDR to accommodate SIP registration, as discussed above.[1276] The Commission considered requiring persons to register as an SDR and SIP on two separate forms, but determined not to do so because the costs to SDRs to make multiple filings of separate Form SDR and Form SIP would not provide any measureable benefits to the Commission.

The Commission considered, in accordance with one commenter's suggestion,[1277] adopting a joint form with the CFTC for SDR and swap data repository registration. As discussed above, the Commission believes that it is necessary to maintain separate registration so that each agency's form remains tailored to the particular needs of that agency.[1278] For example, the Commission is revising Form SDR to accommodate SIP registration, while the CFTC's form accommodates only swap data repository registration. Moreover, adopting a joint form may impose costs and cause uncertainty for dual registrants because the CFTC would be required to amend its form, which it has already adopted, at a time when the industry is still in the implementation phase and some swap data repositories are already provisionally registered with the CFTC. Finally, because the CFTC's registration form for swap data repositories is substantially similar to the Commission's Form SDR, the Commission does not anticipate that filing with each commission separately will entail a significant cost for a dual registrant. The Commission is sensitive to the potential costs imposed by duplicative forms, but believes that these costs are justified by the need of having a form specifically tailored to the SDR registration scheme.

The Commission considered the request of one commenter, which is provisionally registered with the CFTC as a swap data repository, for expedited review of the commenter's application for registration as an SDR.[1279] Although it is not clear what the commenter means by ''expedited review,'' the Commission believes that it is necessary to conduct a review of an SDR's application for registration independent of the CFTC's review of a swap data repository's application for registration. Moreover, the Commission believes that the procedures for reviewing applications for registration as an SDR that the Commission is adopting in this release provide reasonable timeframes for the Commission's review of the applications. These procedures are consistent with how the Commission reviews the applications of other registrants, such as SIPs and registered clearing agencies. The Commission believes that each SDR applicant, including an applicant who is provisionally registered with the CFTC, needs to demonstrate that it is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as an SDR, comply with any applicable provision of the federal securities laws and the rules and regulations thereunder, and carry out its functions in a manner consistent with the purposes of Exchange Act Section 13(n) and the rules and regulations thereunder.

Finally, the Commission considered providing a method for temporary registration, as proposed.[1280] As discussed above, the Commission believes that the exemptive relief provided by the Commission in the Effective Date Order, which was effective on June 15, 2011, addressed the primary purpose for temporary registration.[1281] The Commission also believes that the Compliance Date for the SDR Rules[1282] should provide sufficient time for SDRs to analyze and understand the final SDR Rules, to develop and test new systems required to comply with the Dodd-Frank Act's provisions governing SDRs and the SDR Rules, to prepare and file Form SDR, to demonstrate their ability to meet the criteria for registration set forth in Rule 13n–1(c)(3), and to obtain registration with the Commission.[1283] For these reasons, the Commission no longer believes that a temporary registration regime for SDRs is necessary or appropriate.

[1269] *See* Proposing Release, 75 FR at 77355, *supra* note 2.

[1270] *See* Proposing Release, 75 FR at 77355, *supra* note 2.

[1271] ESMA, *supra* note 19.

[1272] Although one commenter expressed concern that non-resident SDRs would be subject to a stricter regulatory regime because of the certification and opinion of counsel requirements, the commenter did not comment specifically on the Commission's estimates of the costs of providing such an opinion. *See* ESMA, *supra* note 19.

[1273] *See* DTCC 3, *supra* note 19.

[1274] *See* Section VI.A.1.c of this release discussing rulebooks.

[1275] *See* DTCC 2, *supra* note 19; *see also* DTCC 3, *supra* note 19 (suggesting adopting a joint registration form with the CFTC that would include SIP registration).

[1276] *See* Section VI.A.1.c of this release discussing Form SDR.

[1277] *See* DTCC 3, *supra* note 19.

[1278] *See* Section VI.A.1.c of this release discussing Form SDR.

[1279] *See* ICE CB, *supra* note 26.

[1280] *See* Proposing Release, 75 FR at 77314, *supra* note 2.

[1281] *See* Effective Date Order, 76 FR at 36306, *supra* note 9.

[1282] *See* Section V.C of this release discussing the Compliance Date.

[1283] *See* Section VI.A.3 of this release discussing temporary registration.

2. SDR Duties, Data Collection and Maintenance, and Direct Electronic Access

Rules 13n–4(b)(2)–(7), 13n–5, and 13n–6 include various requirements relating to SDRs' information technology systems. Rules 13n–4(b)(2)–(7), 13n–5, and 13n–6 set forth the duties of an SDR, including an SDR's collection, maintenance, and analysis of transaction data and other records.[1284]

Under Rules 13n–4(b)(2) and (4), an SDR is required to accept data as prescribed in Regulation SBSR and maintain transaction data and related identifying information as required by Rule 13n–5(b)(4). Rule 13n–4(b)(5) states that each SDR must provide direct electronic access to the Commission or any of its designees.[1285]

Rule 13n–5 establishes requirements for data collection and maintenance.[1286] Rule 13n–5(b) requires, among other things, an SDR to promptly record transaction data and to establish, maintain, and enforce written policies and procedures reasonably designed (1) for reporting complete and accurate transaction data to the SDR; (2) to satisfy itself that the transaction data submitted to it is complete and accurate; (3) to calculate positions for all persons with open SBSs for which the SDR maintains records; (4) to ensure that the transaction data and positions that it maintains are complete and accurate; and (5) to prevent any provision in a valid SBS from being invalidated or modified through the procedures or operations of the SDR. Rule 13n–5(b)(4) establishes requirements related to the formats in which and time periods for which an SDR must maintain transaction data, related identifying information, and positions. Rule 13n–5(b)(7) requires an SDR that ceases doing business, or ceases to be registered pursuant to Exchange Act Section 13(n), to preserve, maintain, and make accessible the transaction data and historical positions for the remainder of the time period required by Rule 13n–5. Rule 13n–5(b)(8) requires an SDR to make and keep current a plan to ensure that the transaction data and positions that are recorded in the SDR continue to be maintained in accordance with Rule 13n–5(b)(7).

Rule 13n–6 requires SDRs, with respect to those systems that support or are integrally related to the performance of their activities, establish, maintain, and enforce written policies and procedures reasonably designed to ensure that their systems provide adequate levels of capacity, integrity, resiliency, availability, and security.[1287]

a. Benefits

The rules discussed in this section will enhance the Commission's ability to oversee the SBS market beyond that in the current voluntary reporting system. The Commission's ability to oversee the SBS market and benefits of SDRs to the market depend on the accuracy and reliability of the data maintained by SDRs. Exchange Act Section 13(n)(4)(B) specifically instructs the Commission to ''prescribe data collection and maintenance standards for'' SDRs.[1288] The rules related to an SDR's information technology and related policies and procedures are designed to facilitate accurate data collection and retention with respect to SBSs in order to promote transparency with respect to the SBS market.

The ability of the Commission to oversee the SBS market and detect fraudulent activity depends on the Commission having access to accurate current and historical market data. In particular, the direct electronic access requirement described in Rule 13n–4(b)(5) will permit the Commission to carry out these responsibilities in a more effective and more efficient manner. The requirement that each SDR make and keep current a plan to ensure that SBS data recorded in such SDR continues to be maintained is essential to ensure that the Commission will continue to have access to and the ability to analyze SBS data in the event that the SDR ceases to do business.

The requirements in the rules discussed in this section are likely to create benefits that will follow from providing the Commission with access to SBS market information. Pursuant to the rules discussed in this section, in conjunction with Regulation SBSR,[1289] SDRs will receive and maintain systemically important SBS transaction data from multiple market participants. This data will increase transparency about activity in the SBS market. In addition, this data will enhance the ability of the Commission to respond to market developments.

Benefits also may accrue from the Commission's ability to use SBS data in order to oversee the SBS market for illegal conduct. For example, data collected by SDRs will enhance the Commission's ability to detect and deter fraudulent and manipulative activity and other trading abuses in connection with the SBS market, conduct inspections and examinations to evaluate the financial responsibility and soundness of market participants, and verify compliance with the statutory requirements and duties of SDRs. This data may also help the Commission identify fraudulent or other predatory market activity. Increasing market participants' confidence that the likelihood of illegal or fraudulent activity is low and that the likelihood that they will suffer economic loss from such illegal or fraudulent activity is low will reduce the prices at which they are willing to use SBS to hedge market risks to which they are exposed, which should, in turn, encourage participation in the SBS market.

The richness of data collected by SDRs also may facilitate market analysis. For example, the Commission may review market activity through the study of SBS transactions, which may help assess the effectiveness of the Commission's regulation of the SBS market. Such reviews can inform the Commission on the need for modifications to these and other rules as the market evolves.

The Commission recognizes that these benefits may be reduced to the extent that SBS market data is fragmented across multiple SDRs. Fragmentation of SBS market data may impose costs on any user of this data associated with consolidating, reconciling, and aggregating that data. As discussed above, the Commission believes that the form and manner with which an SDR provides the data to the Commission should not only permit the Commission to accurately analyze the data maintained by a single SDR, but also allow the Commission to aggregate and analyze data received from multiple SDRs.[1290]

SDRs also may create economic benefits for market participants by providing non-core services, such as facilitating the reporting of life cycle events, asset servicing, or payment calculations. These activities may be less costly to perform when SBS market data is centrally located and accessible.

The Commission solicited comment on the benefits related to Rules 13n–4(b)(2)–(7), 13n–5, and 13n–6.[1291] The

[1284] *See* Sections VI.D.2.c, VI.E, and VI.F.3 of this release discussing Rules 13n–4(b)(2) and (4), 13n–5, and 13n–6, respectively.

[1285] *See also* Exchange Act Section 13(n)(5)(D)(i), 15 U.S.C. 78m(n)(5)(D)(i) (requiring an SDR to provide direct electronic access to the Commission or any of its designees).

[1286] *See* Section VI.E of this release discussing Rule 13n–5.

[1287] *See* Section VI.F.3 of this release discussing Rule 13n–6.

[1288] 15 U.S.C. 78m(n)(4)(B).

[1289] *See* Regulation SBSR Adopting Release, *supra* note 13.

[1290] *See* Section VI.D.2.c.ii of this release discussing direct electronic access.

[1291] *See* Proposing Release, 75 FR at 77357, *supra* note 2.

Commission specifically requested comment on whether any additional benefits would accrue if the Commission imposed further, more specific technology-related requirements.[1292] The Commission received no comments on the estimated benefits of the rules discussed in this section.

b. Costs

The Commission anticipates that the primary costs to SDRs, particularly those that are not already registered with the CFTC or operating as trade repositories, are from the rules described in this section that relate to the cost of developing and maintaining systems to collect and store SBS transaction data. SDRs also need to develop, maintain, and enforce compliance with related policies and procedures and provide applicable training. Changes in the cost of developing and maintaining such systems are likely to be passed on to market participants; similarly, compliance costs incurred by SDRs are likely to be passed on to market participants.

As discussed above, the Commission estimates that the cost associated with creating SDR information technology systems will be 42,000 hours and $10,000,000 for each SDR and the average ongoing paperwork cost will be 25,200 hours and $6,000,000 per year for each SDR.[1293] Assuming a maximum of ten SDRs, the aggregate one-time estimated dollar cost will be $210,810,000[1294] and the aggregate ongoing estimated dollar cost per year will be $126,486,000[1295] to comply with the rules. Based on Commission staff's conversations with industry representatives, the Commission estimates that the cost imposed on SDRs to provide direct electronic access to the Commission should be minimal as SDRs likely have or will establish comparable electronic access mechanisms to enable market participants to provide data to SDRs and review transactions to which such participants are parties.[1296]

As discussed above, the Commission estimates that the average initial paperwork cost associated with developing policies and procedures necessary to comply with Rules 13n–5(b)(1), (2), (3), and (5) and 13n–6 will be 1,050 hours and $100,000 for each SDR and the average ongoing paperwork cost will be 300 hours per year for each SDR.[1297] Assuming a maximum of ten SDRs, the aggregate one-time estimated dollar cost will be $4,185,300[1298] and the aggregate ongoing estimated dollar cost per year will be $965,400[1299] to comply with the rules.

The Commission believes that existing SDRs may have already developed and implemented information technology systems and related policies and procedures.[1300] Such persons are currently not subject to regulation by the Commission, and therefore, may need to enhance their information technology systems and related policies and procedures to comply with the SDR Rules. Thus, such persons may experience costs in enhancing their information technology systems and related policies and procedures to comply with the SDR Rules. Moreover, because the costs discussed above represent the costs of creating information technology systems and related policies and procedures without any existing information technology systems or policies and procedures in place, existing SDRs that already have information technology systems and related policies and procedures may experience initial costs lower than those estimated above. The Commission believes that after such persons bring their technology systems and related policies and procedures into compliance with the SDR Rules, however, the ongoing annual costs for such persons will likely be consistent with the estimates provided above.[1301]

Multiple SDRs may register with the Commission, potentially within the same asset class, with each SDR collecting data from a subset of market participants. While multiple SDRs per asset class will allow for market competition to decide how data is collected, it may hinder market-wide data aggregation due to coordination costs, particularly if market participants adopt incompatible reporting standards and practices. The SDR Rules do not specify a particular reporting format or structure, which may create the possibility that persons reporting to SDRs or other market participants accessing SBS data, will have to accommodate different data standards and develop different systems to accommodate each. This may result in increased costs for reporting persons and users of SBS data.

Furthermore, the costs associated with aggregating data across multiple SDRs by the Commission and other users of such data will increase to the extent that SDRs choose to use different identifying information for transactions, counterparties, and products. Data aggregation costs also could accrue to the extent that there is variation in the quality of data maintained across SDRs.

[1292] *See* Proposing Release, 75 FR at 77357, *supra* note 2.

[1293] *See* Section VII.D.2 of this release discussing the costs of creating SDR information technology systems.

[1294] The Commission estimates that an SDR will assign these responsibilities to an Attorney, a Compliance Manager, a Programmer Analyst, and a Senior Business Analyst. Data from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, suggest that the cost of a Compliance Manager is $283 per hour, a Programmer Analyst is $220 per hour, and a Senior Business Analyst is $251 per hour. Thus, the total initial estimated dollar cost will be $21,081,000 per SDR and $210,810,000 for all SDRs, calculated as follows: ($10,000,000 for information technology systems + (Attorney at $380 per hour for 7,000 hours) + (Compliance Manager at $283 per hour for 8,000 hours) + (Programmer Analyst at $220 per hour for 20,000 hours) + (Senior Business Analyst at $251 per hour for 7,000 hours)) × 10 registrants = $210,810,000.

[1295] The Commission estimates that an SDR will assign these responsibilities to an Attorney, a Compliance Manager, a Programmer Analyst, and a Senior Business Analyst. Thus, the total ongoing estimated dollar cost will be $12,648,600 per SDR and $126,486,000 for all SDRs, calculated as follows: ($6,000,000 for information technology systems + (Attorney at $380 per hour for 4,200 hours) + (Compliance Manager at $283 per hour for 4,800 hours) + (Programmer Analyst at $220 per hour for 12,000 hours) + (Senior Business Analyst at $251 per hour for 4,200 hours)) × 10 registrants = $126,486,000.

[1296] *See* SDR Proposing Release, 75 FR at 77357, *supra* note 2. Indeed, the Commission notes that one commenter, which currently operates a trade repository, stated that ''[t]he Commission's proposed required practices are generally consistent with those of'' the commenter's trade repository. DTCC 2, *supra* note 19.

[1297] *See* Section VII.D.2 of this release discussing the costs of developing policies and procedures necessary to comply with Rules 13n–5(b)(1), (2), (3), and (5) and 13n–6.

[1298] The Commission estimates that an SDR will assign these responsibilities to a Compliance Manager, an Attorney, a Senior Systems Analyst, and an Operations Specialist. Data from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, suggest that the cost of a Senior Systems Analyst is $260 per hour and the cost of an Operation Specialist is $125 per hour. Thus, the total initial estimated dollar cost will be $418,530 per SDR and $4,185,300 for all SDRs, calculated as follows: ($100,000 for outside legal services + (Compliance Manager at $283 per hour for 385 hours) + (Attorney at $380 per hour for 435 hours) + (Senior Systems Analyst at $260 per hour for 115 hours) + (Operations Specialist at $125 per hour for 115 hours)) × 10 registrants = $4,185,300.

[1299] The Commission estimates that an SDR will assign these responsibilities to a Compliance Manager and an Attorney. Thus, the total ongoing estimated dollar cost will be $96,540 per SDR and $965,400 for all SDRs, calculated as follows: ((Compliance Manager at $283 per hour for 180 hours) + (Attorney at $380 per hour for 120 hours)) × 10 registrants = $965,400.

[1300] *Cf.* DTCC 2, *supra* note 19 (stating that ''[t]he Commission's proposed required practices are generally consistent with those of'' the commenter's trade repository).

[1301] *See* Section VII.D.2 of this release discussing the costs of Rules 13n–4(b)(2)–(7), 13n–5, and 13n–6.

Each SDR has discretion over how to implement its policies and procedures in the recording of reportable data, and variations in quality may result. Since aggregated data used for surveillance and risk monitoring requires that the underlying components are provided with the same level of accuracy, variations in the quality of data could be costly if subsequent interpretations of analysis based on the data suffer from issues of integrity. To the extent that market competition among SDRs impacts profit margins and the level of resources devoted to collecting and maintaining transaction data, there is an increased likelihood of variations in the quality of reported data, which could make the aggregation of data across multiple SDRs more difficult.

In the Proposing Release the Commission solicited comment on the costs related to Rules 13n–4(b)(2)–(7), 13n–5, and 13n–6.[1302] The Commission specifically requested comment on the initial and ongoing costs associated with establishing and maintaining the technology systems and related policies and procedures; additional costs to creating an SDR that the Commission should consider; alternatives that the Commission should consider; whether the estimates accurately reflect the cost of storing data in a convenient and usable electronic format for the required retention period; and a description and, to the extent practicable, quantification of the costs associated with any comments that are submitted.[1303] The Commission received no comments on the estimated costs of the rules discussed in this section.

c. Alternatives

Commenters suggested that an SDR's duties should include reporting SBS data to a single SDR that would consolidate the data.[1304] Specifically, one commenter recommended that the Commission ''designate one SDR as the recipient of the information of the other SDRs to ensure the efficient consolidation of data.''[1305] The commenter further stated that the designated SDR would need to have ''the organization and governance structure that is consistent with being a financial market utility serving a vital function to the entire marketplace.''[1306] The Commission recognizes, as asserted by the commenter, that fragmentation of data among SDRs would ''leave to regulators the time consuming, complicated and expensive task of rebuilding complex data aggregation and reporting mechanisms.''[1307] If the Commission were to designate one SDR as the data consolidator, however, such an action could be deemed as the Commission's endorsement of one regulated person over another, discourage new market entrants, and interfere with competition, resulting in a perceived government-sponsored monopoly. In addition, such a requirement would likely impose an additional cost on market participants to cover the SDR's cost for acting as the data consolidator. The Commission does not believe that, at this time, the benefits of such a requirement, in terms of saving other SDRs the costs of having to make data available to the Commission and saving the costs of consolidating the data itself, would be substantial enough to justify this potential negative effect on competition among SDRs. The Commission, however, may revisit this issue if, for example, there is data fragmentation among SDRs that is creating substantial difficulties for relevant authorities to get a complete and accurate view of the market.

The Commission considered directing, under Rule 13n–4(b)(7), all SDRs to establish automated systems for monitoring, screening, and analyzing SBS data, a position urged by one commenter.[1308] The Commission believes that mandating automated systems for monitoring, screening, and analyzing SBS data at this time would impose an additional cost on SDRs. The Commission believes that it should avoid imposing the cost of automated systems on SDRs until the Commission can better determine what information it needs through such automated systems in addition to the information that it can obtain from SDRs through other rules applicable to SDRs, such as Rule 13n–4(b)(5).

The Commission considered requiring every SDR to maintain transaction data and related identifying information for not less than five years after the applicable SBS expires or ten years after the applicable SBS is executed, whichever is greater, as an alternative to the time period in Rule 13n–5(b)(4) (for not less than five years after the applicable SBS expires). The Commission understands, however, that the alternative time period does not fit current industry practices and therefore would be costly to implement. The five-year period is consistent with the record retention period for other Commission registrants and the statutory requirement for SB SEFs.

The Commission also considered, as an alternative to Rule 13n–5(b)(4)(i), prescribing a particular data format in which an SDR must maintain transaction data and positions, as suggested by three commenters.[1309] The Commission believes that SDRs should have the flexibility to choose their own data format, based on what works best in practice.[1310] The Commission is also concerned that a format that it mandates would eventually become outdated, necessitating either a rule change to keep pace with technological innovation or a requirement that SDRs use outdated technology. Market participants may incur the increased costs of converting their transaction data to a format that is no longer an industry standard. Although the Commission recognizes that a commonly-mandated format for all SBS data has the potential to facilitate aggregation of data across different SDRs, the Commission believes that not imposing a particular format saves SDRs the costs associated with using and implementing one data format chosen by the Commission. The Commission believes that SDRs, working with market participants, will be in the best position to choose and upgrade formats as needed.[1311] For these reasons, the Commission does not believe that mandating a particular format in which an SDR must maintain transaction data, related identifying information, and positions is, at this time, an appropriate alternative to the flexible approach of Rule 13n–5(b)(4)(i) and the lower compliance costs.

Finally, the Commission considered, as suggested by one commenter,

[1302] *See* Proposing Release, 75 FR at 77358, *supra* note 2.

[1303] *See* Proposing Release, 75 FR at 77358, *supra* note 2.

[1304] *See* DTCC 1*, *supra* note 20; Better Markets 1, *supra* note 19; *see also* FINRA SBSR, *supra* note 27 (urging the Commission to mandate the consolidation of disseminated SBS data to the public).

[1305] DTCC 1*, *supra* note 20; *see also* Better Markets 1, *supra* note 19 (making similar comments); DTCC 2, *supra* note 19 (''The role of an aggregating SDR is significant in that it ensures regulators efficient, streamlined access to consolidated data, reducing the strain on limited agency resources.'').

[1306] DTCC 1*, *supra* note 20.

[1307] DTCC 3, *supra* note 19.

[1308] *See* Better Markets 1, *supra* note 19. Similarly, another commenter suggested that the Commission ''provide additional details on the anticipated requirements in order to better manage the expectations of SDRs and wider market participants concerning their duties in this area.'' Barnard, *supra* note 19.

[1309] *See* Better Markets 1, *supra* note 19; ISDA Temp Rule, *supra* note 28; Barnard, *supra* note 19.

[1310] *See* Section VI.E.4.c of this release discussing Rule 13n–5(b)(4).

[1311] As discussed above, when an SDR is deciding the format in which it will maintain transaction data and positions, it may want to consider whether it will need to reformat or translate the data to reflect any formats and taxonomies that the Commission may adopt pursuant to Exchange Act Section 13(n)(5)(D) and Rule 13n–4(b)(5). *See* Section VI.E.4.c of this release.

requiring SDRs to keep records of data indefinitely.[1312] This commenter asserted that there was ''no technological or practical reason for limiting the retention period,'' [1313] but the Commission believes that given the volume of data and transactions SDRs may handle, prohibiting SDRs from ever eliminating records may result in SDRs retaining a large volume of records for which there may be little or no use. Having to maintain records secure and accessible for an indefinite period of time may impose significant costs to SDRs, particularly as storage and access technology evolves. Because the Commission believes that requiring transaction data to be maintained for not less than five years after the applicable SBS expires is more reasonable, and because that approach is consistent with the record retention period for other Commission registrants and the statutory requirement for SB SEFs, the Commission does not believe that risks and costs that could come with imposing an unlimited time period for retention are justified. Accordingly, the Commission is not adopting the alternative suggested by the commenter.

3. Recordkeeping

Rule 13n–7 requires an SDR to make and keep certain records relating to its business and retain a copy of records made or received by the SDR in the course of its business for a period of not less than five years, the first two years in a place that is immediately available to representatives of the Commission for inspection and examination. The rule also requires an SDR that ceases doing business or ceases to be registered as an SDR to preserve, maintain, and make accessible the records required to be collected, maintained, and preserved pursuant to the rule for the remainder of the time period required by Rule 13n–7.[1314]

a. Benefits

Rule 13n–7 is designed to further the Dodd-Frank Act's goals by enhancing the Commission's ability to oversee SDRs, which are critical components of the new regulatory scheme governing SBSs. The rule will assist the Commission in determining whether an SDR is complying with the federal securities laws and the rules and regulations thereunder. In addition, the recordkeeping requirements contained in the rule will permit the Commission to evaluate the financial responsibility and soundness of SDRs.

To the extent that the rule standardizes the business recordkeeping practices of SDRs, the Commission will be better able to perform efficient, targeted inspections and examinations with an increased likelihood of identifying improper conduct. To the extent that standardized recordkeeping requirements will allow the Commission to perform more efficient, targeted inspections and examinations, SDRs may incur less costs in responding to targeted inspections and examinations (as opposed to inspections and examinations that are broader in scope). In addition, both the Commission and SDRs should benefit from standardized recordkeeping requirements to the extent that uniform records will enable the Commission and SDRs to know what records the SDRs are required to maintain.

The Commission solicited comment on the benefits related to Rule 13n–7.[1315] The Commission did not receive any comments on the benefits related to Rule 13n–7.

b. Costs

As discussed above, the Commission estimates that the average initial paperwork cost associated with making, keeping and preserving certain records and developing and maintaining information technology systems to ensure compliance with the recordkeeping requirements will be 346 hours and $1,800 for each SDR and the average ongoing paperwork cost associated with compliance with the recordkeeping requirements will be 279.17 hours per year for each SDR.[1316] Assuming a maximum of ten SDRs, the aggregate one-time estimated dollar cost will be $986,600 [1317] and the aggregate ongoing estimated dollar cost per year will be $790,051.10 [1318] to comply with Rule 13n–7.

The Commission believes that existing SDRs may already maintain business records as part of their day-to-day operations.[1319] Such persons are currently not subject to regulation by the Commission, and therefore, may need to enhance their maintenance of business records to comply with Rule 13n–7. Thus, such persons may experience costs in enhancing their recordkeeping to comply with Rule 13n–7. Moreover, because the costs discussed above represent the costs of establishing a recordkeeping system without any existing recordkeeping system in place, existing SDRs that already have a recordkeeping system may experience initial costs lower than those estimated above. The Commission believes that after such persons bring their recordkeeping into compliance with Rule 13n–7, however, the ongoing annual costs for such persons will likely be consistent with the estimates provided above.

The Commission solicited comment on the costs related to Rule 13n–7.[1320] The Commission specifically requested comment on the initial and ongoing costs associated with establishing and maintaining the recordkeeping systems and related policies and procedures, including whether currently-operating SDRs would incur different recordkeeping costs.[1321] The Commission did not receive any comments on the costs related to Rule 13n–7.

4. Reports

Rule 13n–8 requires SDRs to report promptly to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines necessary or appropriate for the Commission to perform its duties.[1322]

a. Benefits

Title VII establishes a regulatory framework for the OTC derivatives market that depends on the Commission's access to information regarding the current and historical operation of the SBS market to verify compliance with the statute and to provide for effective monitoring for market abuse. In addition, specific provisions of Title VII require routine,

[1312] *See* Barnard, *supra* note 19.

[1313] Barnard, *supra* note 19.

[1314] *See* Section VI.G of this release discussing Rule 13n–7.

[1315] *See* Proposing Release, 75 FR at 77358, *supra* note 2.

[1316] *See* Section VII.D.3 of this release discussing the cost associated with Rule 13n–7.

[1317] The Commission estimates that an SDR will assign these responsibilities primarily to a Compliance Manager as well as a Senior Systems Analyst. Thus, the total initial estimated dollar cost will be $98,660 per SDR and $986,600 for all SDRs, calculated as follows: ($1,800 in information technology costs + (Compliance Manager at $283 per hour for 300 hours) + (Senior Systems Analyst at $260 per hour for 46 hours)) × 10 registrants = $986,600.

[1318] The Commission estimates that an SDR will assign these responsibilities to a Compliance Manager. Thus, the total ongoing estimated dollar cost will be $79,005.11 per SDR and $790,051.10 for all SDRs, calculated as follows: (Compliance Manager at $283 per hour for 279.17 hours) × 10 registrants = $790,051.10.

[1319] *Cf.* DTCC 2, *supra* note 19 (stating that ''[t]he Commission's proposed required practices are generally consistent with those of'' the commenter's trade repository).

[1320] *See* Proposing Release, 75 FR at 77359, *supra* note 2.

[1321] *See* Proposing Release, 75 FR at 77359, *supra* note 2.

[1322] *See* Section VI.H.3 of this release discussing Rule 13n–8.

targeted monitoring of certain types of events. Access to such information will enable the Commission to oversee the SBS market, which is critical to the continued integrity of the markets, and detect and deter fraudulent and manipulative activity and other trading abuses in connection with the derivatives markets.

The Commission solicited comment on the benefits related to the requirements contained in Rule 13n–8.[1323] The Commission did not receive any comments on the benefits related to the requirements contained in Rule 13n–8.

b. Costs

The Commission anticipates that the initial costs to SDRs from Rule 13n–8 relate to the cost of developing and maintaining systems to respond to requests for information and provide the necessary reports and establishing related policies and procedures. In addition, SDRs will need to employ staff to maintain systems to provide the requested reports as well as to respond to ad hoc requests that cannot be satisfied using such systems.[1324] The information technology costs associated with this rule are included in the overall information technology costs discussed above.[1325]

Furthermore, as discussed above, the Commission estimates that SDRs will incur costs in compiling the information requested under Rule 13n–8, which the Commission estimates will be limited to information already compiled under the SDR Rules, and thus, require only 1 hour per response to compile and transmit per year for each SDR.[1326] Assuming a maximum of ten SDRs, the aggregate ongoing estimated dollar cost per year will be $2,510 to comply with the rule.[1327]

The Commission solicited comment on the costs related to Rule 13n–8.[1328] The Commission specifically requested comment on the initial and ongoing costs associated with establishing and providing the reports required under the rule.[1329] The Commission did not receive any comments on the estimated costs related to this rule.

5. Disclosure

Under Rule 13n–10, before accepting any SBS data from a market participant or upon the market participant's request, each SDR is required to furnish to the market participant a disclosure document containing certain information that reasonably will enable the market participant to identify and evaluate the risks and costs associated with using the services of the SDR.[1330] An SDR's disclosure document must include the SDR's criteria for providing others with access to services offered and data maintained by the SDR; the SDR's criteria for those seeking to connect to or link with the SDR; a description of the SDR's policies and procedures regarding safeguarding of data and operational reliability; a description of the SDR's policies and procedures reasonably designed to protect the privacy of SBS transaction information; a description of the SDR's policies and procedures regarding its non-commercial and/or commercial use of SBS transaction information; a description of the SDR's dispute resolution procedures; a description of all of the SDR's services, including ancillary services; the SDR's updated schedule of dues, unbundled prices, rates, or other fees for all of its services, and any discounts or rebates; and a description of the SDR's governance arrangements.

a. Benefits

Rule 13n–10 is intended to provide certain information regarding an SDR to market participants prior to their entering into an agreement to provide SBS data to the SDR. To the extent that multiple SDRs accept data for the same asset class, the disclosure document should enable market participants to make an informed choice among SDRs. The disclosure document is necessary to inform market participants of the nature of the services provided by the SDR and the conditions and obligations that are imposed on market participants in order for them to report data to the SDR.

Rule 13n–10 is designed to further the Dodd-Frank Act's goals by providing market participants with applicable information regarding the operation of SDRs. The Commission solicited comment,[1331] but did not receive any comments on the benefits related to this rule.

b. Costs

The Commission anticipates that the primary costs to SDRs to complying with Rule 13n–10 relate to the development and dissemination of the disclosure document. As discussed above, the Commission estimates that the average initial paperwork cost associated with developing the disclosure document and related policies and procedures will be 97.5 hours and $9,400 for each SDR and the average ongoing paperwork cost will be 1 hour per year for each SDR.[1332] Assuming a maximum of ten registered SDRs, the aggregate one-time estimated dollar cost will be $263,162.5 [1333] and the aggregate ongoing estimated dollar cost per year will be $1,735 [1334] to comply with the rule.

The Commission solicited comment on the costs related to Rule 13n–10.[1335] The Commission specifically requested comment on the initial and ongoing costs associated with drafting, reviewing, and providing the required disclosure document.[1336] The Commission did not receive any comments on the costs related to this rule.

6. Chief Compliance Officer and Compliance Functions; Compliance Reports and Financial Reports

Rules 13n–4(b)(11) and 13n–11 and the amendments to Regulation S–T require each registered SDR to identify on Form SDR a person who has been designated by the board to serve as CCO whose duties include preparing an annual compliance report, which will

[1323] *See* Proposing Release, 75 FR at 77359, *supra* note 2.

[1324] The Commission understands that some existing trade repositories may have dedicated personnel who are responsible for responding to and providing ad hoc report requests from relevant authorities, including the Commission. To the extent that Rule 13n–8 may result in more automated reporting, the need for such dedicated personnel resources may be reduced.

[1325] *See* Section VIII.D.2.b of this release.

[1326] *See* Section VII.D.4 of this release discussing the cost associated with Rule 13n–8.

[1327] The Commission estimates that an SDR will assign these responsibilities to a Senior Business Analyst. Thus, the total ongoing estimated dollar cost will be $251 per SDR and $2,510 for all SDRs, calculated as follows: (Senior Business Analyst at $251 per hour for 1 hour) × 10 registrants = $2,510.

[1328] *See* Proposing Release, 75 FR at 77360, *supra* note 2.

[1329] *See* Proposing Release, 75 FR at 77360, *supra* note 2.

[1330] *See* Section VI.I.2 of this release discussing Rule 13n–10.

[1331] *See* Proposing Release, 75 FR at 77360, *supra* note 2.

[1332] *See* Section VII.D.5 of this release discussing the cost associated with Rule 13n–10.

[1333] The Commission estimates that an SDR will assign these responsibilities to a Compliance Manager and a Compliance Clerk. Thus, the total initial estimated dollar cost will be $26,316.25 per SDR and $263,162.5 for all SDRs, calculated as follows: ($4,400 for external legal costs + $5,000 for external compliance consulting costs + (Compliance Manager at $283 per hour for 48.75 hours) + (Compliance Clerk at $64 per hour for 48.75 hours)) × 10 registrants = $263,162.5.

[1334] The Commission estimates that an SDR will assign these responsibilities to a Compliance Manager and a Compliance Clerk. Thus, the total ongoing estimated dollar cost will be $173.5 per SDR and $1,735 for all SDRs, calculated as follows: ((Compliance Manager at $283 per hour for 0.5 hours) + (Compliance Clerk at $64 per hour for 0.5 hours)) × 10 registrants = $1,735.

[1335] *See* Proposing Release, 75 FR at 77360, *supra* note 2.

[1336] *See* Proposing Release, 75 FR at 77360, *supra* note 2.

be filed with the Commission along with a financial report.[1337] The CCO's appointment must be approved by the majority of the SDR's board and the CCO must report directly to the senior officer of the SDR or the board. As discussed above, the CCO is responsible for, among other things, establishing procedures for the remediation of noncompliance issues identified by the CCO and establishing and following appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.[1338] No officer, director, or employee may directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence the CCO in the performance of his or her duties under Rule 13n–11.[1339] The CCO is required to prepare and sign an annual compliance report and submit the report to the board for its review prior to the report being filed with the Commission. Finally, the annual compliance report must be filed along with the financial report, which must be prepared pursuant to Rule 13n–11(f) and filed with the Commission. The compliance report must be filed in a tagged data format in accordance with the instructions contained in the EDGAR Filer Manual,[1340] and the financial report must be provided as an official filing in accordance with the EDGAR Filer Manual and include, as part of the official filing, an Interactive Data Financial Report filed in accordance with Rule 407 of Regulation S–T.[1341]

a. Benefits

Rules 13n–4(b)(11) and 13n–11 are designed to help ensure that SDRs comply with the federal securities laws, including Exchange Act Section 13(n), and the rules and regulations thereunder. Although existing SDRs may already have CCOs in place, the rules will make this standard practice for all registered SDRs, as mandated by the Exchange Act.[1342]

As a result of Rules 13n–4(b)(11) and 13n–11, the Commission believes that data and other records maintained by each SDR are more likely to be accurate and reliable. The Commission believes that strong internal compliance programs lower the likelihood of non-compliance with securities rules and regulations.[1343] The designation of a CCO, who will, among other things, take reasonable steps to ensure compliance with the rules and regulations thereunder relating to SBSs, including each rule prescribed by the Commission, will help ensure that each SDR complies with the Exchange Act and the rules and regulations thereunder. The prohibition against an SDR's officer, director, or employee from directly or indirectly taking any action to coerce, manipulate, mislead, or fraudulently influence its CCO increases the probability that the CCO's actions are based on accurate information and the compliance reports reflect the independent judgment of the CCO; however, these prohibitions may also cause some SDRs or SDR officers, directors and employees to implement additional controls in their interactions with the CCO, potentially limiting the scope or timeliness of the information made available to the CCO. To the extent that compliance with the Exchange Act and the rules and regulations thereunder results in more accurate data being maintained, publicly disseminated, and reported to the Commission, the ability of the Commission to rely on the SBS data will improve. Finally, strong compliance programs may help reduce non-compliance with the SDR Rules by SDRs; non-compliance with, for example, the privacy requirements (Rules 13n–4(b)(8) and 13n–9), have the potential of negatively impacting confidence in the overall SBS market.

Rule 13n–11(f) requires SDRs to file annual audited financial reports to the Commission. This rule will enhance the Commission's oversight of SDRs by facilitating the Commission's evaluation of an SDR's financial and managerial resources. The financial reports will also assist the Commission in assessing potential conflicts of interests of a financial nature arising from the operation of an SDR.

Benefits will also accrue from requiring SDRs to file financial reports in an interactive data format. This requirement will enable the Commission and, to the extent that the data is made public, the public to analyze the reported information more quickly, more accurately, and at a lower cost. In particular, the tagged data will make it easier to aggregate information collected from SDRs and compare across SDRs and over time, which the Commission believes is important to perform its regulatory mandate and legal responsibilities.

The Commission solicited comment on the benefits related to Rules 13n–4(b)(11) and 13n–11.[1344] The Commission specifically requested comment on the benefits that would accrue from designating a CCO who would be responsible for preparing and signing an annual compliance report and reporting annually to the board and on the benefits associated with the financial reports.[1345] The Commission did not receive any comments on the benefits of these rules.

b. Costs

The establishment of a designated CCO and compliance with the accompanying responsibilities of a CCO will impose certain costs on SDRs. As discussed above, the Commission estimates that the average initial paperwork cost associated with establishing procedures for the remediation of noncompliance issues identified by the CCO and establishing and following appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues will be 420 hours and $40,000 for each SDR and the average ongoing paperwork cost will be 120 hours for each SDR.[1346] In addition, each SDR is required to retain a CCO in order to comply with the SDR Rules, at an annual cost of $873,000.[1347] Assuming a maximum of ten SDRs, the aggregate initial estimated dollar cost per year will be $1,802,000[1348] and the aggregate ongoing estimated dollar cost per year will be $9,130,800[1349] to comply with the rules.

[1337] *See* Section VI.J of this release discussing Rule 13n–11.

[1338] *See* Section VI.J.3.c of this release discussing the duties of CCOs.

[1339] *See* Section VI.J.6 of this release discussing the prohibition of undue influence on CCOs.

[1340] *See* 17 CFR 232.301.

[1341] *See* Section VI.J.5.c of this release discussing Rule 407 of Regulation S–T.

[1342] *See* Exchange Act Section 13(n)(6), 15 U.S.C. 78m(n)(6).

[1343] *See* DTCC 2, *supra* note 19 (agreeing with the Commission that ''a robust internal compliance function plays an important role in facilitating an SDR's monitoring of, and compliance with, the requirements of the Exchange Act (and rules thereunder) applicable to SDRs'').

[1344] *See* Proposing Release, 75 FR at 77361, *supra* note 2.

[1345] *See* Proposing Release, 75 FR at 77361, *supra* note 2.

[1346] *See* Section VII.D.6 of this release discussing the costs of Rule 13n–11.

[1347] Data from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, suggest that the cost of a CCO is $485 per hour. Thus, the total ongoing estimated dollar cost will be $873,000 per SDR and $8,730,000 for all SDRs, calculated as follows: (CCO at $485 per hour for 1800 hours) × 10 registrants = $8,730,000.

[1348] The Commission estimates that an SDR will assign these responsibilities to a Compliance Attorney. Thus, the total initial estimated dollar cost will be $180,280 per SDR and $1,802,800 for all SDRs, calculated as follows: ($40,000 for outside legal services + (Compliance Attorney at $334 per hour for 420 hours)) × 10 registrants = $1,802,800.

[1349] The Commission estimates that an SDR will assign these responsibilities to a Compliance

Continued

As discussed above, the Commission estimates that the average ongoing paperwork cost associated with preparing and submitting annual compliance reports to the SDR's board pursuant to Rules 13n–11(d) and (e) will be 5 hours.[1350] Assuming a maximum of ten SDRs, the aggregate ongoing estimated dollar cost per year will be $16,700 to comply with the rules.[1351]

As discussed above, the Commission estimates that the average ongoing paperwork cost associated with preparing and filing financial reports pursuant to Rule 13n–11(f) and (g) and the amendments to Regulation S–T will be 500 hours and $500,000 for each registered SDR.[1352] Assuming a maximum of ten SDRs, the aggregate ongoing estimated dollar cost per year will be $5,990,000 to comply with the rules.[1353]

As discussed above, the Commission estimates that the average ongoing paperwork cost associated with filing annual compliance and financial reports with the Commission in a tagged data format pursuant to Rules 13n–11(d), (f), and (g), and in accordance with the amendments to Regulation S–T, will be 54 hours and $22,772 for each registered SDR.[1354] Assuming a maximum of ten SDRs, the aggregate ongoing estimated dollar cost per year will be $368,120 to comply with the rules.[1355]

The Commission believes that existing SDRs may already maintain compliance programs that are overseen by a CCO or an individual who effectively serves as a CCO.[1356] In addition, CCOs may prepare compliance reports presented to senior management and/or the SDRs' boards as part of their current business practice. SDRs are currently not subject to regulation by the Commission, and therefore, may need to enhance their compliance programs and compliance reports to comply with Rules 13n–4(b)(11) and 13n–11. Thus, SDRs may experience costs in enhancing their compliance programs and compliance reports to comply with Rules 13n–4(b)(11) and 13n–11. Moreover, because the costs discussed above represent the costs of complying with Rules 13n–4(b)(11) and 13n–11 without any existing compliance programs in place that are overseen by a CCO or an individual who effectively serves as a CCO, existing SDRs that already maintain such compliance programs may experience initial costs lower than those estimated above. However, even if an SDR has an existing compliance program overseen by a CCO, it is possible that officers, directors, and employees concerned about the prohibition in Rule 13n–11(h) (prohibiting officers, directors, and employees of an SDR from directly or indirectly taking any action to coerce, manipulate, mislead, or fraudulently influence the CCO) may want expanded liability insurance coverage. In response, an SDR may seek to acquire additional insurance coverage. The Commission acknowledges that it is possible, therefore, that Rule 13n–11(h) may result in liability insurance rates that are above what they would have been in the absence of the rule. The Commission is unable to estimate these costs given that it lacks specific information regarding current insurance costs for SDRs, the amount of the demand that there will be for increased coverage, and thereby the potential increases associated with the rule. The Commission believes that after SDRs bring their compliance programs and compliance reports into compliance with Rules 13n–4(b)(11) and 13n–11, however, the ongoing annual costs for SDRs will likely be consistent with the estimates provided above.

The Commission solicited comment on these estimates related to Rules 13n–4(b)(11) and 13n–11.[1357] The Commission specifically requested comment on the initial and ongoing costs associated with designating a CCO and the costs associated with any personnel who may be necessary to support the CCO and create the annual compliance and financial reports.[1358] One commenter stated that it is difficult to assess the incremental costs to SDRs of implementing Rule 13n–11 regarding designation of a CCO and that even with an established compliance infrastructure, the commenter believed that ''it is likely that the new requirements of Rule 13n–11 will entail additional costs, potentially including additional personnel and systems'' and the ''compliance responsibilities in an SDR will evolve (and likely increase) as the scope of transactions reported to that SDR increase, which may also result in additional incremental costs.'' [1359] The Commission agrees with the commenter's views; nevertheless the Commission has attempted to quantify the costs of compliance with the rule, as discussed above.

c. Alternatives

The Commission considered requiring that the compensation, appointment, and termination of a CCO be approved by a majority of independent board members of an SDR, a position urged by two commenters.[1360] As discussed above, the Commission believes that the rules that are intended to minimize an SDR's potential and existing conflicts of interest and to help ensure that SDRs meet core principles are sufficient at this time. Consequently, the Commission does not believe that requiring SDRs to have independent directors, and imposing the associated costs on SDRs, is warranted at this time. For these same reasons, the Commission does not believe that approval of a CCO's compensation, appointment, and termination by a majority of independent directors will provide

Attorney. Thus, the total ongoing estimated dollar cost will be $913,080 per SDR and $9,130,800 for all SDRs, calculated as follows: ($873,000 for a CCO + (Compliance Attorney at $334 per hour for 120 hours)) × 10 registrants = $9,130,800.

[1350] *See* Section VII.D.6 of this release discussing the costs of Rule 13n–11.

[1351] The Commission estimates that an SDR will assign these responsibilities to a Compliance Attorney. Thus, the total ongoing estimated dollar cost will be $1,670 per SDR and $16,700 for all SDRs, calculated as follows: (Compliance Attorney at $334 per hour for 5 hours) × 10 registrants = $16,700.

[1352] *See* Section VII.D.6 of this release discussing the costs of Rule 13n–11.

[1353] The Commission estimates that an SDR will assign these responsibilities to a Senior Accountant. Data from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, suggest that the cost of a Senior Accountant is $198 per hour. Thus, the total ongoing estimated dollar cost will be $599,000 per SDR and $5,990,000 for all SDRs, calculated as follows: ($500,000 for independent public accounting services + (Senior Accountant at $198 per hour for 500 hours)) × 10 registrants = $5,990,000.

[1354] *See* Section VII.D.6 of this release discussing the costs of Rule 13n–11.

[1355] The Commission estimates that an SDR will assign these responsibilities to a Senior Systems Analyst. Thus, the total ongoing estimated dollar cost will be $36,812 per SDR and $368,120 for all SDRs, calculated as follows: ($22,772 for information technology services + (Senior Systems Analyst at $260 per hour for 54 hours)) × 10 registrants = $368,120.

[1356] *Cf.* DTCC 2, *supra* note 19 (stating that it ''has an established compliance infrastructure for its businesses . . . which includes processes for establishing and implementing required compliance policies and procedures and overseeing adherence to those procedures and a mechanism for reporting, tracking, remediating and closing compliance issues whether self-identified or identified through internal or external examinations'' and that ''[t]he Commission's proposed required practices are generally consistent with those of'' the commenter's trade repository).

[1357] *See* Proposing Release, 75 FR at 77362, *supra* note 2.

[1358] *See* Proposing Release, 75 FR at 77362, *supra* note 2.

[1359] DTCC 2, *supra* note 19.

[1360] *See* Better Markets 1, *supra* note 19 (recommending that the CCO's compensation and termination be approved by independent board members of an SDR). Similarly, one commenter suggested that only public independent directors or directors with an ''Independent Perspective,'' and not the full board, have ''the authority and sole responsibility to appoint or remove the CCO, or to materially change its duties and responsibilities.'' Barnard, *supra* note 19.

substantially greater benefits than having a majority of the board approve compensation, appointment, and termination.

Similarly, the Commission considered requiring CCOs to report directly to independent directors, as suggested by one commenter.[1361] For the reasons stated above, the Commission does not believe that requiring independent directors, and therefore requiring CCOs to report to independent directors, is warranted at this time.[1362]

The Commission considered whether it should prohibit a CCO from being the general counsel of an SDR or a member of the SDR's legal department, as suggested by two commenters.[1363] The Commission is not adopting this prohibition because, as discussed above, the Commission believes that any potential conflicts of interest can be adequately addressed by the SDR's conflicts of interest policies and procedures, which are required to be established under Rule 13n–4(c)(3).[1364] The Commission believes that SDRs should have flexibility in appointing their CCOs and that these conflicts of interest provisions are sufficient to mitigate any risks from not adopting the prohibition suggested by the commenter. Further, the Commission believes that imposing such a prohibition could impose additional costs on SDRs by requiring that they employ two different persons as general counsel and CCO, each position with its own compensation.

The Commission considered reducing the amount of information required on the annual compliance report. For example, the Commission could have not required any discussion of recommendations for material changes to policies and procedures, as suggested by one commenter.[1365] The Commission believes, however, that the benefits of obtaining all of the information required by Rule 13n–11(d) justify any burdens associated with providing such information on the annual compliance report. The information will assist Commission staff in assessing an SDR's compliance with the federal securities laws and the rules and regulations thereunder, and information about recommendations for material changes to an SDR's policies and procedures may alert the staff to material compliance issues at an SDR. Moreover, only recommendations for material changes will have to be described, which will impose a lesser burden than requiring disclosure of every recommendation.

The Commission considered, as suggested by one commenter,[1366] harmonizing with the CFTC's approach [1367] and not adopting Rule 13n–11(f)(2)'s requirement that each financial report be audited in accordance with the PCAOB's standards by a registered public accounting firm that is qualified and independent. Although the Commission understands that SDRs will incur costs in hiring and retaining qualified public accounting firms, the Commission believes that obtaining audited financial reports from SDRs is important given the significant role the Commission believes that SDRs will play in the SBS market. The Commission believes that SDRs will provide transparency to, and increase the efficiency of, the SBS market. The Commission believes that SDRs will also be an important source of market data for regulators. Given the critical nature of their role in the marketplace, the Commission believes that it is important to obtain audited financial reports from SDRs in order to determine whether or not they have sufficient financial resources to continue operations. While the Commission recognizes that Rule 13n–11(f)(2) may, in some cases, be more costly than the CFTC's requirement of quarterly unaudited financial statements, the Commission believes that the additional burden, where it exists, is justified by the benefits of requiring audited financial reports.

Finally, the Commission considered one commenter's suggestion that there should be ''[c]ompetency standards to ensure that CCOs have the background and skills necessary to fulfill their responsibilities.'' [1368] The Commission believes that, as discussed above, such standards do not need to be adopted by rule, but rather that SDRs should have flexibility in determining what standards their CCOs should meet.[1369] The Commission believes that SDRs are in the best position to judge the competency of their CCOs and select them accordingly.

7. Other Policies and Procedures Relating to an SDR's Business

The SDR Rules require SDRs to develop and maintain various policies and procedures.[1370] Rules 13n–4(b)(8) and 13n–9 require each SDR to comply with certain requirements pertaining to the privacy of SBS transaction information.[1371] Rule 13n–4(c) requires each SDR to comply with certain core principles pertaining to market access to services and data, governance arrangements, and conflicts of interest, including developing policies and procedures related to these core principles.[1372] Rule 13n–5(b)(6) requires SDRs to establish procedures and provide facilities to effectively resolve disputes.[1373]

a. Benefits

The privacy requirements set forth in Rules 13n–4(b)(8) and 13n–9 are intended to safeguard transaction information provided to SDRs by market participants. These privacy requirements make it less likely that the transaction information that market participants are required to report will expose their trading strategies or unhedged positions, which could subject them to predatory trading.

Rule 13n–4(c)(1), which relates to market access to services and data, requires that SDRs impose fair, reasonable, and consistently applied fees and maintain objective access and participation criteria. This rule is designed to help ensure that SDRs do not engage in anticompetitive behavior and assuming that the SDR Rules promote competition among SDRs, that the cost of an SDR's core and ancillary services that are passed on to market participants are competitive. Furthermore, the Commission believes that by requiring each SDR to permit market participants to access specific services offered by the SDR separately, Rule 13n–4(c)(1)(ii) may promote efficiency to the extent that it saves market participants from having to purchase ancillary services that they do not want and will not use as a condition to using an SDR's data collection and maintenance services. Rule 13n–4(c)(1)(ii) may also promote efficiency and lower costs to the extent that it promotes competition among SDRs and

[1361] *See* Better Markets 1, *supra* note 19.

[1362] *See* Section VI.D.3.b.iii of this release discussing prescriptive governance requirements and limitations.

[1363] *See* Better Markets 1, *supra* note 19; Barnard, *supra* note 19.

[1364] *See* Section VI.J.1.c of this release discussing Rule 13n–11(a).

[1365] *See* DTCC 2, *supra* note 19.

[1366] *See* DTCC 5, *supra* note 19.

[1367] *See* CFTC Rule 49.25, 17 CFR 49.25.

[1368] *See* Better Markets 3, *supra* note 19.

[1369] *See* Section VI.J.1.c of this release discussing Rule 13n–11(a).

[1370] *See* Section VIII.D.2 of this release discussing the cost and benefits associated with the policies and procedures that SDRs must develop and maintain with respect to their information systems.

[1371] *See* Section VI.I.1 of this release discussing Rule 13n–9.

[1372] *See* Section VI.D.3 of this release discussing Rule 13n–4(c).

[1373] *See* Section VI.E.6 of this release discussing Rule 13n–5(b)(6).

among SDRs and third party service providers offering ancillary services.

The governance requirements in Rule 13n–4(c)(2) are designed to reduce conflicts of interest in the management of SDRs. In addition, by requiring fair representation of market participants on the board with the opportunity to participate in the process for nominating directors and the right to petition for alternative candidates, the rule will help reduce the likelihood that an incumbent market participant will exert undue influence on the board.

While the above requirements are designed to prevent and constrain potential conflicts of interest, Rule 13n–4(c)(3) directly addresses conflicts of interest through targeted policies and procedures and an obligation to establish a process for resolving conflicts of interest. This rule will help mitigate the possibility that SDRs' business practices and internal structures might disadvantage a particular group of market participants.

The requirement in Rule 13n–5(b)(6) is designed to help ensure that SDRs maintain accurate records relating to SBSs.[1374] In addition to helping to ensure the accuracy of data maintained by SDRs, the requirement will provide a facility through which market participants could correct inaccuracies in SBS data regarding transactions to which they are a party.

Collectively, the rules described in this section will help ensure that SDRs operate consistently with the objectives set forth in the Exchange Act by providing fair, open, and not unreasonably discriminatory access to market participants without taking advantage of the SDRs' access to transaction data that market participants are required to report to the SDRs.

The Commission solicited comment on the benefits related to Rules 13n–4(c), 13n–5(b)(6), 13n–4(b)(8), and 13n–9.[1375] Other than one commenter noting that Rule 13n–5(b)(6) is a key step in the effort to have accurate data at SDRs,[1376] the Commission did not receive any comments on the estimated benefits of these rules.

b. Costs

The Commission anticipates that the costs to SDRs from Rules 13n–4(c), 13n–5(b)(6), 13n–4(b)(8), and 13n–9 will derive primarily from the costs of establishing, maintaining, and enforcing the required policies and procedures.

The governance requirements in Rule 13n–4(c)(2) could impose costs resulting from educating senior management and each director about SBS trading and reporting and the new regulatory structure that will govern SBSs, which could slow management or board processes at least initially. Existing SDRs may experience lower costs, however, to the extent that they have already educated senior management and each director about SBS trading and reporting and the new regulatory structure that will govern SBSs.

The requirement in Rule 13n–5(b)(6) will also impose costs on SDRs because SDRs are required to establish procedures and provide facilities through which market participants can challenge the accuracy of the transaction data and positions recorded in the SDRs.

Rule 13n–4(c)(1)(ii) may also impose costs on SDRs by requiring SDRs to offer services separately. If SDRs would otherwise bundle their ancillary services with their data collection and maintenance services, or vice versa, then the requirement that they offer services separately may impose costs on SDRs. These costs include the cost of building the infrastructure to offer services separately, the potential losses of economies of scope in providing bundled services, and lost revenue from fees for services that market participants would otherwise be required to purchase. Similarly, the rule may impose costs on third party service providers that would be prevented from bundling their services with the services of an SDR.

As discussed above, the Commission estimates that the average initial paperwork cost associated with Rule 13n–4(c)(1) will be 367.5 hours and $35,000 and the average ongoing cost will be 105 hours per year for each SDR.[1377] Assuming a maximum of ten SDRs, the aggregate one-time estimated dollar cost will be $1,465,550[1378] and the aggregate ongoing estimated dollar cost per year will be $320,890[1379] to comply with the rule.

As discussed above, the Commission estimates that the average initial paperwork cost associated with Rule 13n–4(c)(2) will be 210 hours and $20,000 for each SDR and the average ongoing paperwork cost will be 60 hours per year for each SDR.[1380] Assuming a maximum of ten SDRs, the aggregate one-time estimated dollar cost will be $901,400[1381] and the aggregate ongoing estimated dollar cost per year will be $200,400[1382] to comply with the rule.

As discussed above, the Commission estimates that the average initial paperwork cost associated with Rule 13n–4(c)(3) will be 420 hours and $40,000 for each SDR and the average ongoing paperwork cost will be 120 hours per year for each SDR.[1383] Assuming a maximum of ten SDRs, the aggregate one-time estimated dollar cost will be $1,802,800[1384] and the aggregate ongoing estimated dollar cost per year will be $400,800[1385] to comply with the rule.

As discussed above, the Commission estimates that the average initial paperwork cost associated with Rule 13n–5(b)(6) will be 315 hours and $30,000 for each SDR and the average

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[1374] *See* Exchange Act Section 13(n)(5)(B), 15 U.S.C. 78m(n)(5)(B) (requiring an SDR to confirm, as prescribed in Rule 13n–5, with both counterparties to the SBS the accuracy of the data that was submitted); Exchange Act Section 13(n)(5)(C), 15 U.S.C. 78m(n)(5)(C) (requiring SDRs to maintain SBS data).

[1375] *See* Proposing Release, 75 FR at 77363, *supra* note 2.

[1376] MFA 1, *supra* note 19; *see also* MFA SBSR, *supra* note 27.

[1377] *See* Section VII.D.7 of this release discussing costs of Rules 13n–4(c)(1)(iii) and (iv).

[1378] The Commission estimates that an SDR will assign these responsibilities to a Compliance Manager, an Attorney, a Senior Systems Analyst, and an Operations Specialist. Thus, the total initial estimated dollar cost will be $146,555 per SDR and $1,465,550 for all SDRs, calculated as follows: ($35,000 for outside legal services + (Compliance Manager at $283 per hour for 135 hours) + (Attorney at $380 per hour for 152.5 hours) + (Senior Systems Analyst at $260 per hour for 40 hours) + (Operations Specialist at $125 per hour for 40 hours)) × 10 registrants = $1,465,550.

[1379] The Commission estimates that an SDR will assign these responsibilities to a Compliance Manager, an Attorney, a Senior Systems Analyst, and an Operations Specialist. Thus, the total ongoing estimated dollar cost will be $32,089 per SDR and $320,890 for all SDRs, calculated as follows: ((Compliance Manager at $283 per hour for 38 hours) + (Attorney at $380 per hour for 45 hours) + (Senior Systems Analyst at $260 per hour for 11 hours) + (Operations Specialist at $125 per hour for 11 hours)) × 10 registrants = $320,890.

[1380] *See* Section VII.D.7 of this release discussing costs of Rule 13n–4(c)(2)(iv).

[1381] The Commission estimates that an SDR will assign these responsibilities to a Compliance Attorney. Thus, the total initial estimated dollar cost will be $90,140 per SDR and $901,400 for all SDRs, calculated as follows: ($20,000 for outside legal services + (Compliance Attorney at $334 per hour for 210 hours)) × 10 registrants = $901,400.

[1382] The Commission estimates that an SDR will assign these responsibilities to a Compliance Attorney. Thus, the total ongoing estimated dollar cost will be $20,040 per SDR and $200,400 for all SDRs, calculated as follows: (Compliance Attorney at $334 per hour for 60 hours) × 10 registrants = $200,400.

[1383] *See* Section VII.D.7 of this release discussing costs of Rule 13n–4(c)(3).

[1384] The Commission estimates that an SDR will assign these responsibilities to a Compliance Attorney. Thus, the total initial estimated dollar cost will be $180,280 per SDR and $1,802,800 for all SDRs, calculated as follows: ($40,000 for outside legal services + (Compliance Attorney at $334 per hour for 420 hours)) × 10 registrants = $1,802,800.

[1385] The Commission estimates that an SDR will assign these responsibilities to a Compliance Attorney. Thus, the total ongoing estimated dollar cost will be $40,080 per SDR and $400,800 for all SDRs, calculated as follows: (Compliance Attorney at $334 per hour for 120 hours) × 10 registrants = $400,800.

ongoing paperwork cost will be 90 hours per year for each SDR.[1386] Assuming a maximum of ten SDRs, the aggregate one-time estimated dollar cost will be $1,352,100[1387] and the aggregate ongoing estimated dollar cost per year will be $300,600[1388] to comply with the rule.

As discussed above, the Commission estimates that the average initial paperwork cost associated with Rules 13n–4(b)(8) and 13n–9 will be 630 hours and $60,000 for each SDR and the average ongoing paperwork cost will be 180 hours per year for each SDR.[1389] Assuming a maximum of ten SDRs, the aggregate one-time estimated dollar cost will be $2,704,200[1390] and the aggregate ongoing estimated dollar cost per year will be $601,200[1391] to comply with the rules.

The Commission solicited comment on the costs related to Rules 13n–4(c), 13n–5(b)(6), 13n–4(b)(8), and 13n–9.[1392] The Commission specifically requested comment on the initial and ongoing costs associated with establishing and maintaining the policies and procedures required by the rules, particularly as the costs apply to persons currently operating as SDRs.[1393] One commenter believed that an interpretation of Rule 13n–4(c)(1)(i) that prohibits the use of the ''dealer pays'' or ''sell-side pays'' model ''would have the unintended consequence of significantly increasing the costs for buy-side participants . . . .''[1394] Because, as discussed above, Rule 13n–4(c)(1)(i) is not intended to prohibit an SDR from utilizing any one particular model, including a ''dealer pays'' or ''sell-side pays'' model, the Commission does not believe that the rule will necessarily increase costs for buy-side participants, as stated by the commenter.[1395] The Commission further believes that if there is significant demand by buy-side participants with reporting responsibility for a ''dealer pays'' model, then an SDR is likely to provide such a service.

A commenter to proposed Regulation SBSR suggested that SDRs should not be permitted to charge fees to third parties acting on behalf of counterparties for accepting SBS transaction information, as such fees would increase the cost of using an SB SEF or other third party.[1396] Although the Commission agrees that an SB SEF or other third party could pass along fees charged by SDRs, the Commission does not believe that it is appropriate to determine who an SDR can charge for its services. Rather, the Commission believes that SDRs should have flexibility in determining how and whom to charge for their services, and that any costs associated with such flexibility are justified by the benefits of allowing SDRs to develop sustainable business models in an open, competitive environment.

The Commission believes that existing SDRs may already have in place policies and procedures similar to the policies and procedures required by Rules 13n–4(c), 13n–5(b)(6), 13n–4(b)(8), and 13n–9. Such persons are currently not subject to regulation by the Commission, and therefore, may need to enhance their policies and procedures to comply with Rules 13n–4(c), 13n–5(b)(6), 13n–4(b)(8), and 13n–9. Thus, such persons may experience costs in enhancing their policies and procedures to comply with Rules 13n–4(c), 13n–5(b)(6), 13n–4(b)(8), and 13n–9. Moreover, because the costs discussed above represent the costs of creating policies and procedures without any existing policies and procedures in place, existing SDRs that already have policies and procedures may experience initial costs lower than those estimated above. The Commission believes that after such persons bring their policies and procedures into compliance with Rules 13n–4(c), 13n–5(b)(6), 13n–4(b)(8), and 13n–9, however, the ongoing annual costs for such persons will likely be consistent with the estimates provided above.

c. Alternatives

As suggested by a commenter, the Commission considered (1) adding safeguards specifically related to confidentiality of trading positions and (2) requiring SDRs to adopt policies and procedures to limit access to confidential information to directors, officers, employees, agents, and representatives who need to know such information in order to fulfill their regulatory obligations.[1397] As discussed above, the Commission believes that Rules 13n–4(b)(8) and 13n–9, as adopted, are broad enough to cover information about trading positions, so no specific requirement regarding confidentiality of trading positions is necessary.[1398] The Commission also believes that the rules are broad enough to allow SDRs, if they choose, to adopt policies and procedures to limit access to confidential information to directors, officers, employees, agents, and representatives who need to know such information in order to fulfill their regulatory obligations. The Commission believes that the adoption of the specific policies that were suggested by the commenter would prevent an SDR's management from finding the most cost effective method of meeting the privacy requirements in these rules.

The Commission considered, as an alternative to Rules 13n–4(c)(2) and (3), adopting, as suggested by two commenters, prescriptive rules relating to governance (*e.g.,* ownership or voting limitations, independent directors, nominating committees composed of a majority of independent directors).[1399] As discussed above, the Commission believes that rules that are intended to minimize an SDR's potential and existing conflicts of interest and to help ensure that an SDR meets its core principles are sufficient and that prescriptive governance requirements are not warranted at this time.[1400] If the Commission were to impose additional governance requirements and limitations, SDRs would likely incur costs in addition to the costs already imposed by the SDR Rules, which do not seem to be warranted at this time. For these reasons, the Commission is

[1386] *See* Section VII.D.7 of this release discussing costs of Rule 13n–5(b)(6).

[1387] The Commission estimates that an SDR will assign these responsibilities to a Compliance Attorney. Thus, the total initial estimated dollar cost will be $135,210 per SDR and $1,352,100 for all SDRs, calculated as follows: ($30,000 for outside legal services + (Compliance Attorney at $334 per hour for 315 hours)) × 10 registrants = $1,352,100.

[1388] The Commission estimates that an SDR will assign these responsibilities to a Compliance Attorney. Thus, the total initial estimated dollar cost will be $30,060 per SDR and $300,600 for all SDRs, calculated as follows: (Compliance Attorney at $334 per hour for 90 hours) × 10 registrants = $300,600.

[1389] *See* Section VII.D.7 of this release discussing costs of Rules 13n–4(b)(8), 13n–9(b)(1), and 13n–9(b)(2).

[1390] The Commission estimates that an SDR will assign these responsibilities to a Compliance Attorney. Thus, the total initial estimated dollar cost will be $270,420 per SDR and $2,704,200 for all SDRs, calculated as follows: ($60,000 for outside legal services + (Compliance Attorney at $334 per hour for 630 hours)) × 10 registrants = $2,704,200.

[1391] The Commission estimates that an SDR will assign these responsibilities to a Compliance Attorney. Thus, the total ongoing estimated dollar cost will be $60,120 per SDR and $601,200 for all SDRs, calculated as follows: (Compliance Attorney at $334 per hour for 180 hours) × 10 registrants = $601,200.

[1392] *See* Proposing Release 75 FR at 77364, *supra* note 2.

[1393] *See* Proposing Release 75 FR at 77364, *supra* note 2.

[1394] MarkitSERV, *supra* note 19.

[1395] *See* Section VI.D.3.a.iii(1) of this release discussing Rule 13n–4(c)(1)(i).

[1396] Tradeweb SBSR, *supra* note 27.

[1397] *See* MFA 1, *supra* note 19.

[1398] *See* Sections VI.D.2.c and VI.I.1.c of this release discussing Rules 13n–4(b)(8) and 13n–9, respectively.

[1399] *See* Barnard, *supra* note 19; Better Markets 1, *supra* note 19; *see also* Better Markets 2, *supra* note 19.

[1400] *See* Sections VI.D.3.b.iii and VI.D.3.c.iii of this release discussing Rules 13n–4(c)(2) and 13n–4(c)(3), respectively.

not adopting the alternative to Rules 13n–4(c)(2) and (3) of more prescriptive governance arrangements.

The Commission considered whether the resolution of disputes should be left primarily to the SBS counterparties and third party service providers, which one commenter suggested.[1401] The Commission believes that the benefits of a dispute resolution procedure in Rule 13n–5(b)(6) justify the possible issues cited by the commenter, such as duplication of services already provided by third party service providers. As discussed above, there may be instances where a third party service provider cannot resolve a dispute, and, in those situations, the cost of dispute resolution through the SDR will be necessary to maintain the accuracy and quality of the SBS data.[1402] The value of the SBS data depends on its accuracy and quality.

The Commission also considered prohibiting the commercial use of SBS data by SDRs unless the parties to the SBS provide written consent. Three commenters, including two commenters to proposed Regulation SBSR, also suggested that SDRs be prohibited from using SBS data for commercial purposes.[1403] As discussed above, the Commission believes that limiting the commercial use of SBS data would potentially limit the business models that SDRs may develop, thereby reducing competition.[1404] Decreased competition may result in higher costs for SDR services. Limiting the commercial use of SBS data would reduce SDRs' potential revenue streams, reducing the profitability and stability of SDRs. Further, as discussed above, such a limitation may decrease transparency by preventing an SDR from releasing to the public anonymized, aggregated reports of SBS data.[1405] Finally, the Commission believes that the SDR Rules, including Rules 13n–4(c)(3) and 13n–9, are sufficient to reduce conflicts of interest and protect the privacy of SBS data. For these reasons, the Commission is not adopting the alternative of limiting the commercial use of SBS data.

8. Total Costs

Based on the analyses described above, the Commission estimates that Rules 13n–1 through 13n–11 and Form SDR will impose on registered SDRs an aggregate total initial one-time estimated dollar cost of $227,075,600.50.[1406] The Commission further estimates that Rules 13n–1 through 13n–11 and Form SDR will impose on registered SDRs a total ongoing annualized aggregate dollar cost of $145,630,646.10.[1407] Finally, the Commission estimates that certain non-U.S. persons may incur an aggregate total initial one-time estimated dollar cost of approximately $7,600[1408] in determining the availability of the SDR Exemption (*i.e.,* Rule 13n–12).

Existing SDRs may experience costs lower than these estimates. Such persons may have in place existing technology systems, policies and procedures, personnel, and compliance regimes that they can use to comply with the SDR Rules. Because the estimates discussed above represent the costs of compliance starting from scratch, an existing SDR will most likely experience costs lower than these estimates.

Similarly, if such a person is registered with the CFTC as a swap data repository, the person's costs of complying with the SDR Rules will most likely be lower than the estimates provided above because the person may be able to use its existing policies, procedures, and operations to comply with the SDR Rules. As stated above, the Commission believes that on the whole, the SDR Rules are largely consistent with the rules adopted by the CFTC for swap data repositories.[1409] Consequently, a person registered with the CFTC as a swap data repository may be able to use its existing policies, procedures, and operations to comply with the SDR Rules and may not need to create policies, procedures, and operations from scratch.

IX. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'')[1410] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a)[1411] of the Administrative Procedure Act,[1412] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on ''small entities.''[1413] Section 605(b) of the RFA states that this requirement does not apply to any final rule that an agency certifies will not ''have a significant economic impact on a substantial number of small entities.''[1414]

For purposes of Commission rulemaking in connection with the RFA, a small entity includes: (1) An issuer or a person, other than an investment company, that, on the last day of its most recent fiscal year, had total assets of $5 million or less and (2) a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Exchange Act Rule 17a–5(d), or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small entity.[1415]

In the Proposing Release, the Commission stated that it did not believe that any persons that would register as SDRs would be considered small entities.[1416] The Commission stated that it believed that most, if not

[1401] *See* DTCC 2, *supra* note 19.

[1402] *See* Section VI.E.6.c of this release discussing Rule 13n–5(b)(6).

[1403] *See* MFA 1, *supra* note 19; DTCC SBSR, *supra* note 27; WMBAA SBSR, *supra* note 27.

[1404] *See* Section VI.D.3.c.iii of this release discussing Rule 13n–4(c)(3).

[1405] *See* Section VI.D.3.c.iii of this release discussing Rule 13n–4(c)(3).

[1406] The Commission derived its estimate from the following: ($801,688 ($793,840 + $3,840 + $4,008) for Registration Requirements and Form SDR) + ($214,995,300 ($210,810,000 + $4,185,300) for SDR Duties, Data Collection and Maintenance, and Direct Electronic Access) + ($986,600 for Recordkeeping) + ($263,162.50 for Disclosure) + ($1,802,800 for Chief Compliance Officer and Compliance Functions) + ($8,226,050 ($1,465,550 + $901,400 + $1,802,800 + $1,352,100 + 2,704,200) for Other Policies and Procedures Relating to an SDR's Business) = $227,075,600.50.

[1407] The Commission derived its estimate from the following: ($55,440 for Registration Requirements and Form SDR) + ($127,451,400 ($126,486,000 + $965,400) for SDR Duties, Data Collection and Maintenance, and Direct Electronic Access) + ($790,051.10 for Recordkeeping) + ($2,510 for Reports) + ($1,735 for Disclosure) + ($15,505,620 ($9,130,800 + $16,700 + $5,990,000 + $368,120) for Chief Compliance Officer and Compliance Functions) + ($1,823,890 ($320,890 + $200,400 + $400,800 + $300,600 + $601,200) for Other Policies and Procedures Relating to an SDR's Business) = $145,630,646.10.

[1408] The Commission derived its estimate from the following: ($380 for one hour of an Attorney's time per person) × (20 non-U.S. persons that perform the functions of an SDR using in-house legal counsel to determine whether an applicable MOU or arrangement is in place).

[1409] *See* Section I.D of this release.

[1410] 5 U.S.C. 601 *et seq.*

[1411] 5 U.S.C. 603(a).

[1412] 5 U.S.C. 551 *et seq.*

[1413] Although Section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term small entity for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. *See* Final Definitions of ''Small Business'' and ''Small Organization'' for Purposes of the Regulatory Flexibility Act, Exchange Act Release No. 18451 (Jan. 28, 1982), 47 FR 5215 (Feb. 4, 1982).

[1414] *See* 5 U.S.C. 605(b).

[1415] 17 CFR 240.0–10.

[1416] Proposing Release, 75 FR at 77365, *supra* note 2.

all, SDRs would be part of large business entities with assets in excess of $5 million and total capital in excess of $500,000. As a result, the Commission certified that the proposed rules would not have a significant impact on a substantial number of small entities and requested comments on this certification.

The Commission did not receive any comments that specifically addressed whether Rules 13n–1 through 13n–12 and Form SDR would have a significant economic impact on small entities. Therefore, the Commission continues to believe that Rules 13n–1 through 13n–12 and Form SDR will not have a significant economic impact on a substantial number of small entities.[1417] Accordingly, the Commission hereby certifies that, pursuant to 5 U.S.C. 605(b), Rules 13n–1 through 13n–12, Form SDR will not have a significant economic impact on a substantial number of small entities.

X. Statutory Authority

Pursuant to the Exchange Act, and particularly Sections 13(n) and 23(a) thereof, 15 U.S.C. 78m(n) and 78w(a), the Commission is adopting new Rules 13n–1 to 13n–12, which govern SDRs and a new form for registration as an SDR. Additionally, the Commission is adopting new Rule 407 and amendments to Regulation S–T under authority set forth in Exchange Act Section 23(a).[1418] The Commission is also adopting amendments to Exchange Act Rule 24b–2 under authority set forth in Exchange Act Section 23(a).[1419] All the new rules and amendments are adopted under Chapter II of Title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects

17 CFR Part 232

Reporting and recordkeeping requirements.

17 CFR Parts 240 and 249

Confidential business information, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

[1417] *See* Proposing Release, 75 FR at 77365, *supra* note 2.

[1418] 15 U.S.C. 78w(a).

[1419] 15 U.S.C. 78w(a).

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for part 232 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78*o*(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.;* and 18 U.S.C. 1350.

* * * * *

■ 2. Section 232.11 is amended by adding the definitions of ''Interactive Data Financial Report'' and ''Related Official Financial Report Filing'' in alphabetical order to read as follows:

§ 232.11 Definition of terms used in part 232.

* * * * *

Interactive Data Financial Report. The term *Interactive Data Financial Report* means the machine-readable computer code that presents information in eXtensible Business Reporting Language (XBRL) electronic format pursuant to § 232.407.

* * * * *

Related Official Financial Report Filing. The term *Related Official Financial Report* Filing means the ASCII or HTML format part of the official filing with which an Interactive Data Financial Report appears as an exhibit.

* * * * *

■ 3. Section 232.101 is amended by:

■ a. Removing, in paragraph (a)(1)(xv), the word ''and'' after the semicolon;

■ b. In paragraph (a)(1)(xvi), removing the period and adding in its place a semicolon, and adding the word ''and'' after the semicolon;

■ c. Adding paragraph (a)(1)(xvii);

■ d. Revising paragraph (c) introductory text; and

■ e. Adding paragraph (d).

The additions and revision read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xvii) Documents filed with the Commission pursuant to section 13(n) of the Exchange Act (15 U.S.C. 78m(n)) and the rules and regulations thereunder, including Form SDR (17 CFR 249.1500) and reports filed pursuant to Rules 13n–11(d) and (f) (17 CFR 240.13n–11(d) and (f)) under the Exchange Act.

* * * * *

(c) *Documents to be submitted in paper only.* Except as otherwise specified in paragraph (d) of this section, the following shall not be submitted in electronic format:

* * * * *

(d) All documents, including any information with respect to which confidential treatment is requested, filed pursuant to section 13(n) of the Exchange Act (15 U.S.C. 78m(n)) and the rules and regulations thereunder shall be filed in electronic format.

■ 4. Section 232.305 is amended by revising paragraph (b) to read as follows:

§ 232.305 Number of characters per line; tabular and columnar information.

* * * * *

(b) Paragraph (a) of this section does not apply to HTML documents, Interactive Data Files (§ 232.11), Interactive Data Financial Reports (§ 232.11) or XBRL-Related Documents (§ 232.11).

■ 5. Section 232.407 is added to read as follows:

§ 232.407 Interactive data financial report filings.

Section 407 of Regulation S–T (§ 232.407) applies to electronic filers that file Interactive Data Financial Reports (§ 232.11) as required by Rule 13n–11(f)(5) (§ 240.13n–11(f)(5) of this chapter). Section 407 imposes content, format, and filing requirements for Interactive Data Financial Reports, but does not change the substantive content requirements for the financial and other disclosures in the Related Official Financial Report Filing (§ 232.11). Rule 13n–11(f)(5) specifies the circumstances under which an Interactive Data Financial Report must be filed as an exhibit.

(a) *Content, format, and filing requirements—General.* Interactive Data Financial Reports must:

(1) Comply with the content, format, and filing requirements of this section;

(2) Be filed only by an electronic filer that is required to file an Interactive Data Financial Report pursuant to Rule 13n–11(f)(5) (§ 240.13n–11(f)(5) of this chapter) as an exhibit to a filing; and

(3) Be filed in accordance with the EDGAR Filer Manual and Rules 13n–11(f)(5) and (g) (§ 240.13n–11(f)(5) and (g) of this chapter).

(b) *Content—categories of information presented.* An Interactive Data Financial Report must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related Official Financial Report Filing, no more and no less, for the following categories, as applicable:

(1) The complete set of the electronic filer's financial statements (which

includes the face of the financial statements and all footnotes); and

(2) All schedules set forth in Article 12 of Regulation S–X (§§ 210.12–01 through 210.12–29 of this chapter) related to the electronic filer's financial statements.

Note to paragraph (b): It is not permissible for the Interactive Data Financial Report to present only partial face financial statements, such as by excluding comparative financial information for prior periods.

(c) *Format—Generally.* An Interactive Data Financial Report must comply with the following requirements, except as modified by paragraph (d) or (e) of this section, as applicable, with respect to the corresponding data in the Related Official Financial Report Filing consisting of footnotes to financial statements or financial statement schedules as set forth in Article 12 of Regulation S–X (§§ 210.12–01 through 210.12–29 of this chapter):

(1) *Data elements and labels*—(i) *Element accuracy.* Each data element (*i.e.,* all text, line item names, monetary values, percentages, numbers, dates and other labels) contained in the Interactive Data Financial Report reflects the same information in the corresponding data in the Related Official Financial Report Filing;

(ii) *Element specificity.* No data element contained in the corresponding data in the Related Official Financial Report Filing is changed, deleted or summarized in the Interactive Data Financial Report;

(iii) *Standard and special labels and elements.* Each data element contained in the Interactive Data Financial Report is matched with an appropriate tag from the most recent version of the standard list of tags specified by the EDGAR Filer Manual. A tag is appropriate only when its standard definition, standard label, and other attributes as and to the extent identified in the list of tags match the information to be tagged, except that:

(A) *Labels.* An electronic filer must create and use a new special label to modify a tag's existing standard label when that tag is an appropriate tag in all other respects (*i.e.*, in order to use a tag from the standard list of tags only its label needs to be changed); and

(B) *Elements.* An electronic filer must create and use a new special element if and only if an appropriate tag does not exist in the standard list of tags for reasons other than or in addition to an inappropriate standard label; and

(2) *Additional mark-up related content.* The Interactive Data Financial Report contains any additional mark-up related content (*e.g.*, the eXtensible Business Reporting Language tags themselves, identification of the core XML documents used and other technology-related content) not found in the corresponding data in the Related Official Financial Report Filing that is necessary to comply with the EDGAR Filer Manual requirements.

(d) *Format—Footnotes—Generally.* The part of the Interactive Data Financial Report for which the corresponding data in the Related Official Financial Report Filing consists of footnotes to financial statements must comply with the requirements of paragraphs (c)(1) and (2) of this section, as modified by this paragraph (d). Each complete footnote must be block-text tagged.

(e) *Format—Schedules—Generally.* The part of the Interactive Data Financial Report for which the corresponding data in the Related Official Financial Report Filing consists of financial statement schedules as set forth in Article 12 of Regulation S–X (§§ 210.12–01 through 210.12–29 of this chapter) must comply with the requirements of paragraphs (c)(1) and (2) of this section, as modified by this paragraph (e). Each complete schedule must be block-text tagged.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 6. The general authority citation for Part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78n–1, 78*o*, 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 7. Sections 240.13n–1 through 240–13n–12 are added to read as follows:

Sec.

§ 240.13n–1 Registration of security-based swap data repository.

(a) *Definitions.* For purposes of this section —

(1) *Non-resident security-based swap data repository* means:

(i) In the case of an individual, one who resides in or has his principal place of business in any place not in the United States;

(ii) In the case of a corporation, one incorporated in or having its principal place of business in any place not in the United States; or

(iii) In the case of a partnership or other unincorporated organization or association, one having its principal place of business in any place not in the United States.

(2) *Tag* (including the term *tagged*) has the same meaning as set forth in Rule 11 of Regulation S–T (17 CFR 232.11).

(b) An application for the registration of a security-based swap data repository and all amendments thereto shall be filed electronically in a tagged data format on Form SDR (17 CFR 249.1500) with the Commission in accordance with the instructions contained therein. As part of the application process, each security-based swap data repository shall provide additional information to any representative of the Commission upon request.

(c) Within 90 days of the date of the publication of notice of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall –

(1) By order grant registration; or

(2) Institute proceedings to determine whether registration should be granted or denied. Such proceedings shall include notice of the issues under consideration and opportunity for hearing on the record and shall be concluded within 180 days of the date of the publication of notice of the filing of the application for registration under paragraph (b) of this section. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to 90 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

(3) The Commission shall grant the registration of a security-based swap data repository if the Commission finds that such security-based swap data repository is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as a security-based swap data repository, comply with any applicable provision of the federal securities laws and the rules and regulations thereunder, and carry out its functions in a manner consistent with the purposes of section 13(n) of the Act (15 U.S.C. 78m(n)) and the rules and regulations thereunder. The Commission shall deny the registration of a security-based swap data repository if it does not make any such finding.

(d) If any information reported in items 1 through 17, 26, and 48 of Form SDR (17 CFR 249.1500) or in any amendment thereto is or becomes inaccurate for any reason, whether before or after the registration has been granted, the security-based swap data repository shall promptly file an amendment on Form SDR updating such information. In addition, the security-based swap data repository shall annually file an amendment on Form SDR within 60 days after the end of each fiscal year of such security-based swap data repository.

(e) Each security-based swap data repository shall designate and authorize on Form SDR an agent in the United States, other than a Commission member, official, or employee, who shall accept any notice or service of process, pleadings, or other documents in any action or proceedings brought against the security-based swap data repository to enforce the federal securities laws and the rules and regulations thereunder.

(f) Any non-resident security-based swap data repository applying for registration pursuant to this section shall:

(1) Certify on Form SDR that the security-based swap data repository can, as a matter of law, and will provide the Commission with prompt access to the books and records of such security-based swap data repository and can, as a matter of law, and will submit to onsite inspection and examination by the Commission, and

(2) Provide an opinion of counsel that the security-based swap data repository can, as a matter of law, provide the Commission with prompt access to the books and records of such security-based swap data repository and can, as a matter of law, submit to onsite inspection and examination by the Commission.

(g) An application for registration or any amendment thereto that is filed pursuant to this section shall be considered a ''report'' filed with the Commission for purposes of sections 18(a) and 32(a) of the Act (15 U.S.C. 78r(a) and 78ff(a)) and the rules and regulations thereunder and other applicable provisions of the United States Code and the rules and regulations thereunder.

§ 240.13n–2 Withdrawal from registration; revocation and cancellation.

(a) *Definition.* For purposes of this section, *tag* (including the term *tagged*) has the same meaning as set forth in Rule 11 of Regulation S–T (17 CFR 232.11).

(b) A registered security-based swap data repository may withdraw from registration by filing a withdrawal from registration on Form SDR (17 CFR 249.1500) electronically in a tagged data format. The security-based swap data repository shall designate on Form SDR a person to serve as the custodian of the security-based swap data repository's books and records. When filing a withdrawal from registration on Form SDR, a security-based swap data repository shall update any inaccurate information.

(c) A withdrawal from registration filed by a security-based swap data repository shall become effective for all matters (except as provided in this paragraph (c)) on the 60th day after the filing thereof with the Commission, within such longer period of time as to which such security-based swap data repository consents or which the Commission, by order, may determine as necessary or appropriate in the public interest or for the protection of investors, or within such shorter period of time as the Commission may determine.

(d) A withdrawal from registration that is filed pursuant to this section shall be considered a ''report'' filed with the Commission for purposes of sections 18(a) and 32(a) of the Act (15 U.S.C. 78r(a) and 78ff(a)) and the rules and regulations thereunder and other applicable provisions of the United States Code and the rules and regulations thereunder.

(e) If the Commission finds, on the record after notice and opportunity for hearing, that any registered security-based swap data repository has obtained its registration by making any false and misleading statements with respect to any material fact or has violated or failed to comply with any provision of the federal securities laws and the rules and regulations thereunder, the Commission, by order, may revoke the registration. Pending final determination of whether any registration shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing on the record, to be necessary or appropriate in the public interest or for the protection of investors.

(f) If the Commission finds that a registered security-based swap data repository is no longer in existence or has ceased to do business in the capacity specified in its application for registration, the Commission, by order, may cancel the registration.

§ 240.13n–3 Registration of successor to registered security-based swap data repository.

(a) In the event that a security-based swap data repository succeeds to and continues the business of a security-based swap data repository registered pursuant to section 13(n) of the Act (15 U.S.C. 78m(n)), the registration of the predecessor shall be deemed to remain effective as the registration of the successor if, within 30 days after such succession, the successor files an application for registration on Form SDR (17 CFR 249.1500), and the predecessor files a withdrawal from registration on Form SDR; *provided, however,* that the registration of the predecessor security-based swap data repository shall cease to be effective 90 days after the publication of notice of the filing of the application for registration on Form SDR filed by the successor security-based swap data repository.

(b) Notwithstanding paragraph (a) of this section, if a security-based swap data repository succeeds to and continues the business of a registered predecessor security-based swap data repository, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor security-based swap data repository on Form SDR (17 CFR 249.1500) to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

§ 240.13n–4 Duties and core principles of security-based swap data repository.

(a) *Definitions.* For purposes of this section—

(1) *Affiliate* of a security-based swap data repository means a person that, directly or indirectly, controls, is

controlled by, or is under common control with the security-based swap data repository.

(2) *Board* means the board of directors of the security-based swap data repository or a body performing a function similar to the board of directors of the security-based swap data repository.

(3) *Control* (including the terms *controlled by* and *under common control with*) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. A person is presumed to control another person if the person:

(i) Is a director, general partner, or officer exercising executive responsibility (or having similar status or functions);

(ii) Directly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities; or

(iii) In the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25 percent or more of the capital.

(4) *Director* means any member of the board.

(5) *Direct electronic access* means access, which shall be in a form and manner acceptable to the Commission, to data stored by a security-based swap data repository in an electronic format and updated at the same time as the security-based swap data repository's data is updated so as to provide the Commission or any of its designees with the ability to query or analyze the data in the same manner that the security-based swap data repository can query or analyze the data.

(6) *Market participant* means any person participating in the security-based swap market, including, but not limited to, security-based swap dealers, major security-based swap participants, and any other counterparties to a security-based swap transaction.

(7) *Nonaffiliated third party* of a security-based swap data repository means any person except:

(i) The security-based swap data repository;

(ii) Any affiliate of the security-based swap data repository; or

(iii) A person employed by a security-based swap data repository and any entity that is not the security-based swap data repository's affiliate (and ''nonaffiliated third party'' includes such entity that jointly employs the person).

(8) *Person associated with a security-based swap data repository* means:

(i) Any partner, officer, or director of such security-based swap data repository (or any person occupying a similar status or performing similar functions);

(ii) Any person directly or indirectly controlling, controlled by, or under common control with such security-based swap data repository; or

(iii) Any employee of such security-based swap data repository.

(b) *Duties.* To be registered, and maintain registration, as a security-based swap data repository, a security-based swap data repository shall:

(1) Subject itself to inspection and examination by any representative of the Commission;

(2) Accept data as prescribed in Regulation SBSR (17 CFR 242.900 through 242.909) for each security-based swap;

(3) Confirm, as prescribed in Rule 13n–5 (§ 240.13n–5), with both counterparties to the security-based swap the accuracy of the data that was submitted;

(4) Maintain, as prescribed in Rule 13n–5, the data described in Regulation SBSR in such form, in such manner, and for such period as provided therein and in the Act and the rules and regulations thereunder;

(5) Provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity);

(6) Provide the information described in Regulation SBSR in such form and at such frequency as prescribed in Regulation SBSR to comply with the public reporting requirements set forth in section 13(m) of the Act (15 U.S.C. 78m(m)) and the rules and regulations thereunder;

(7) At such time and in such manner as may be directed by the Commission, establish automated systems for monitoring, screening, and analyzing security-based swap data;

(8) Maintain the privacy of any and all security-based swap transaction information that the security-based swap data repository receives from a security-based swap dealer, counterparty, or any registered entity as prescribed in Rule 13n–9 (§ 240.13n–9); and

(9) [Reserved]

(10) [Reserved]

(11) Designate an individual to serve as a chief compliance officer.

(c) *Compliance with core principles.* A security-based swap data repository shall comply with the core principles as described in this paragraph.

(1) *Market access to services and data.* Unless necessary or appropriate to achieve the purposes of the Act and the rules and regulations thereunder, the security-based swap data repository shall not adopt any policies or procedures or take any action that results in an unreasonable restraint of trade or impose any material anticompetitive burden on the trading, clearing, or reporting of transactions. To comply with this core principle, each security-based swap data repository shall:

(i) Ensure that any dues, fees, or other charges imposed by, and any discounts or rebates offered by, a security-based swap data repository are fair and reasonable and not unreasonably discriminatory. Such dues, fees, other charges, discounts, or rebates shall be applied consistently across all similarly-situated users of such security-based swap data repository's services, including, but not limited to, market participants, market infrastructures (including central counterparties), venues from which data can be submitted to the security-based swap data repository (including exchanges, security-based swap execution facilities, electronic trading venues, and matching and confirmation platforms), and third party service providers;

(ii) Permit market participants to access specific services offered by the security-based swap data repository separately;

(iii) Establish, monitor on an ongoing basis, and enforce clearly stated objective criteria that would permit fair, open, and not unreasonably discriminatory access to services offered and data maintained by the security-based swap data repository as well as fair, open, and not unreasonably discriminatory participation by market participants, market infrastructures, venues from which data can be submitted to the security-based swap data repository, and third party service providers that seek to connect to or link with the security-based swap data repository; and

(iv) Establish, maintain, and enforce written policies and procedures reasonably designed to review any prohibition or limitation of any person with respect to access to services offered, directly or indirectly, or data maintained by the security-based swap data repository and to grant such person access to such services or data if such person has been discriminated against unfairly.

(2) *Governance arrangements.* Each security-based swap data repository shall establish governance arrangements that are transparent to fulfill public interest requirements under the Act and the rules and regulations thereunder; to

carry out functions consistent with the Act, the rules and regulations thereunder, and the purposes of the Act; and to support the objectives of the Federal Government, owners, and participants. To comply with this core principle, each security-based swap data repository shall:

(i) Establish governance arrangements that are well defined and include a clear organizational structure with effective internal controls;

(ii) Establish governance arrangements that provide for fair representation of market participants;

(iii) Provide representatives of market participants, including end-users, with the opportunity to participate in the process for nominating directors and with the right to petition for alternative candidates; and

(iv) Establish, maintain, and enforce written policies and procedures reasonably designed to ensure that the security-based swap data repository's senior management and each member of the board or committee that has the authority to act on behalf of the board possess requisite skills and expertise to fulfill their responsibilities in the management and governance of the security-based swap data repository, have a clear understanding of their responsibilities, and exercise sound judgment about the security-based swap data repository's affairs.

(3) *Conflicts of interest.* Each security-based swap data repository shall establish and enforce written policies and procedures reasonably designed to minimize conflicts of interest in the decision-making process of the security-based swap data repository and establish a process for resolving any such conflicts of interest. Such conflicts of interest include, but are not limited to: conflicts between the commercial interests of a security-based swap data repository and its statutory and regulatory responsibilities; conflicts in connection with the commercial interests of certain market participants or linked market infrastructures, third party service providers, and others; conflicts between, among, or with persons associated with the security-based swap data repository, market participants, affiliates of the security-based swap data repository, and nonaffiliated third parties; and misuse of confidential information, material, nonpublic information, and/or intellectual property. To comply with this core principle, each security-based swap data repository shall:

(i) Establish, maintain, and enforce written policies and procedures reasonably designed to identify and mitigate potential and existing conflicts of interest in the security-based swap data repository's decision-making process on an ongoing basis;

(ii) With respect to the decision-making process for resolving any conflicts of interest, require the recusal of any person involved in such conflict from such decision-making; and

(iii) Establish, maintain, and enforce reasonable written policies and procedures regarding the security-based swap data repository's non-commercial and/or commercial use of the security-based swap transaction information that it receives from a market participant, any registered entity, or any other person.

Note to § 240.13n–4: This rule is not intended to limit, or restrict, the applicability of other provisions of the federal securities laws, including, but not limited to, section 13(m) of the Act (15 U.S.C. 78m(m)) and the rules and regulations thereunder.

§ 240.13n–5 Data collection and maintenance.

(a) *Definitions.* For purposes of this section—

(1) *Asset class* means those security-based swaps in a particular broad category, including, but not limited to, credit derivatives and equity derivatives.

(2) *Position* means the gross and net notional amounts of open security-based swap transactions aggregated by one or more attributes, including, but not limited to, the:

(i) Underlying instrument, index, or reference entity;

(ii) Counterparty;

(iii) Asset class;

(iv) Long risk of the underlying instrument, index, or reference entity; and

(v) Short risk of the underlying instrument, index, or reference entity.

(3) *Transaction data* means all information reported to a security-based swap data repository pursuant to the Act and the rules and regulations thereunder, except for information provided pursuant to Rule 906(b) of Regulation SBSR (17 CFR 242.906(b)).

(b) *Requirements.* Every security-based swap data repository registered with the Commission shall comply with the following data collection and data maintenance standards:

(1) *Transaction data.* (i) Every security-based swap data repository shall establish, maintain, and enforce written policies and procedures reasonably designed for the reporting of complete and accurate transaction data to the security-based swap data repository and shall accept all transaction data that is reported in accordance with such policies and procedures.

(ii) If a security-based swap data repository accepts any security-based swap in a particular asset class, the security-based swap data repository shall accept all security-based swaps in that asset class that are reported to it in accordance with its policies and procedures required by paragraph (b)(1)(i) of this section.

(iii) Every security-based swap data repository shall establish, maintain, and enforce written policies and procedures reasonably designed to satisfy itself that the transaction data that has been submitted to the security-based swap data repository is complete and accurate, and clearly identifies the source for each trade side and the pairing method (if any) for each transaction in order to identify the level of quality of the transaction data.

(iv) Every security-based swap data repository shall promptly record the transaction data it receives.

(2) *Positions.* Every security-based swap data repository shall establish, maintain, and enforce written policies and procedures reasonably designed to calculate positions for all persons with open security-based swaps for which the security-based swap data repository maintains records.

(3) Every security-based swap data repository shall establish, maintain, and enforce written policies and procedures reasonably designed to ensure that the transaction data and positions that it maintains are complete and accurate.

(4) Every security-based swap data repository shall maintain transaction data and related identifying information for not less than five years after the applicable security-based swap expires and historical positions for not less than five years:

(i) In a place and format that is readily accessible and usable to the Commission and other persons with authority to access or view such information; and

(ii) In an electronic format that is non-rewriteable and non-erasable.

(5) Every security-based swap data repository shall establish, maintain, and enforce written policies and procedures reasonably designed to prevent any provision in a valid security-based swap from being invalidated or modified through the procedures or operations of the security-based swap data repository.

(6) Every security-based swap data repository shall establish procedures and provide facilities reasonably designed to effectively resolve disputes over the accuracy of the transaction data and positions that are recorded in the security-based swap data repository.

(7) If a security-based swap data repository ceases doing business, or ceases to be registered pursuant to section 13(n) of the Act (15 U.S.C. 78m(n)) and the rules and regulations thereunder, it must continue to preserve, maintain, and make accessible the transaction data and historical positions required to be collected, maintained, and preserved by this section in the manner required by the Act and the rules and regulations thereunder and for the remainder of the period required by this section.

(8) Every security-based swap data repository shall make and keep current a plan to ensure that the transaction data and positions that are recorded in the security-based swap data repository continue to be maintained in accordance with Rule 13n–5(b)(7) (§ 240.13n–5(b)(7)), which shall include procedures for transferring the transaction data and positions to the Commission or its designee (including another registered security-based swap data repository).

§ 240.13n–6 Automated systems.

Every security-based swap data repository, with respect to those systems that support or are integrally related to the performance of its activities, shall establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its systems provide adequate levels of capacity, integrity, resiliency, availability, and security.

§ 240.13n–7 Recordkeeping of security-based swap data repository.

(a) Every security-based swap data repository shall make and keep current the following books and records relating to its business:

(1) A record for each office listing, by name or title, each person at that office who, without delay, can explain the types of records the security-based swap data repository maintains at that office and the information contained in those records; and

(2) A record listing each officer, manager, or person performing similar functions of the security-based swap data repository responsible for establishing policies and procedures that are reasonably designed to ensure compliance with the Act and the rules and regulations thereunder.

(b) *Recordkeeping rule for security-based swap data repositories.* (1) Every security-based swap data repository shall keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Act and the rules and regulations thereunder, correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it in the course of its business as such.

(2) Every security-based swap data repository shall keep all such documents for a period of not less than five years, the first two years in a place that is immediately available to representatives of the Commission for inspection and examination.

(3) Every security-based swap data repository shall, upon request of any representative of the Commission, promptly furnish to the possession of such representative copies of any documents required to be kept and preserved by it pursuant to paragraphs (a) and (b) of this section.

(c) If a security-based swap data repository ceases doing business, or ceases to be registered pursuant to section 13(n) of the Act (15 U.S.C. 78m(n)) and the rules and regulations thereunder, it must continue to preserve, maintain, and make accessible the records and data required to be collected, maintained and preserved by this section in the manner required by this section and for the remainder of the period required by this section.

(d) This section does not apply to transaction data and positions collected and maintained pursuant to Rule 13n–5 (§ 240.13n–5).

§ 240.13n–8 Reports to be provided to the Commission.

Every security-based swap data repository shall promptly report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under the Act and the rules and regulations thereunder.

§ 240.13n–9 Privacy requirements of security-based swap data repository.

(a) *Definitions.* For purposes of this section—

(1) *Affiliate* of a security-based swap data repository means a person that, directly or indirectly, controls, is controlled by, or is under common control with the security-based swap data repository.

(2) *Control* (including the terms *controlled by* and *under common control with*) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. A person is presumed to control another person if the person:

(i) Is a director, general partner, or officer exercising executive responsibility (or having similar status or functions);

(ii) Directly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities; or

(iii) In the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25 percent or more of the capital.

(3) *Market participant* means any person participating in the security-based swap market, including, but not limited to, security-based swap dealers, major security-based swap participants, and any other counterparties to a security-based swap transaction.

(4) *Nonaffiliated third party* of a security-based swap data repository means any person except:

(i) The security-based swap data repository;

(ii) The security-based swap data repository's affiliate; or

(iii) A person employed by a security-based swap data repository and any entity that is not the security-based swap data repository's affiliate (and *nonaffiliated third party* includes such entity that jointly employs the person).

(5) *Nonpublic personal information* means:

(i) Personally identifiable information that is not publicly available information; and

(ii) Any list, description, or other grouping of market participants (and publicly available information pertaining to them) that is derived using personally identifiable information that is not publicly available information.

(6) *Personally identifiable information* means any information:

(i) A market participant provides to a security-based swap data repository to obtain service from the security-based swap data repository;

(ii) About a market participant resulting from any transaction involving a service between the security-based swap data repository and the market participant; or

(iii) The security-based swap data repository obtains about a market participant in connection with providing a service to that market participant.

(7) *Person associated with a security-based swap data repository* means:

(i) Any partner, officer, or director of such security-based swap data repository (or any person occupying a similar status or performing similar functions);

(ii) Any person directly or indirectly controlling, controlled by, or under

common control with such security-based swap data repository; or

(iii) Any employee of such security-based swap data repository.

(b) Each security-based swap data repository shall:

(1) Establish, maintain, and enforce written policies and procedures reasonably designed to protect the privacy of any and all security-based swap transaction information that the security-based swap data repository receives from a security-based swap dealer, counterparty, or any registered entity. Such policies and procedures shall include, but are not limited to, policies and procedures to protect the privacy of any and all security-based swap transaction information that the security-based swap data repository shares with affiliates and nonaffiliated third parties; and

(2) Establish and maintain safeguards, policies, and procedures reasonably designed to prevent the misappropriation or misuse, directly or indirectly, of:

(i) Any confidential information received by the security-based swap data repository, including, but not limited to, trade data, position data, and any nonpublic personal information about a market participant or any of its customers;

(ii) Material, nonpublic information; and/or

(iii) Intellectual property, such as trading strategies or portfolio positions, by the security-based swap data repository or any person associated with the security-based swap data repository for their personal benefit or the benefit of others. Such safeguards, policies, and procedures shall address, without limitation:

(A) Limiting access to such confidential information, material, nonpublic information, and intellectual property;

(B) Standards pertaining to the trading by persons associated with the security-based swap data repository for their personal benefit or the benefit of others; and

(C) Adequate oversight to ensure compliance with this subparagraph.

§ 240.13n–10 Disclosure requirements of security-based swap data repository.

(a) *Definition.* For purposes of this section, m*arket participant* means any person participating in the over-the-counter derivatives market, including, but not limited to, security-based swap dealers, major security-based swap participants, and any other counterparties to a security-based swap transaction.

(b) Before accepting any security-based swap data from a market participant or upon a market participant's request, a security-based swap data repository shall furnish to the market participant a disclosure document that contains the following written information, which must reasonably enable the market participant to identify and evaluate accurately the risks and costs associated with using the services of the security-based swap data repository:

(1) The security-based swap data repository's criteria for providing others with access to services offered and data maintained by the security-based swap data repository;

(2) The security-based swap data repository's criteria for those seeking to connect to or link with the security-based swap data repository;

(3) A description of the security-based swap data repository's policies and procedures regarding its safeguarding of data and operational reliability, as described in Rule 13n–6 (§ 240.13n–6);

(4) A description of the security-based swap data repository's policies and procedures reasonably designed to protect the privacy of any and all security-based swap transaction information that the security-based swap data repository receives from a security-based swap dealer, counterparty, or any registered entity, as described in Rule 13n–9(b)(1) (§ 240.13n–9(b)(1));

(5) A description of the security-based swap data repository's policies and procedures regarding its non-commercial and/or commercial use of the security-based swap transaction information that it receives from a market participant, any registered entity, or any other person;

(6) A description of the security-based swap data repository's dispute resolution procedures involving market participants, as described in Rule 13n–5(b)(6) (§ 240.13n–5(b)(6));

(7) A description of all the security-based swap data repository's services, including any ancillary services;

(8) The security-based swap data repository's updated schedule of any dues; unbundled prices, rates, or other fees for all of its services, including any ancillary services; any discounts or rebates offered; and the criteria to benefit from such discounts or rebates; and

(9) A description of the security-based swap data repository's governance arrangements.

§ 240.13n–11 Chief compliance officer of security-based swap data repository; compliance reports and financial reports.

(a) *In general.* Each security-based swap data repository shall identify on Form SDR (17 CFR 249.1500) a person who has been designated by the board to serve as a chief compliance officer of the security-based swap data repository. The compensation, appointment, and removal of the chief compliance officer shall require the approval of a majority of the security-based swap data repository's board.

(b) *Definitions.* For purposes of this section—

(1) *Board* means the board of directors of the security-based swap data repository or a body performing a function similar to the board of directors of the security-based swap data repository.

(2) *Director* means any member of the board.

(3) *EDGAR Filer Manual* has the same meaning as set forth in Rule 11 of Regulation S–T (17 CFR 232.11).

(4) *Interactive Data Financial Report* has the same meaning as set forth in Rule 11 of Regulation S–T (17 CFR 232.11).

(5) *Material change* means a change that a chief compliance officer would reasonably need to know in order to oversee compliance of the security-based swap data repository.

(6) *Material compliance matter* means any compliance matter that the board would reasonably need to know to oversee the compliance of the security-based swap data repository and that involves, without limitation:

(i) A violation of the federal securities laws by the security-based swap data repository, its officers, directors, employees, or agents;

(ii) A violation of the policies and procedures of the security-based swap data repository by the security-based swap data repository, its officers, directors, employees, or agents; or

(iii) A weakness in the design or implementation of the policies and procedures of the security-based swap data repository.

(7) *Official filing* has the same meaning as set forth in Rule 11 of Regulation S–T (17 CFR 232.11).

(8) *Senior officer* means the chief executive officer or other equivalent officer.

(9) *Tag* (including the term *tagged*) has the same meaning as set forth in Rule 11 of Regulation S–T (17 CFR 232.11).

(c) *Duties.* Each chief compliance officer of a security-based swap data repository shall:

(1) Report directly to the board or to the senior officer of the security-based swap data repository;

(2) Review the compliance of the security-based swap data repository with respect to the requirements and

core principles described in section 13(n) of the Act (15 U.S.C. 78m(n)) and the rules and regulations thereunder;

(3) In consultation with the board or the senior officer of the security-based swap data repository, take reasonable steps to resolve any material conflicts of interest that may arise;

(4) Be responsible for administering each policy and procedure that is required to be established pursuant to section 13 of the Act (15 U.S.C. 78m) and the rules and regulations thereunder;

(5) Take reasonable steps to ensure compliance with the Act and the rules and regulations thereunder relating to security-based swaps, including each rule prescribed by the Commission under section 13 of the Act (15 U.S.C. 78m);

(6) Establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

(i) Compliance office review;

(ii) Look-back;

(iii) Internal or external audit finding;

(iv) Self-reported error; or

(v) Validated complaint; and

(7) Establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(d) *Compliance reports*—(1) *In general.* The chief compliance officer shall annually prepare and sign a report that contains a description of the compliance of the security-based swap data repository with respect to the Act and the rules and regulations thereunder and each policy and procedure of the security-based swap data repository (including the code of ethics and conflicts of interest policies of the security-based swap data repository). Each compliance report shall also contain, at a minimum, a description of:

(i) The security-based swap data repository's enforcement of its policies and procedures;

(ii) Any material changes to the policies and procedures since the date of the preceding compliance report;

(iii) Any recommendation for material changes to the policies and procedures as a result of the annual review, the rationale for such recommendation, and whether such policies and procedures were or will be modified by the security-based swap data repository to incorporate such recommendation; and

(iv) Any material compliance matters identified since the date of the preceding compliance report.

(2) *Requirements.* A financial report of the security-based swap data repository shall be filed with the Commission as described in paragraph (g) of this section and shall accompany a compliance report as described in paragraph (d)(1) of this section. The compliance report shall include a certification by the chief compliance officer that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the compliance report is accurate and complete. The compliance report shall also be filed in a tagged data format in accordance with the instructions contained in the EDGAR Filer Manual, as described in Rule 301 of Regulation S–T (17 CFR 232.301).

(e) The chief compliance officer shall submit the annual compliance report to the board for its review prior to the filing of the report with the Commission.

(f) *Financial reports.* Each financial report filed with a compliance report shall:

(1) Be a complete set of financial statements of the security-based swap data repository that are prepared in accordance with U.S. generally accepted accounting principles for the most recent two fiscal years of the security-based swap data repository;

(2) Be audited in accordance with the standards of the Public Company Accounting Oversight Board by a registered public accounting firm that is qualified and independent in accordance with Rule 2–01 of Regulation S–X (17 CFR 210.2–01);

(3) Include a report of the registered public accounting firm that complies with paragraphs (a) through (d) of Rule 2–02 of Regulation S–X (17 CFR 210.2–02);

(4) If the security-based swap data repository's financial statements contain consolidated information of a subsidiary of the security-based swap data repository, provide condensed financial information, in a financial statement footnote, as to the financial position, changes in financial position and results of operations of the security-based swap data repository, as of the same dates and for the same periods for which audited consolidated financial statements are required. Such financial information need not be presented in greater detail than is required for condensed statements by Rules 10–01(a)(2), (3), and (4) of Regulation S–X (17 CFR 210.10–01). Detailed footnote disclosure that would normally be included with complete financial statements may be omitted with the exception of disclosures regarding material contingencies, long-term obligations, and guarantees. Descriptions of significant provisions of the security-based swap data repository's long-term obligations, mandatory dividend or redemption requirements of redeemable stocks, and guarantees of the security-based swap data repository shall be provided along with a five-year schedule of maturities of debt. If the material contingencies, long-term obligations, redeemable stock requirements, and guarantees of the security-based swap data repository have been separately disclosed in the consolidated statements, then they need not be repeated in this schedule; and

(5) Be provided as an official filing in accordance with the EDGAR Filer Manual and include, as part of the official filing, an Interactive Data Financial Report filed in accordance with Rule 407 of Regulation S–T (17 CFR 232.407).

(g) Reports filed pursuant to paragraphs (d) and (f) of this section shall be filed within 60 days after the end of the fiscal year covered by such reports.

(h) No officer, director, or employee of a security-based swap data repository may directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence the security-based swap data repository's chief compliance officer in the performance of his or her duties under this section.

§ 240.13n–12 Exemption from requirements governing security-based swap data repositories for certain non-U.S. persons.

(a) *Definitions.* For purposes of this section—

(1) *Non-U.S. person* means a person that is not a U.S. person.

(2) *U.S. person* shall have the same meaning as set forth in Rule 3a71–3(a)(4)(i) (§ 240.3a71–3(a)(4)(i)).

(b) A non-U.S. person that performs the functions of a security-based swap data repository within the United States shall be exempt from the registration and other requirements set forth in section 13(n) of the Act (15 U.S.C. 78m(n)), and the rules and regulations thereunder, provided that each regulator with supervisory authority over such non-U.S. person has entered into a memorandum of understanding or other arrangement with the Commission that addresses the confidentiality of data collected and maintained by such non-U.S. person, access by the Commission to such data, and any other matters determined by the Commission.

■ 8. Section 240.24b–2 is amended by:

■ a. In the first sentence of paragraph (b), removing ''paragraph (g)'' and adding in its place ''paragraphs (g) and (h)''; and

■ b. Adding paragraph (h).

The addition reads as follows:

§ 240.24b–2 Nondisclosure of information filed with the Commission and with any exchange.

* * * * *

(h) A security-based swap data repository shall not omit the confidential portion from the material filed in electronic format pursuant to section 13(n) of the Act (15 U.S.C. 78m(n)) and the rules and regulations thereunder. In lieu of the procedures described in paragraph (b) of this section, a security-based swap data repository shall request confidential treatment electronically for any material filed in electronic format pursuant to section 13(n) of the Act (15 U.S.C. 78m(n)) and the rules and regulations thereunder.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 9. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 10. Subpart P consisting of § 249.1500 is added to read as follows:

Subpart P—Forms for Registration of Security-Based Swap Data Repositories

§ 249.1500 Form SDR, for application for registration as a security-based swap data repository, amendments thereto, or withdrawal from registration.

Note: The text of Form SDR does not, and the amendments will not, appear in the Code of Federal Regulations.]

The form shall be used for registration as a security-based swap data repository, and for the amendments to and withdrawal from such registration pursuant to section 13(n) of the Exchange Act (15 U.S.C. 78m(n)).

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM SDR

APPLICATION OR AMENDMENT TO APPLICATION FOR REGISTRATION OR WITHDRAWAL FROM REGISTRATION AS SECURITY-BASED SWAP DATA REPOSITORY UNDER THE SECURITIES EXCHANGE ACT OF 1934

GENERAL INSTRUCTIONS FOR PREPARING AND FILING FORM SDR

1. Form SDR and exhibits thereto are to be filed electronically in a tagged data format through EDGAR with the Securities and Exchange Commission by an applicant for registration as a security-based swap data repository, by a registered security-based swap data repository amending its application for registration, or by a registered security-based swap data repository withdrawing its registration, pursuant to Section 13(n) of the Securities Exchange Act of 1934 (''Exchange Act'') and Rules 13n–1 and 13n–2 thereunder. The electronic filing requirements of Regulation S–T will apply to all such filings.

2. With respect to an applicant for registration as a security-based swap data repository, Form SDR also constitutes an application for registration as a securities information processor. An amendment or withdrawal on Form SDR also constitutes an amendment or withdrawal of securities information processor registration pursuant to Section 11A of the Exchange Act and the rules and regulations thereunder. Applicants for registration as a securities information processor not seeking to become dually-registered as a security-based swap data repository and a securities information processor, or registered securities information processors that are not dually-registered as a security-based swap data repository and a securities information processor, should continue to file on Form SIP.

3. Upon the filing of an application for registration, the Commission will publish notice of the filing and afford interested persons an opportunity to submit written data, views, and arguments. No application for registration shall be effective unless the Commission, by order, grants such registration.

4. Individuals' names shall be given in full (last name, first name, middle name).

5. Form SDR shall be signed by a person who is duly authorized to act on behalf of the security-based swap data repository.

6. If Form SDR is being filed as an application for registration, all applicable items must be answered in full. If any item is not applicable, indicate by ''none'' or ''N/A'' as appropriate.

7. Disclosure of the information specified on this form is mandatory prior to processing of an application for registration as a security-based swap data repository and a securities information processor. The information will be used for the principal purpose of determining whether the Commission should grant or deny registration to an applicant. Except in cases where confidential treatment is requested by the applicant and granted by the Commission pursuant to the Freedom of Information Act and the rules of the Commission thereunder, information supplied on this form may be made available on the Commission's Web site, will be included routinely in the public files of the Commission, and will be available for inspection by any interested person. A form that is not prepared and executed in compliance with applicable requirements may be deemed as not acceptable for filing. Acceptance of this form, however, shall not constitute any finding that it has been filed as required or that the information submitted is true, current, or complete. Intentional misstatements or omissions of fact constitute federal criminal violations (*see* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a)).

8. Rule 13n–1(d) under the Exchange Act requires a security-based swap data repository to amend promptly Form SDR if any information contained in items 1 through 17, 26, and 48 of this application, or any amendment thereto, is or becomes inaccurate for any reason. Rule 13n–1(d) under the Exchange Act also requires a security-based swap data repository to file annually an amendment on Form SDR within 60 days after the end of each fiscal year of such security-based swap data repository. Rule 13n–2 under the Exchange Act requires a security-based swap data repository that seeks to withdraw from registration to file such withdrawal on Form SDR.

9. For the purposes of this form, the term ''applicant'' includes any applicant for registration as a security-based swap data repository or any registered security-based swap data repository that is amending Form SDR or withdrawing its registration as a security-based swap data repository. In addition, the term ''applicant'' includes any applicant for registration as a securities information processor.

10. Applicants filing Form SDR as an amendment (other than an annual amendment) need to update any information contained in items 1 through 17, 26, and 48 that has become inaccurate since the security-based swap data repository's last filing of Form SDR. An applicant submitting an amendment (other than an annual amendment) represents that all unamended information contained in items 1 through 17, 26, and 48 remains true, current, and complete as filed.

11. Applicants filing a withdrawal need to update any items or exhibits that are being amended since the security-based swap data repository's last filing of Form SDR. An applicant submitting a withdrawal represents that

all unamended items and exhibits remain true, current, and complete as filed.

12. Applicants filing an annual amendment must file a complete form, including all pages, answers to all items, together with all exhibits. Applicants filing an annual amendment must indicate which items have been amended since the last annual amendment, or, if the security-based swap data repository has not yet filed an annual amendment, since the security-based swap data repository's application for registration.

DEFINITIONS: Unless the context requires otherwise, all terms used in this form have the same meaning as in the Exchange Act, as amended, and in the rules and regulations of the Commission thereunder.

This collection of information will be reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The Commission estimates that the average burden to respond to Form SDR will be between 12 and 482 hours depending upon the purpose for which the form is being filed. Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden. It is mandatory that a security-based swap data repository file all notifications, updates, and reports required by Rules 13n–1 and 13n–2 using Form SDR.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM SDR

APPLICATION OR AMENDMENT TO APPLICATION FOR REGISTRATION OR WITHDRAWAL FROM REGISTRATION AS SECURITY-BASED SWAP DATA REPOSITORY UNDER THE SECURITIES EXCHANGE ACT OF 1934

(Exact Name of Applicant as Specified in Charter)

(Address of Principal Executive Offices)

If this is an APPLICATION for registration, complete this form in full and check here ☐

If this is an AMENDMENT to an application, or to an effective registration (other than an annual amendment), list all items that are amended and check here ☐

If this is an ANNUAL AMENDMENT to an application, or to an effective registration, complete this form in full, list all items that are amended since the last annual amendment, and check here ☐

If this is a WITHDRAWAL from registration, list all items that are amended and check here ☐

Or check here to confirm that there is no inaccurate information to update ☐

GENERAL INFORMATION

1. Name under which business is conducted, if different than name specified herein:

2. If name of business is amended, state previous business name:

3. Mailing address:

(Number and Street)

(City) (State/Country) (Mailing Zip/Postal Code)

4. List of principal office(s) and address(es) where security-based swap data repository and securities information processor activities are conducted:

Office

Address

5. If the applicant is a successor (within the definition of Rule 12b–2 under the Exchange Act) to a previously registered security-based swap data repository, please complete the following:

a. Date of succession:

b. Full name and address of predecessor security-based swap data repository:

(Name)

(Number and Street)

(City) (State/Country) (Mailing Zip/Postal Code)

c. Predecessor's CIK

6. List all asset classes of security-based swaps for which the applicant is collecting and maintaining data or for which it proposes to collect and maintain data.

7. Furnish a description of the function(s) that the applicant performs or proposes to perform.

8. Applicant is a:

☐ Corporation
☐ Partnership
☐ Other Form of Organization (Specify)

9. If the applicant is a corporation or other form of organization (besides a partnership):

a. Date of incorporation or organization

b. Place of incorporation or state/country of organization

10. If the applicant is a partnership:

a. Date of filing of partnership agreement

b. Place where partnership agreement was filed

11. Applicant understands and consents that any notice or service of process, pleadings, or other documents in connection with any action or proceeding against the applicant may be effectuated by certified mail to the officer specified or person named below at the U.S. address given. Such officer or person cannot be a Commission member, official, or employee.

(Name of Person or, if Applicant is a Corporation, Title of Officer)

(Name of Applicant or Applicable Entity)

(Number and Street)

(City) (State) (Zip Code)

(Area Code) (Telephone Number)

12. If this is a withdrawal from registration, furnish:

a. Name(s) and address(es) of the person(s) who has or will have custody or possession of the books and records

that the applicant maintained in connection with its performance of security-based swap data repository and securities information processor functions.

(Name of Person)

(Number and Street)

(City) (State/Country) (Mailing Zip/Postal Code)

(Area Code) (Telephone Number)

b. If different from above, provide address(es) where such books and records will be located.

(Number and Street)

(City) (State/Country) (Mailing Zip/Postal Code)

13. SIGNATURE: Applicant has duly caused this application, amendment, or withdrawal to be signed on its behalf by the undersigned, hereunto duly authorized, on this date:_____. Applicant and the undersigned hereby represent that all information contained herein is true, current, and complete. Intentional misstatements or omissions of fact constitute federal criminal violations (*see* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a)). It is understood that all required items and exhibits are considered integral parts of this form and that the submission of any amendment or withdrawal represents that all unamended items and exhibits remain true, current, and complete as previously filed and that the submission of any amendment (other than an annual amendment) represents that all unamended information contained in items 1 through 17, 26, and 48 remains true, current, and complete as filed. If the applicant is a non-resident security-based swap data repository, the applicant and the undersigned further represent that the applicant can, as a matter of law, and will provide the Commission with prompt access to the applicant's books and records and that the applicant can, as a matter of law, and will submit to an onsite inspection and examination by the Commission. For purposes of this certification, ''non-resident security-based swap data repository'' means (i) in the case of an individual, one who resides in or has his principal place of business in any place not in the United States; (ii) in the case of a corporation, one incorporated in or having its principal place of business in any place not in the United States; or (iii) in the case of a partnership or other unincorporated organization or association, one having its principal place of business in any place not in the United States.

(Name of Applicant)

(Signature of General Partner, Managing Agent, or Principal Officer)

(Title)

EXHIBITS—BUSINESS ORGANIZATION

14. List as Exhibit A any person as defined in Section 3(a)(9) of the Exchange Act that owns 10 percent or more of the applicant's stock or that, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of the applicant. State in Exhibit A the full name and address of each such person and attach a copy of the agreement or, if there is none written, describe the agreement or basis upon which such person exercises or may exercise such control or direction.

15. Attach as Exhibit B the following information about the chief compliance officer who has been appointed by the board of directors of the applicant or a person or group performing a function similar to such board of directors:

a. Name

b. Title

c. Date of commencement and, if appropriate, termination of present term of position

d. Length of time the chief compliance officer has held the same position

e. Brief account of the business experience of the chief compliance officer over the last five years

f. Any other business affiliations in the securities industry or derivatives industry

g. Details of:

(1) any order of the Commission with respect to such person pursuant to Sections 15(b)(4), 15(b)(6), 19(h)(2), or 19(h)(3) of the Exchange Act;

(2) any conviction or injunction of a type described in Sections 15(b)(4)(B) or (C) of the Exchange Act within the past ten years;

(3) any action of a self-regulatory organization with respect to such person imposing a final disciplinary sanction pursuant to Sections 6(b)(6), l5A(b)(7), or 17A(b)(3)(G) of the Exchange Act;

(4) any final action by a self-regulatory organization with respect to such person constituting a denial, bar, prohibition, or limitation of membership, participation, or association with a member, or of access to services offered by such organization or a member thereof; and

(5) any final action by another federal regulatory agency, including the Commodity Futures Trading Commission, any state regulatory agency, or any foreign financial regulatory authority resulting in:

i. a finding that such person has made a false statement or omission, or has been dishonest, unfair, or unethical;

ii. a finding that such person has been involved in a violation of any securities-related regulations or statutes;

iii. a finding that such person has been a cause of a business having its authorization to do business denied, suspended, revoked, or restricted;

iv. an order entered, in the past ten years, against such person in connection with a securities-related activity; or

v. any disciplinary sanction, including a denial, suspension, or revocation of such person's registration or license or otherwise, by order, a prevention from associating with a securities-related business or a restriction of such person's activities.

16. Attach as Exhibit C a list of the officers, directors, governors, and persons performing similar functions, and the members of all standing committees grouped by committee of the applicant or of the entity identified in item 19 that performs the security-based swap data repository and securities information processor activities of the applicant, indicating for each:

a. Name

b. Title

c. Dates of commencement and, if appropriate, termination of present term of office or position

d. Length of time each present officer, director, governor, persons performing similar functions, or member of a standing committee has held the same office or position

e. Brief account of the business experience of each officer, director, governor, persons performing similar functions, or member of a standing committee over the last five years

f. Any other business affiliations in the securities industry or derivatives industry

g. Details of:

(1) any order of the Commission with respect to such person pursuant to Sections 15(b)(4), 15(b)(6), 19(h)(2), or 19(h)(3) of the Exchange Act;

(2) any conviction or injunction of a type described in Sections 15(b)(4)(B) or (C) of the Exchange Act within the past ten years;

(3) any action of a self-regulatory organization with respect to such person imposing a final disciplinary sanction

pursuant to Sections 6(b)(6), l5A(b)(7), or 17A(b)(3)(G) of the Exchange Act;

(4) any final action by a self-regulatory organization with respect to such person constituting a denial, bar, prohibition, or limitation of membership, participation, or association with a member, or of access to services offered by such organization or a member thereof; and

(5) any final action by another federal regulatory agency, including the Commodity Futures Trading Commission, any state regulatory agency, or any foreign financial regulatory authority resulting in:

i. a finding that such person has made a false statement or omission, or has been dishonest, unfair, or unethical;

ii. a finding that such person has been involved in a violation of any securities-related regulations or statutes;

iii. a finding that such person has been a cause of a business having its authorization to do business denied, suspended, revoked, or restricted;

iv. an order entered, in the past ten years, against such person in connection with a securities-related activity; or

v. any disciplinary sanction, including a denial, suspension, or revocation of such person's registration or license or otherwise, by order, a prevention from associating with a securities-related business or a restriction of such person's activities.

17. Attach as Exhibit D a copy of documents relating to the governance arrangements of the applicant, including, but not limited to, the nomination and selection process of the members on the applicant's board of directors, a person or group performing a function similar to a board of directors (collectively, ''board''), or any committee that has the authority to act on behalf of the board; the responsibilities of the board and each such committee; the composition of the board and each such committee; and the applicant's policies and procedures reasonably designed to ensure that the applicant's senior management and each member of the board or such committee possess requisite skills and expertise to fulfill their responsibilities in the management and governance of the applicant, to have a clear understanding of their responsibilities, and to exercise sound judgment about the applicant's affairs.

18. Attach as Exhibit E a copy of the constitution, articles of incorporation or association with all amendments thereto, existing by-laws, rules, procedures, and instruments corresponding thereto, of the applicant.

19. Attach as Exhibit F a narrative and/or graphic description of the organizational structure of the applicant. Note: If the security-based swap data repository or securities information processor activities of the applicant are conducted primarily by a division, subdivision, or other segregable entity within the applicant's corporation or organization, describe the relationship of such entity within the overall organizational structure and attach as Exhibit F the description that applies to the segregable entity.

20. Attach as Exhibit G a list of all affiliates of the applicant and indicate the general nature of the affiliation. For purposes of this application, an ''affiliate'' of an applicant means a person that, directly or indirectly, controls, is controlled by, or is under common control with the applicant.

21. Attach as Exhibit H a brief description of any material pending legal proceeding(s), other than ordinary and routine litigation incidental to the business, to which the applicant or any of its affiliates is a party or to which any of its property is the subject. Include the name of the court or agency in which the proceeding(s) are pending, the date(s) instituted, the principal parties to the proceeding, a description of the factual basis alleged to underlie the proceeding(s), and the relief sought. Include similar information as to any such proceeding(s) known to be contemplated by any governmental agencies.

22. Attach as Exhibit I copies of all material contracts with any security-based swap execution facility, clearing agency, central counterparty, or third party service provider. To the extent that form contracts are used by the applicant, submit a sample of each type of form contract used. In addition, include a list of security-based swap execution facilities, clearing agencies, central counterparties, and third party service providers with whom the applicant has entered into material contracts.

23. Attach as Exhibit J procedures implemented by the applicant to minimize conflicts of interest in the decision-making process of the applicant and to resolve any such conflicts of interest.

EXHIBITS—FINANCIAL INFORMATION

24. Attach as Exhibit K a statement of financial position, results of operations, statement of sources and application of revenues and all notes or schedules thereto, as of the most recent fiscal year of the applicant. If statements certified by an independent public accountant are available, such statements shall be submitted as Exhibit K. Alternatively, a financial report, as described in Rule 13n–11(f) under the Exchange Act, may be filed as Exhibit K.

25. Attach as Exhibit L a statement of financial position and results of operations for each affiliate of the applicant as of the end of the most recent fiscal year of each such affiliate. Alternatively, identify, if available, the most recently filed annual report on Form 10–K under the Exchange Act for any such affiliate as Exhibit L.

26. Attach as Exhibit M the following:

a. A complete list of all dues, fees, and other charges imposed, or to be imposed, as well as all discounts or rebates offered, or to be offered, by or on behalf of the applicant for its services, including the security-based swap data repository's services, securities information processor's services, and any ancillary services, and identify the service(s) provided for each such due, fee, other charge, discount, or rebate;

b. A description of the basis and methods used in determining at least annually the level and structure of the services as well as the dues, fees, other charges, discounts, or rebates listed in paragraph a of this item; and

c. If the applicant differentiates, or proposes to differentiate, among its customers, or classes of customers in the amount of any dues, fees, or other charges imposed or any discount or rebate offered for the same or similar services, then state and indicate the amount of each differential. In addition, identify and describe any differences in the cost of providing such services, and any other factors, that account for such differences.

EXHIBITS—OPERATIONAL CAPABILITY

27. Attach as Exhibit N a narrative description, or the functional specifications, of each service or function listed in item 7 and performed as a security-based swap data repository or securities information processor. Include a description of all procedures utilized for the collection and maintenance of information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by market participants.

28. Attach as Exhibit O a list of all computer hardware utilized by the applicant to perform the security-based swap data repository or securities information processor functions listed in item 7, indicating:

a. Name of manufacturer and manufacturer's equipment identification number;

b. Whether such hardware is purchased or leased (If leased, state

from whom leased, duration of lease, and any provisions for purchase or renewal); and

c. Where such equipment (exclusive of terminals and other access devices) is physically located.

29. Attach as Exhibit P a description of the personnel qualifications for each category of professional, non-professional, and supervisory employees employed by the applicant or the division, subdivision, or other segregable entity within the applicant as described in item 19.

30. Attach as Exhibit Q a description of the measures or procedures implemented by the applicant to provide for the security of any system employed to perform the functions of the security-based swap data repository or securities information processor. Include a general description of any physical and operational safeguards designed to prevent unauthorized access (whether by input or retrieval) to the system. Describe any circumstances within the past year in which the described security measures or safeguards failed to prevent any such unauthorized access to the system and any measures taken to prevent a reoccurrence. Describe any measures used by the applicant to satisfy itself that the information received or disseminated by the system is accurate.

31. Where security-based swap data repository or securities information processor functions are performed by automated facilities or systems, attach as Exhibit R a description of all backup systems or subsystems that are designed to prevent interruptions in the performance of any such function as a result of technical malfunctions or otherwise in the system itself, in any permitted input or output system connection, or as a result of any independent source.

32. Attach as Exhibit S the following:

a. For each of the security-based swap data repository or securities information processor functions described in item 7:

(1) quantify in appropriate units of measure the limits on the applicant's capacity to receive (or collect), process, store, or display (or disseminate for display or other use) the data elements included within each function (*e.g.,* number of inquiries from remote terminals); and

(2) identify the factors (mechanical, electronic, or other) that account for the current limitations reported in answer to (1) on the applicant's capacity to receive (or collect), process, store, or display (or disseminate for display or other use) the data elements included within each function.

b. If the applicant is able to employ, or presently employs, its system(s) for any use other than for performing the functions of a security-based swap data repository or securities information processor, state the priorities of assignment of capacity between such functions and such other uses, and state the methods used or able to be used to divert capacity between such functions and other uses.

EXHIBITS—ACCESS TO SERVICES AND DATA

33. Attach as Exhibit T the following:

a. State the number of persons who subscribe, or who have notified the applicant of their intention to subscribe, to the applicant's services.

b. For each instance during the past year in which any person has been prohibited or limited with respect to access to services offered or data maintained by the applicant, indicate the name of each such person and the reason for the prohibition or limitation.

c. For each of such services that involves the supply of information to a quotation board, ticker device, electronic information terminal, or other such device, state the total number of devices to which information is, or will be supplied (''serviced'') and any minimum and or maximum number of devices required or permitted by agreement or otherwise to be serviced by the applicant. In addition, define the data elements for each service.

d. For each service that is furnished in machine-readable form, state the storage media of any service furnished and define the data elements of such service.

34. Attach as Exhibit U copies of all contracts governing the terms by which persons may subscribe to the security-based swap data repository services, securities information processor services, and any ancillary services provided by the applicant. To the extent that form contracts are used by the applicant, submit a sample of each type of form contract used.

35. Attach as Exhibit V a description of any specifications, qualifications, or other criteria that limit, are interpreted to limit, or have the effect of limiting access to or use of any security-based swap data repository or securities information processor services offered or data maintained by the applicant and state the reasons for imposing such specifications, qualifications, or other criteria.

36. Attach as Exhibit W any specifications, qualifications, or other criteria required of persons who supply security-based swap information to the applicant for collection, maintenance, processing, preparing for distribution, and publication by the applicant or of persons who seek to connect to or link with the applicant.

37. Attach as Exhibit X any specifications, qualifications, or other criteria required of any person, including, but not limited to, regulators, market participants, market infrastructures, venues from which data could be submitted to the applicant, and third party service providers, who requests access to data maintained by the applicant.

38. Attach as Exhibit Y policies and procedures implemented by the applicant to review any prohibition or limitation of any person with respect to access to services offered or data maintained by the applicant and to grant such person access to such services or data if such person has been discriminated against unfairly.

EXHIBITS—OTHER POLICIES AND PROCEDURES

39. Attach as Exhibit Z policies and procedures implemented by the applicant to protect the privacy of any and all security-based swap transaction information that the applicant receives from a market participant or any registered entity.

40. Attach as Exhibit AA a description of safeguards, policies, and procedures implemented by the applicant to prevent the misappropriation or misuse of (a) any confidential information received by the applicant, including, but not limited to, trade data, position data, and any nonpublic personal information about a market participant or any of its customers; (b) material, nonpublic information; and/or (c) intellectual property by applicant or any person associated with the applicant for their personal benefit or the benefit of others.

41. Attach as Exhibit BB policies and procedures implemented by the applicant regarding its use of the security-based swap transaction information that it receives from a market participant, any registered entity, or any person for non-commercial and/or commercial purposes.

42. Attach as Exhibit CC procedures and a description of facilities of the applicant for effectively resolving disputes over the accuracy of the transaction data and positions that are recorded in the security-based swap data repository.

43. Attach as Exhibit DD policies and procedures relating to the applicant's calculation of positions.

44. Attach as Exhibit EE policies and procedures implemented by the applicant to prevent any provision in a

valid security-based swap from being invalidated or modified through the procedures or operations of the applicant.

45. Attach as Exhibit FF a plan to ensure that the transaction data and position data that are recorded in the applicant continue to be maintained after the applicant withdraws from registration as a security-based swap data repository, which shall include procedures for transferring the transaction data and position data to the Commission or its designee (including another registered security-based swap data repository).

46. Attach as Exhibit GG all of the policies and procedures required under Regulation SBSR.

47. If the applicant has a rulebook, then the applicant may attach the rulebook as Exhibit HH.

EXHIBIT—LEGAL OPINION

48. If the applicant is a non-resident security-based swap data repository, then attach as Exhibit II an opinion of counsel that the security-based swap data repository can, as a matter of law, provide the Commission with prompt access to the books and records of such security-based swap data repository and that the security-based swap data repository can, as a matter of law, submit to onsite inspection and examination by the Commission.

By the Commission.

Dated: February 11, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–03127 Filed 3–18–15; 8:45 am]

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FEDERAL REGISTER

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Part III

Securities and Exchange Commission

17 CFR Part 242
Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–74244; File No. S7–34–10]

RIN 3235–AK80

Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: In accordance with Section 763 and Section 766 of Title VII (''Title VII'') of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''), the Securities and Exchange Commission (''SEC'' or ''Commission'') is adopting Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information (''Regulation SBSR'') under the Securities Exchange Act of 1934 (''Exchange Act''). Regulation SBSR provides for the reporting of security-based swap information to registered security-based swap data repositories (''registered SDRs'') or the Commission, and the public dissemination of security-based swap transaction, volume, and pricing information by registered SDRs. Registered SDRs are required to establish and maintain certain policies and procedures regarding how transaction data are reported and disseminated, and participants of registered SDRs that are registered security-based swap dealers or registered major security-based swap participants are required to establish and maintain policies and procedures that are reasonably designed to ensure that they comply with applicable reporting obligations. Regulation SBSR contains provisions that address the application of the regulatory reporting and public dissemination requirements to cross-border security-based swap activity as well as provisions for permitting market participants to satisfy these requirements through substituted compliance. Finally, Regulation SBSR will require a registered SDR to register with the Commission as a securities information processor.

DATES: *Effective Date:* May 18, 2015.

Compliance Date: For Rules 900, 907, and 909 of Regulation SBSR, the compliance date is the effective date. For Rules 901, 902, 903, 904, 905, 906, and 908 of Regulation SBSR, compliance dates are being proposed in a separate release, 34–74245 (February 11, 2015).

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SUPPLEMENTARY INFORMATION:

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I. Introduction

The Commission is adopting Regulation SBSR, which implements the requirements for regulatory reporting and public dissemination of security-based swap transactions set forth in Title VII of the Dodd-Frank Act.[1] The Dodd-Frank Act was enacted, among other reasons, to promote the financial stability of the United States by improving accountability and transparency in the financial system.[2] The 2008 financial crisis highlighted significant issues in the over-the-counter (''OTC'') derivatives markets, which experienced dramatic growth in the years leading up to the financial crisis and are capable of affecting significant sectors of the U.S. economy. Title VII of the Dodd-Frank Act provides for a comprehensive new regulatory framework for swaps and security-based swaps, by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants; (2) imposing clearing and trade execution requirements on swaps and security-based swaps, subject to certain exceptions; (3) creating recordkeeping, regulatory reporting, and public dissemination requirements for swaps and security-based swaps; and (4) enhancing the rulemaking and enforcement authorities of the Commission and the Commodity Futures Trading Commission (''CFTC'').

The Commission initially proposed Regulation SBSR in November 2010.[3] In May 2013, the Commission re-proposed the entirety of Regulation SBSR as part of the Cross-Border Proposing Release[4] and re-opened the comment period for all of its other outstanding Title VII rulemakings.[5]

The Commission received 86 comments that were specifically directed to the comment file (File No. S7–34–10) for the Regulation SBSR Proposing Release, of which 38 were comments submitted in response to the re-opening of the comment period.[6] Of the comments directed to the comment file (File No. S7–02–13) for the Cross-Border Proposing Release, six referenced Regulation SBSR specifically, while many others addressed cross-border issues generally, without specifically referring to Regulation SBSR. The Commission also has considered other comments germane to regulatory reporting and/or public dissemination of security-based swaps that were submitted in other contexts. The comments discussed in this release are listed in the Appendix to the release.

The Commission is now adopting Regulation SBSR largely as re-proposed, with certain revisions suggested by commenters or designed to clarify the rules. In addition, in separate releases, as discussed below, the Commission also is adopting rules relating to SDR registration, duties, and core principles (the ''SDR Adopting Release'')[7] and is proposing certain rules, amendments, and guidance relating to Regulation SBSR (''Regulation SBSR Proposed Amendments Release'').[8] The principal aspects of Regulation SBSR—which, as adopted, consists of ten rules, Rules 900 to 909 under the Exchange Act[9]—are briefly described immediately below. A detailed discussion of each rule within Regulation SBSR, as well as how these rules interact with the rules in the SDR Adopting Release, follows in the body of this release.[10]

A. Summary of Final Regulation SBSR

Rule 900, as adopted, sets forth the definitions used throughout Regulation SBSR. The defined terms are discussed in connection with the rules in which they appear.

Rule 901(a), as adopted, assigns the reporting obligation for all security-based swaps except for the following: (1) Clearing transactions;[11] (2) security-based swap transactions executed on a platform[12] that will be submitted to clearing; (3) transactions where there is no U.S. person, registered security-

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] *See* Public Law 111–203, Preamble.

[3] *See* Securities Exchange Act Release No. 63346 (November 19, 2010), 75 FR 75207 (December 2, 2010) (''Regulation SBSR Proposing Release'').

[4] *See* Securities Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30967 (May 23, 2013) (''Cross-Border Proposing Release'').

[5] *See* Securities Exchange Act Release No. 69491 (May 1, 2013), 78 FR 30799 (May 23, 2013).

[6] However, one comment that was specifically directed to the comment file for the Regulation SBSR Proposing Release exclusively addressed issues related to clearing ''debt swaps.'' *See* Hamlet Letter. Because the subject matter of this comment letter is beyond the scope of Regulation SBSR, the Commission is not addressing this comment.

[7] *See* Securities Exchange Act Release No. 74246 (February 11, 2015).

[8] *See* Securities Exchange Act Release No. 74245 (February 11, 2015).

[9] 15 U.S.C. 78a *et seq.* All references in this release to the Exchange Act refer to the Securities Exchange Act of 1934.

[10] If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

[11] A ''clearing transaction'' is defined as ''a security-based swap that has a registered clearing agency as a direct counterparty.'' *See* Rule 900(g).

[12] A ''platform'' is defined as a ''national securities exchange or security-based swap execution facility that is registered or exempt from registration.'' *See* Rule 900(v); *infra* note 199 and accompanying text (discussing the definition of ''platform'').

based swap dealer, or registered major security-based swap participant on either side; and (4) transactions where there is no registered security-based swap dealer or registered major security-based swap participant on either side and there is a U.S. person on only one side. For purposes of this release, the Commission uses the term ''covered transactions'' to refer to all security-based swaps other than those listed in the four categories above; all covered transactions shall be reported in the manner set forth in Regulation SBSR, as adopted. For covered transactions, Rule 901(a) assigns the duty to report to one side of the transaction (the ''reporting side''). The ''reporting hierarchy'' established in Rule 901(a) is based, where possible, on the registration status (*e.g.,* registration as a security-based swap dealer or major security-based swap participant) of the direct and indirect counterparties to the transaction. In the Regulation SBSR Proposed Amendments Release, the Commission is proposing amendments to Rule 901(a) that would impose reporting obligations for security-based swaps in categories one and two above (*i.e.,* clearing transactions and security-based swap transactions executed on a platform and that will be submitted to clearing).

Rule 901(b), as adopted, provides that if there is no registered security-based swap data repository (''SDR'') that will accept the report, the reporting side must report the transaction to the Commission.[13]

Rule 901(c) sets forth the primary trade information and Rule 901(d) sets forth the secondary trade information that must be reported. For most transactions, the Rule 901(c) information will be publicly disseminated. Information reported pursuant to Rule 901(d) is for regulatory purposes only and will not be publicly disseminated.

Rule 901(e) requires the reporting of life cycle events to the entity to which the original transaction was reported.

Rule 901(i) requires reporting, to the extent the information is available, of security-based swaps entered into before the date of enactment of the Dodd-Frank Act (''pre-enactment security-based swaps'') and security-based swaps entered into after the date of enactment but before Rule 901 becomes fully operative (''transitional security-based swaps'').

[13] A ''registered security-based swap data repository'' is defined as ''a person that is registered with the Commission as a security-based swap data repository pursuant to Section 13(n) of the Exchange Act (15 U.S.C. 78m(n)) and any rules or regulations thereunder.'' *See* Rule 900(ff).

B. Role of Registered SDRs

Rule 902(a) requires a registered SDR to publicly disseminate a transaction report immediately upon receipt of information about a security-based swap, except in certain limited circumstances. Pursuant to Rule 902(a), the published transaction report must consist of all the information reported pursuant to Rule 901(c), plus any condition flag contemplated by the registered SDR's policies and procedures that are required by Rule 907. Rule 901(f) requires a registered SDR to timestamp any information submitted to it pursuant to Rule 901(c), (d), (e), or (i), and Rule 901(g) requires a registered SDR to assign a transaction ID to each security-based swap.

Rule 907(a) requires a registered SDR to establish and maintain written policies and procedures that detail how it will receive and publicly disseminate security-based swap transaction information. For example, Rule 907(a)(1) requires policies and procedures that enumerate the specific data elements of a security-based swap that must be reported to the registered SDR, including the data elements specified in Rules 901(c) and 901(d). Rule 907(a)(2) requires policies and procedures that specify one or more acceptable data formats, connectivity requirements, and other protocols for submitting information. Rules 907(a)(3) and 907(a)(4) require policies and procedures for assigning condition flags to the appropriate transaction reports. In addition, Rule 907(c) requires a registered SDR to make its policies and procedures available on its Web site.

Rule 907(e) requires a registered SDR to provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to Regulation SBSR and the registered SDR's policies and procedures established thereunder.

Finally, Rule 909 requires a registered SDR also to register with the Commission as a securities information processor (''SIP'').

C. Unique Identification Codes

Rule 903 requires a registered SDR to use ''unique identification codes'' (''UICs'') to specifically identify a variety of persons and things. The following UICs are specifically required by Regulation SBSR: Counterparty ID, product ID, transaction ID, broker ID, branch ID, trading desk ID, trader ID, platform ID, and ultimate parent ID.

Rule 906(b) requires each participant of a registered SDR to provide the registered SDR with information sufficient to identify the participant's ultimate parent(s) and any affiliate(s) of the participant that are also participants of the registered SDR.

Rule 903(a) provides that, if an internationally recognized standards-setting system (''IRSS'') meeting certain criteria is recognized by the Commission and has assigned a UIC to a person, unit of a person, or product (or has endorsed a methodology for assigning transaction IDs), that UIC must be used by all registered SDRs and their participants in carrying out duties under Regulation SBSR. If the Commission has not recognized an IRSS—or if the Commission-recognized IRSS has not assigned a UIC to a particular person or thing—the registered SDR is required to assign a UIC using its own methodology. Additionally, Rule 903(a) provides that, if the Commission has recognized such a system that assigns UICs to persons, each participant of a registered SDR shall obtain a UIC from or through that system for identifying itself, and each participant that acts as a guarantor of a direct counterparty's performance of any obligation under a security-based swap that is subject to Rule 908(a) shall, if the direct counterparty has not already done so, obtain a UIC for identifying the direct counterparty from or through that system, if that system permits third-party registration without a requirement to obtain prior permission of the direct counterparty. As discussed further in Section X(B)(2), *infra,* the Commission recognizes the Global LEI System (''GLEIS''), administered by the Regulatory Oversight Committee (''ROC''), as meeting the criteria specified in Rule 903. The Commission may, on its own initiative or upon request, evaluate other IRSSs and decide whether to recognize such other systems.

D. Public Dissemination and Block Trades

Section 13(m)(1)(B) of the Exchange Act[14] authorizes the Commission ''to make security-based swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.'' Section 13(m)(1)(C) of the Exchange Act[15] identifies four categories of security-based swaps and authorizes the Commission ''to provide by rule for the public availability of security-based swap transaction, volume, and pricing data.'' Section 13(m)(1)(C) further provides that, with respect to each of

[14] 15 U.S.C. 78m(m)(1)(B).

[15] 15 U.S.C. 78m(m)(1)(C).

these four categories of security-based swaps, ''the Commission shall require real-time public reporting for such transactions.'' Section 13(m)(1)(D) of the Exchange Act [16] provides that the Commission may require registered entities (such as registered SDRs) to publicly disseminate the security-based swap transaction and pricing data required to be reported under Section 13(m) of the Exchange Act. Finally, Section 13(n)(5)(D)(ii) of the Exchange Act [17] requires SDRs to provide security-based swap information ''in such form and at such frequency as the Commission may require to comply with public reporting requirements.''

Under Rule 902, as adopted, a registered SDR must, immediately upon receiving a transaction report of a security-based swap, publicly disseminate the primary trade information of that transaction, along with any condition flags.

In addition, Section 13(m)(1)(E) of the Exchange Act [18] requires the Commission rule for real-time public dissemination of cleared security-based swaps to: (1) ''specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts''; and (2) ''specify the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public.'' Section 13m(1)(E)(iv) of the Exchange Act [19] requires the Commission rule for real-time public dissemination of security-based swaps that are not cleared at a registered clearing agency but reported to a registered SDR to contain provisions that ''take into account whether the public disclosure [of transaction and pricing data for security-based swaps] will materially reduce market liquidity.''

As discussed in detail below, in response to the comments received and in light of the fact that the Commission has not yet proposed block thresholds, the Commission is adopting final rules that require all security-based swaps—regardless of their notional amount—to be reported to a registered SDR at any point up to 24 hours after the time of execution.[20] The registered SDR will be required, as with all other dissemination-eligible transactions, to publicly disseminate a report of the transaction immediately and automatically upon receipt of the information from the reporting side.

Although the Commission is adopting final rules relating to regulatory reporting and public dissemination of security-based swaps, it intends for the rules relating to public dissemination to apply only on an interim basis. This interim approach is designed to address the concerns of commenters who believed that a public dissemination regime with inappropriately small block trade thresholds could harm market liquidity, and who argued that market participants would need an extended phase-in period to achieve real-time reporting. In connection with its future rulemaking about block thresholds, the Commission anticipates seeking public comment on issues related to block trades. Given the establishment of this interim phase, the Commission is not adopting any other proposed rules relating to block trades.

E. Cross-Border Issues

Regulation SBSR, as initially proposed, included Rule 908, which addressed when Regulation SBSR would apply to cross-border security-based swaps and counterparties of security-based swaps. The Commission re-proposed Rule 908 with substantial revisions as part of the Cross-Border Proposing Release. The Commission is now adopting Rule 908 substantially as re-proposed with some modifications, as discussed in Section XV, *infra.*[21]

Under Rule 908, as adopted, any security-based swap involving a U.S. person, whether as a direct counterparty or as a guarantor, must be reported to a registered SDR, regardless of where the transaction is executed.[22] Furthermore, any security-based swap involving a registered security-based swap dealer or registered major security-based swap participant, whether as a direct counterparty or as a guarantor, also must be reported to a registered SDR, regardless of where the transaction is executed. In addition, any security-based swap that is accepted for clearing by a registered clearing agency having its principal place of business in the United States must be reported to a registered SDR, regardless of the registration status or U.S. person status of the counterparties and regardless of where the transaction is executed.

In the Cross-Border Proposing Release, the Commission proposed a new paragraph (c) to Rule 908, which contemplated a regime for allowing ''substituted compliance'' for regulatory reporting and public dissemination with respect to individual foreign jurisdictions. Under this approach, compliance with the foreign jurisdiction's rules could be substituted for compliance with the Commission's Title VII rules, in this case Regulation SBSR. Final Rule 908(c) allows interested parties to request a substituted compliance determination with respect to a foreign jurisdiction's regulatory reporting and public dissemination requirements, and sets forth the standards that the Commission would use in determining whether the foreign requirements were comparable.

F. Compliance Dates

For Rules 900, 907, and 909 of Regulation SBSR, the compliance date is the effective date of this release. For Rules 901, 902, 903, 904, 905, 906, and 908 of Regulation SBSR, a new compliance schedule is being proposed in the Regulation SBSR Proposed Amendments Release. Accordingly, compliance with Rules 901, 902, 903, 904, 905, 906, and 908 is not required until the Commission establishes compliance dates for those rules.

Rules 910 and 911, as proposed and re-proposed, would have established compliance dates and imposed certain restrictions, respectively, during Regulation SBSR's phase-in period. For reasons discussed in the Regulation SBSR Proposed Amendments Release, the Commission has determined not to adopt Rule 910 or 911.[23]

II. Information Required To Be Reported

A. Primary Trade Information—Rule 901(c)

1. Description of Re-Proposed Rule

Rule 901(c), as re-proposed, would have required the reporting of the following primary trade information in real time, which information would

[16] 15 U.S.C. 78m(m)(1)(D).

[17] 15 U.S.C. 78m(n)(5)(D)(ii).

[18] 15 U.S.C. 13m(m)(1)(E).

[19] 15 U.S.C. 13m(m)(1)(E)(iv).

[20] As discussed in more detail in Section VII(B), *infra,* if reporting would take place on a non-business day (*i.e.,* a Saturday, Sunday or U.S. federal holiday), reporting would instead be required by the same time on the next business day.

[21] The Commission anticipates seeking further public comment on the application of Regulation SBSR to: (1) Security-based swaps where there is no U.S. person, registered security-based swap dealer, or registered major security-based swap participant on either side; and (2) transactions where there is no registered security-based swap dealer or registered major security-based swap participant on either side and there is a U.S. person on only one side.

[22] *See also* Section II(B)(3) and note 139, *infra* (describing the type of guarantees that could cause a transaction to be subject to Regulation SBSR).

[23] Thus, Regulation SBSR, as adopted, consists of Rules 900 through 909 under the Exchange Act. Conforming changes have been made throughout Regulation SBSR to replace references to ''§§ 242.900 through 242.911'' to ''§§ 242.900 through 242.909.'' In addition, the defined terms ''registration date'' and ''phase-in period'' which appeared in re-proposed Rules 910 and 911, respectively, are not being defined in final Rule 900.

then be publicly disseminated: (1) The asset class of the security-based swap and, if the security-based swap is an equity derivative, whether it is a total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the security-based swap is based; (2) information that identifies the security-based swap instrument and the specific asset(s) or issuer(s) of any security on which the security-based swap is based; (3) the notional amount(s), and the currenc(ies) in which the notional amount(s) is (are) expressed; (4) the date and time, to the second, of execution, expressed using Coordinated Universal Time (UTC); (5) the effective date; (6) the scheduled termination date; (7) the price; (8) the terms of any fixed or floating rate payments, and the frequency of any payments; (9) whether or not the security-based swap will be cleared by a clearing agency; (10) if both counterparties to a security-based swap are registered security-based swap dealers, an indication to that effect; (11) if applicable, an indication that the transaction does not accurately reflect the market; and (12) if the security-based swap is customized to the extent that the information in items (1) through (11) above does not provide all of the material information necessary to identify such customized security-based swap or does not contain the data elements necessary to calculate the price, an indication to that effect.

2. Discussion of Final Rule 901(c) and Response to Comments

a. General Approach to Required Information

Rules 901(c) and 901(d), as adopted, require the reporting of general categories of information, without enumerating specific data elements that must be reported, except in limited cases. The Commission has made minor revisions to the introductory language of Rule 901(c).[24]

In addition, Rule 907(a)(1), as adopted, requires each registered SDR to establish, maintain, and make publicly available policies and procedures that, among other things, specify the data elements that must be reported.[25] Commenters expressed mixed views regarding this approach. One commenter expressed the view that ''any required data should be clearly established by the Commission in its rules and not decided in part by [SDRs].'' [26] This commenter further asked the Commission to clarify that any additional fields provided by registered SDRs for reporting would be optional.[27] Two commenters, however, supported the Commission's approach of providing registered SDRs with the authority to define relevant fields on the basis of general guidelines as set by the SEC.[28] One of these commenters noted that it would be difficult for the Commission to specify the security-based swap data fields because security-based swaps are complex products that may require a large number of data fields to be electronically confirmed.[29] In addition, the commenter stated that electronic methods for processing existing and new security-based swaps continue to be developed; accordingly, the commenter stated that establishing a detailed list of reportable fields for each category of security-based swap would be impracticable because such a system ''will be outdated with every new product launch or change in market practice,'' and would result in a ''regulatory scheme that is continuously lagging behind the market.'' [30] The commenter cautioned, however, that the Commission must assure that there is consistency among the data fields collected and reported by registered SDRs in the same asset class so that it would be possible to consolidate the data.[31]

The Commission shares the commenter's concerns about the potential difficulties of consolidating data if there are multiple registered SDRs in the same asset class and each establishes different data elements for information that must be reported. Enumerating specific data elements required to be reported could help to promote consistency among the data fields if there are multiple registered SDRs in the same asset class. In addition, as discussed more fully below, such an approach would be more consistent with the approach taken by the CFTC's swap reporting rules. The Commission also acknowledges the comment that the Commission's rules, rather than the policies and procedures of a registered SDR, should specify the information required to be reported. However, the Commission believes on balance that establishing broad categories of required information will more easily accommodate new types of security-based swaps and new conventions for capturing and reporting transaction data. The Commission agrees with the commenter who expressed the view that a rule that attempted to enumerate the required data elements for each category of security-based swap could become outdated with each new product, resulting in a regulatory framework that constantly lagged the market and would need to be updated.[32] The Commission believes that a standards-based approach will more easily accommodate new security-based swap reporting protocols or languages, as well as new market conventions, including new conventions for describing the data elements that must be reported.

One group of commenters noted that the CFTC provided greater specificity regarding the information to be reported.[33] Several commenters generally urged the Commission and the CFTC to establish consistent reporting obligations to reduce the cost of implementing both agencies' reporting rules.[34]

[24] The first sentence of re-proposed Rule 901(c), which would have required real-time public dissemination of certain data elements, would have stated, in relevant part, ''For any security-based swap that must be publicly disseminated pursuant to §§ 242.902 and 242.908 and for which it is the reporting side, the reporting side shall report the following information . . .'' The information required to be reported pursuant to Rule 901(c) must be reported for all covered transactions, even though Rule 902(c) provides that certain security-based swap transactions are not subject to public dissemination. Accordingly, the Commission is not including in final Rule 901(c) the phrase ''For any security-based swap that must be publicly disseminated pursuant to §§ 242.902 and 242.908 and for which it is the reporting side . . .'' In addition, as discussed in Section VII(B)(1), *infra*, Rule 901(c), as adopted, provides that the reporting side shall report the information specified in Rule 901(c) within the timeframe specified by Rule 901(j).

[25] *See infra* Section V.

[26] ISDA IV at 8.

[27] *See id.* at 9.

[28] *See* MarkitSERV I at 10; Barnard I at 2 (also supporting the proposed categories of information that would be required to be reported for public dissemination).

[29] *See* MarkitSERV I at 9–10. The commenter stated, for example, that the confirmation for a new ''standard'' credit default swap (''CDS'') would contain 35 to 50 data fields, depending on the structure of the CDS, and the confirmation for other CDS products and life cycle events combined would require a total of 160 data fields. *See id.* at note 37.

[30] MarkitSERV I at 10.

[31] *See* MarkitSERV I at 10.

[32] *See id.*

[33] *See* ISDA/SIFMA I at 6.

[34] *See* Better Markets I at 2; Cleary II at 3, 21 note 61 (noting that a consistent approach between the two agencies would address the reporting of mixed swaps); ISDA/SIFMA I at 6; J.P. Morgan Letter at 14; ISDA IV at 1–2 (generally urging that the Commission align, wherever possible and practical, with the CFTC reporting rules). The last commenter also noted that reporting of mixed swaps will be difficult if Regulation SBSR requires a different reporting counterparty from the CFTC's swap data reporting rules or if transaction identifiers are not conformed to the CFTC approach, *see* ISDA IV at 4, 11, and urged the Commission to coordinate with the CFTC on a uniform approach to the time of execution for mixed swaps, *see id.* at 14. A mixed swap is a swap that is subject to both the jurisdiction of the CFTC and SEC, and, absent a joint order of the CFTC and SEC with respect to the mixed swap, as described in Rule 3a67–4(c) under

Continued

The Commission agrees that it would be beneficial to harmonize, to the extent practicable, the information required to be reported under Regulation SBSR and under the CFTC's swap reporting rules. However, the Commission believes that it is possible to achieve a significant degree of consistency without including in final Rule 901 a detailed list of required data elements for each security-based swap. Rather than enumerating a comprehensive list of required data elements in the rule itself, Rule 901 identifies broad categories of information in the rule, and a registered SDR's policies and procedures are required to identify specific data elements that must be reported. The Commission believes that the flexibility afforded by Rule 901 will facilitate harmonization of reporting protocols and elements between the CFTC and SEC reporting regimes. In identifying the specific data elements that must be reported, a registered SDR could, in some instances, require reporting of the same data elements that are required to be reported pursuant to the CFTC's swap reporting rules, provided that those data elements include the information required under Rules 901(c) and 901(d). In some cases, however, the differences between the asset classes under the Commission's jurisdiction and those under the CFTC's jurisdiction will require a registered SDR's policies and procedures to specify the reporting of data elements different from those required under the CFTC's rules.

The Commission recognizes that enumerating the specific data elements required to be reported would be more consistent with the approach taken by the CFTC's swap reporting rules. Nevertheless, the Commission believes that the flexibility afforded by the category-based approach in adopted Rule 901(c) could facilitate harmonization. Accordingly, Rule 901(c), as adopted, continues to require the reporting of broad categories of security-based swap information to registered SDRs, without enumerating each data element required to be reported (with a few exceptions, described below).

b. Rule 901(c)(1)

Rule 901(c)(1), as re-proposed, would have required reporting of the asset class of a security-based swap and, if the security-based swap is an equity derivative, whether it is a total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the security-based swap is based. As described in detail below, the Commission is making several revisions to Rule 901(c)(1) in response to comments. Among other things, these revisions clarify the final rules and eliminate certain unnecessary elements and redundancies. Final Rule 901(c)(1), however, does not expand on the types of data elements that must be reported.

i. Elimination of the Reference to Equity Derivatives

The Commission is eliminating the reference to equity derivatives in final Rule 901(c)(1). Under Regulation SBSR, as proposed and re-proposed, it would have been necessary to identify total return swaps and other security-based swaps designed to offer risks and returns proportional to a position in an equity security or securities, because those security-based swaps would not have been eligible for a block trade exception.[35] However, because the Commission is not adopting block thresholds or other rules relating to the block trade exception at this time, it is not necessary to identify security-based swaps that are not eligible for a block trade exception during the first, interim phase of Regulation SBSR.[36] Accordingly, the Commission is not including in final Rule 901(c)(1) any requirement to identify a security-based swap as a total return swap or a security-based swap otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the security-based swap is based.

ii. Product ID

Final Rule 901(c)(1) requires the reporting of the product ID[37] of a security-based swap, if one is available. If the security-based swap has no product ID, or if the product ID does not include the information enumerated in Rule 901(c)(1)(i)–(v), then the information specified in subparagraphs (i)–(v) of Rule 901(c)(1) (discussed below) must be reported. Rule 901(c)(1) is designed to simplify the reporting process for security-based swaps that have a product ID by utilizing the product ID in lieu of each of the categories of data enumerated in Rule 901(c)(1)(i)–(v).

The Commission believes that the product ID will provide a standardized, abbreviated, and accurate means for identifying security-based swaps that share certain material economic terms. In addition, the reporting and public dissemination of the product ID could enhance transparency because a transaction report that used a single identifier for the product traded could be easier to read than a transaction report that identified the product traded through information provided in numerous individual data fields. For example, market observers would be able to discern quickly that transaction reports including the same product ID related to trades of the same product. Product IDs also could facilitate risk management and assist relevant authorities in analyzing systemic risk and conducting market surveillance. Furthermore, the Commission believes that the development of security-based swaps with standardized terms could facilitate the development of product IDs that would readily identify the terms of these transactions.

Re-proposed Rule 901(c)(2) would have required reporting of information that identifies the security-based swap instrument and the specific asset(s) or issuer(s) of any security on which the security-based swap is based. Proposed Rule 900 defined ''security-based swap instrument'' to mean ''each security-based swap in the same asset class, with the same underlying reference asset, reference issuer, or reference index.'' [38] In the context of final Rule 901(c), the requirement to report the product ID, if one is available, replaces, among other things, the requirement in re-proposed Rule 901(c)(2) to report information that identifies the security-based swap instrument and the specific asset(s) or issuer(s) of any security on which the security-based swap is based. For a security-based swap that has no product ID, Rule 901(c)(1)(i), as adopted, requires reporting of information that identifies the security-based swap, including the asset class of the security-based swap and the specific underlying reference asset(s), reference issuer(s), or reference index. Because the

the Exchange Act, is subject to the applicable reporting and dissemination rules adopted by the CFTC and SEC.

[35] Rule 907(b)(2)(i), as proposed and re-proposed, would have prohibited a registered SDR from designating as a block trade any security-based swap that is an equity total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the security-based swap is based. As noted in the Regulation SBSR Proposing Release, there is no delay in the reporting of block transactions for equity securities in the United States. Re-proposed Rule 907(b)(2)(i) was designed to discourage market participants from evading post-trade transparency in the equity securities markets by using synthetic substitutes in the security-based swap market. *See* Regulation SBSR Proposing Release, 75 FR 75232.

[36] *See infra* Section VII.

[37] *See* Rule 900(bb) (defining ''product ID'' as ''the UIC assigned to a product'').

[38] This definition was re-proposed in the Cross-Border Proposing Release without change as Rule 900(dd).

information that was included in the definition of security-based swap instrument—*i.e.*, the asset class and the underlying reference asset, issuer, or index—will be reported pursuant to adopted Rule 901(c)(1)(i) or included in the product ID, it is no longer necessary to separately define ''security-based swap instrument.'' Thus, final Rule 900 no longer contains a definition of security-based swap instrument.

Although Rule 900, as proposed, defined the term ''product ID,'' it did not separately propose to define the term ''product.'' [39] Moreover, the original definition of the term ''unique identification code'' included the term ''product,'' again without defining it.[40] The Commission is now adopting a specific definition of the term ''product.'' Final Rule 900(aa) defines ''product'' as ''a group of security-based swap contracts each having the same material economic terms except those relating to price and size.'' Accordingly, the definition of ''product ID'' in adopted Rule 900(bb) is revised to mean ''the UIC assigned to a product.''

The key aspect of the term ''product'' is the classifying together of a group of security-based swap contracts that have the same material economic terms, other than those relating to price and size. The assignment of product IDs to groups of security-based swaps with the same material economic terms, other than those relating to price and size, is designed to facilitate more efficient and accurate transaction reporting by allowing reporting of a single product ID in place of the separate data categories contemplated by Rule 901(c)(1)(i)–(v). Product IDs also will make disseminated transaction reports easier to read, and will assist the Commission and other relevant authorities in monitoring for systemic risk and conducting market surveillance.

Although the price and size of a security-based swap are material terms of the transaction—and thus must be reported, along with many other material terms, to a registered SDR pursuant to Rules 901(c) and 901(d)—they do not help distinguish one product from another. The same product can be traded with different prices and with different notional amounts. Thus, by way of example and not of limitation, if otherwise materially similar security-based swaps have different currencies of denomination, underlying assets, or settlement terms, they are different products for purposes of Regulation SBSR and should have different product IDs. An indicium of whether two or more security-based swaps between the same direct counterparties are the same product is whether they could be compressed or netted together to establish a new position (*e.g.*, by a clearing agency or portfolio compression service).[41] If they cannot be compressed or netted, this suggests that there are material differences between the terms of the security-based swaps that do not permit the risks to be fully offset.

The fact that the Commission is requiring products to be distinguished for purposes of regulatory reporting and public dissemination even if a single material economic term differentiates one from another would not prevent the Commission and market participants from analyzing closely related products on a more aggregate basis. For example, products that were otherwise identical but for different currencies of denomination could still be grouped together to understand the gross amount of exposure created by these related products (factoring in exchange rates). However, a product ID system that was not granular enough to separate products based on individual material differences would make it difficult or impossible to analyze positions based solely on those individual differences. For example, if a product ID system permitted otherwise similar security-based swaps with different currencies of denomination to be considered as the same product, it would not be possible to observe risk aggregations according to their particular currencies.[42]

Similarly, the Commission believes that otherwise materially identical security-based swaps with different dates of expiration are different products and therefore must have different product IDs. Delineating products by, among other things, date of expiration will assist the Commission and other relevant authorities in developing a more precise analysis of risk exposure over time. This feature of the ''product'' definition is different from the approach taken in the originally proposed definition of ''security-based swap instrument,'' which specifically rejected distinctions based on tenor.[43]

In connection with these requirements, the Commission notes the part of the ''product'' definition referring to a product as ''a group of security-based swap *contracts*'' (plural). If a group of security-based swap contracts is sufficiently standardized such that they all share the same material economic terms (other than price and size), a registered SDR should treat them as the same product and assign them the same product ID. A product could be evidenced, for example, by the fact that a clearing agency makes the group of security-based swap contracts eligible for clearing and will net multiple transactions in that group of contracts into a single open position. In contrast, a security-based swap that has a combination of material economic terms unlike any other security-based swap would not be part of a product group, and the Commission believes that it would be impractical to require registered SDRs to assign a product ID to each of these unique security-based swaps. For such a security-based swap, the transaction ID would be sufficient to identify the security-based swap in the registered SDR's records and would serve the same purpose as a product ID.

The product ID is one type of UIC. As discussed more fully in Section X, *infra*, Rule 903(a), as adopted, requires a registered SDR to use a UIC, including a product ID, assigned by an IRSS, if an IRSS has been recognized by the Commission and issues that type of UIC. If an IRSS that can issue product IDs has not been recognized by the Commission, Rule 903(a) requires a registered SDR to assign a product ID to that product using its own methodology. Similarly, final Rule 907(a)(5) requires a registered SDR to establish and maintain written policies and procedures for assigning UICs in a manner consistent with Rule 903, which establishes standards for the use of UICs.[44]

One commenter noted that, although there likely will be global standards for identification codes for certain data

[39] Rule 900, as proposed, defined ''product ID'' to mean ''the UIC assigned to a security-based swap instrument.'' As discussed above, Rule 900, as proposed, defined ''security-based swap instrument'' to mean ''each security-based swap in the same asset class, with the same underlying reference asset, reference issuer, or reference index.'' Both of these definitions were re-proposed in the Cross-Border Proposing Release without change as Rules 900(x) and 900(dd), respectively.

[40] Rule 900, as proposed, defined UIC as ''the unique identification code assigned to a person, unit of a person, or *product* . . .'' (emphasis added). This definition was re-proposed in the Cross-Border Proposing Release without change as Rule 900(nn).

[41] *See* TriOptima Letter at 2, 5–6 (explaining the portfolio compression process for uncleared swaps).

[42] *See* ISDA/SIFMA at 10 (recommending that the definition of ''security-based swap instrument'' provide for more granular distinctions between different types of transactions within a single asset class).

[43] The Commission is not expressing a view as to whether products with different tenors might or might not be considered together to constitute a class of securities required to be registered under Section 12 of the Exchange Act. *See* Section 12(a) of the Exchange Act, 15 U.S.C. 78l(a); Section 12(g)(1) of the Exchange Act, 15 U.S.C. 78l(g); Rule 12g–1 under the Exchange Act, 17 CFR 240.12g–1.

[44] *See infra* Section X(C) (discussing a registered SDR's policies and procedures relating to UICs).

fields, such as the LEI, some global identifiers will not exist.[45] The commenter believed that requiring registered SDRs to create identifiers would ''result in bespoke implementation among'' registered SDRs that would be of limited value absent an industry standard.[46] The commenter recommended that the Commission consider postponing a requirement to establish identifiers ''until an international taxonomy exists that can be applied consistently.''[47]

The Commission agrees that a system of internationally recognized product IDs would be preferable to a process under which registered SDRs assign their own product IDs to the same product. Nonetheless, the Commission believes that the use of product IDs, even product IDs created by registered SDRs rather than by an IRSS, could simplify security-based swap transaction reporting and facilitate regulatory oversight of the security-based swap market. In addition, the Commission believes that the requirement for registered SDRs to assign product IDs could provide additional incentive for security-based swap market participants to develop industry-wide product IDs.[48]

One commenter stated that ''[i]ndustry utilities should be considered for assigning unique IDs for transactions, products, and legal entities/market participants.''[49] As discussed in Section X(B)(2), *infra,* the Commission is recognizing the Global LEI System (''GLEIS''), an industry utility administered by the Regulatory Oversight Committee (''ROC''), as meeting the criteria specified in Rule 903, as adopted. The GLEIS and this comment are discussed in Section X(B)(2), *infra.*

iii. Rule 901(c)(1)(i)

Rule 901(c)(1) requires that, if a security-based swap has no product ID, or if the product ID does not include the information identified in Rule 901(c)(1)(i)–(v), the information specified in Rule 901(c)(1)(i)–(v) must be reported. Final Rule 901(c)(1)(i)–(v) incorporates, with some modifications, information that would have been required under paragraphs (c)(1), (2), (5), (6), (8), and (12) of re-proposed Rule 901, and re-proposed Rule 901(d)(1)(iii).

Rule 901(c)(1)(i), as adopted, generally requires the reporting of information that would have been required to be reported under re-proposed Rules 901(c)(1) and 901(c)(2). Re-proposed Rule 901(c)(1) would have required, in part, reporting of the asset class of a security-based swap.[50] Re-proposed Rule 901(c)(2) would have required the reporting of information identifying the security-based swap instrument and the specific asset(s) or issuer(s) on which the security-based swap is based. Re-proposed Rule 900(dd) would have defined ''security-based swap instrument'' as ''each security-based swap in the same asset class, with the same underlying reference asset, reference issuer, or reference index.'' Rule 901(c)(1)(i), as adopted, requires the reporting of information that identifies the security-based swap, including the asset class of the security-based swap and the specific underlying reference asset(s), reference issuer(s), or reference index. Although the defined term ''security-based swap instrument'' is being deleted from Regulation SBSR for the reasons discussed in Section VII(B)(3), infra, final Rule 901(c)(1)(i) retains the requirement to report the underlying reference asset(s), reference issuer(s), or reference index for the security-based swap, as well as the asset class of the security-based swap.

The Commission received no comments regarding the information required to be reported in Rule 901(c)(1)(i). As stated in the Regulation SBSR Proposing Release, the Commission believes that the reporting and public dissemination of information relating to the asset class of the security-based swap would provide market participants with basic information about the type of security-based swap (*e.g.,* credit derivative or equity derivative) being traded.[51] Similarly, the Commission believes that information identifying the specific reference asset(s), reference issuer(s), or reference index of any security on which the security-based swap is based is fundamental to understanding the transaction being reported, and that a transaction report that lacked such information would not be meaningful.[52] Accordingly, Rule 901(c)(1)(i), as adopted, includes the requirement to report this information.

iv. Rules 901(c)(1)(ii) and (iii)

Re-proposed Rules 901(c)(5) and 901(c)(6) would have required the reporting of, respectively, the effective date of the security-based swap and the scheduled termination date of the security-based swap. These requirements are incorporated into adopted Rules 901(c)(1)(ii) and (iii), which require the reporting of, respectively, the effective date of the security-based swap and the scheduled termination date of the security-based swap. The Commission received no comments regarding the reporting of this information. As stated in the Regulation SBSR Proposing Release, the Commission believes that information specifying the effective date and the scheduled termination date of the security-based swap is fundamental to understanding the transaction being reported, and that a transaction report that lacked such information would not be meaningful.[53] Accordingly, final Rules 901(c)(1)(ii) and (iii) include the requirement to report the effective date and the scheduled termination date, respectively, of the security-based swap.

v. Rule 901(c)(1)(iv)

Re-proposed Rule 901(c)(8) would have required the reporting of any fixed or floating rate payments of a security-based swap, and the frequency of any payments. Re-proposed Rule

[45] *See* DTCC V at 14.

[46] *Id.*

[47] *Id.* The use of identifiers is discussed more fully in connection with Rule 903. *See infra* Section X.

[48] In this regard, the Commission notes that one commenter stated that a ''newly formed ISDA cross-product data working group, with representatives from sell side and buy side institutions, will look at proposed solutions and the practical implications of unique identifiers for the derivatives industry.'' The commenters stated, further, that ''ISDA is committed to provide product identifiers for OTC derivatives products that reflect the FpML standard. . . . In the first instance, this work will focus on product identifiers for cleared products. ISDA/FpML is currently working on a pilot project with certain derivative clearing houses to provide a normalized electronic data representation through a FpML document for each OTC product listed and/or cleared. This work will include the assignment of unique product identifiers.'' ISDA/SIFMA I at 8–9. In addition, the Commission notes that ISDA has issued a white paper that discusses ways of creating unique identifiers for individual products. *See* ISDA, ''Product Representation for Standardized Derivatives'' (April 14, 2011), *available at http://www2.isda.org/functional-areas/technology-infrastructure/data-and-reporting/identifiers/upi-and-taxonomies/* (last visited September 22, 2014), at 4 (stating that one goal of the white paper is to ''[s]implif[y] . . . the trade processing and reporting architecture across the marketplace for the standardized products, as market participants will be able to abstract the trade economics through reference data instead of having to specify them as part of each transaction'').

[49] ISDA/SIFMA I at 8.

[50] ''Asset class'' is defined as ''those security-based swaps in a particular broad category, including, but not limited to, credit derivatives and equity derivatives.'' *See* Rule 900(b), as adopted. As proposed and re-proposed, the definition of ''asset class'' also would have included loan-based derivatives. However, because loan-based derivatives can be viewed as a form of credit derivative, the Commission has removed the reference to loan-based derivatives as a separate asset class and adopted the definition noted above. This revision aligns the definition of ''asset class'' used in Regulation SBSR with the definition used in the SDR Adopting Release.

[51] *See* 75 FR 75213.

[52] *See id.* at 75214.

[53] *See id.*

901(d)(1)(iii) would have required the reporting of the amount(s) and currenc(ies) of any up-front payment(s) and a description of the terms and contingencies of the payment streams of each direct counterparty to the other. In the Regulation SBSR Proposing Release, the Commission noted that the terms of any fixed or floating rate payments and the frequency of any payments are among the terms that would be fundamental to understanding a security-based swap transaction.[54] One commenter echoed the importance of information concerning the payment streams of security-based swaps.[55]

Another commenter stated that proposed Rule 901(d)(1)(iii) was unclear about the proposed form of the description of the terms and contingencies of the payment streams, and that the requirements of proposed Rule 901(d)(1)(iii) appeared to be duplicative of proposed Rule 901(d)(1)(v), which would have required reporting of the data elements necessary for a person to determine the market value of the transaction.[56] The commenter also suggested that the Commission consider the utility of requiring reporting of the terms of fixed or floating rate payments, as required by re-proposed Rule 901(c)(8).[57]

The Commission continues to believe that, for a security-based swap that provides for periodic exchange of cash flows, information concerning those payment streams is fundamental to understanding the terms of the transaction. The Commission acknowledges, however, that re-proposed Rules 901(c)(8), 901(d)(1)(iii), and 901(d)(v) contained overlapping requirements concerning the payment streams of a security-based swap. Accordingly, the Commission is revising Rules 901(c) and 901(d) to streamline and clarify the information required to be reported with respect to the payment streams of a security-based swap.

Specifically, final Rule 901(c)(1)(iv) requires the reporting of any *standardized* fixed or floating rate payments, and the frequency of any such payments. As discussed more fully in Section II(C)(3)(d), *infra*, final Rule 901(d)(3) requires the reporting of information concerning the terms of any fixed or floating rate payments, or otherwise customized or non-standardized payment streams, including the frequency and contingencies of any such payments, to the extent that this information has not been reported pursuant to Rule 901(c)(1). Thus, Rule 901(c)(1)(iv) requires the reporting of information concerning *standardized* payment streams, while Rule 901(d)(3) requires the reporting of information concerning *customized* payment streams. In addition, as discussed more fully below, final Rule 901(d)(5) requires reporting of any additional data elements included in the agreement between the counterparties that are necessary for a person to determine the market value of the transaction, to the extent that such information has not already been reported pursuant to Rule 901(c) or other provisions of Rule 901(d). The Commission believes that these changes to Rules 901(c) and 901(d) will avoid potential redundancies in the reporting requirements and will clarify the information required to be reported with respect to the payment streams of a security-based swap.

Like other primary trade information reported pursuant to Rule 901(c), information about standardized payment streams reported pursuant to Rule 901(c)(1)(iv) will be publicly disseminated. The Commission envisions that, rather than disseminating such information as discrete elements, this information could be inherent in the product ID of a security-based swap that has a product ID. Information concerning non-standard payment streams that is reported pursuant to Rule 901(d)(3), like other secondary trade information, will be available for regulatory purposes but will not be publicly disseminated. Re-proposed Rule 901(c)(8) would have required reporting of the terms of any fixed or floating rate payments, standardized or non-standardized, and the frequency of such payments, and re-proposed Rule 902(a) would have required the public dissemination of that information. In addition, as noted above, one commenter discussed the importance of the availability of information concerning payment streams.[58] Nonetheless, the Commission believes that public dissemination of the non-standard payment terms of a customized security-based swap would be impractical, because a bespoke transaction by definition could have such unique terms that it would be difficult to reflect the full material terms using any standard dissemination protocol. In addition, it is not clear that the benefits of publicly disseminating information concerning these non-standard payment streams would justify the costs of disseminating the information. However, the Commission will have access to regulatory reports of such transactions, which should facilitate regulatory oversight and assist relevant authorities in monitoring the exposures of security-based swap market participants. Accordingly, Rule 901(d)(3), as adopted, requires the reporting of information concerning the terms of any *non-standard* fixed or floating rate payments, or otherwise customized or non-standardized payment streams, including the frequency and contingencies of any such payments.

One commenter expressed the view that, without further clarification, market participants could adopt different interpretations of the requirement in re-proposed Rule 901(c)(8) to report the terms of fixed or floating rate payments, resulting in inconsistent reporting to registered SDRs; the commenter recommended, therefore, limiting the reportable fields to tenor and frequency, where applicable.[59]

The Commission shares the commenter's concerns that, without guidance, market participants could adopt different interpretations of the requirement to report the terms of fixed or floating rate payments. The Commission notes, however, that final Rules 907(a)(1) and 907(a)(2) require a registered SDR to establish and maintain written policies and procedures that enumerate the specific data elements that must be reported and that specify the protocols for submitting information, respectively. The Commission believes that, read together, Rules 907(a)(1) and 907(a)(2) provide registered SDRs with flexibility to determine the appropriate conventions for reporting these data elements, including the terms of a security-based swap's fixed or floating rate payments. Thus, although Rule 901(c) itself does not specify the precise manner for reporting a security-based swap's fixed or floating rate payments, the policies and procedures of registered SDRs must do so. The Commission notes, further, that final Rule 906(c), among other things, requires SDR participants that are registered security-based swap dealers and registered major security-based swap participants to establish,

[54] *See id.*

[55] *See* Benchmark Letter at 1 (stating that ''[t]he reference data set [for a security-based swap] must include standard attributes necessary to derive cash flows and any contingent claims that can alter or terminate payments of these contracts. . . . Without these critical pieces of information, users of the trade price dissemination service will be unable to accurately assess reported values'').

[56] *See* DTCC II at 10. *See also* DTCC V at 12 (requesting additional clarity with respect to the requirement to report the contingencies of the payments streams of each direct counterparty to the other).

[57] *See* DTCC V at 11.

[58] *See supra* note 55.

[59] *See* DTCC V at 11.

maintain, and enforce written policies and procedures that are reasonably designed to ensure that they comply with any obligations to report information to a registered SDR in a manner consistent with Regulation SBSR.

vi. Rule 901(c)(1)(v)

Re-proposed Rule 901(c)(12) would have required a reporting side to indicate, if applicable, that the information reported under subparagraphs (1)–(11) of re-proposed Rule 901(c) for a customized security-based swap does not provide all of the material information necessary to identify the customized security-based swap or does not contain the data elements necessary to calculate its price. The Commission is adopting the substance of re-proposed Rule 901(c)(12) and locating it in final Rule 901(c)(1)(v). Rule 901(c)(1)(v), as adopted, provides that, if a security-based swap is customized to the extent that the information provided in paragraphs (c)(1)(i) through (iv) of Rule 901 does not provide all of the material information necessary to identify such customized security-based swap or does not contain the data elements necessary to calculate the price, the reporting side must include a flag to that effect. As discussed more fully in Section VI(G), *infra*, the registered SDRs should develop a condition flag to identify bespoke transactions because absent such a flag, users of public reports of bespoke transactions might receive a distorted impression of the market.

One commenter argued that ''publicly disseminated data for trades with a non-standard feature flag activated will be of limited usefulness and could be misleading.'' [60] The commenter expressed the view that dissemination of information regarding highly structured transactions should not occur until an analysis regarding the impact and potential for misleading the investing public has been conducted.[61] A second commenter, however, endorsed the approach being adopted by the Commission.[62] The Commission acknowledges the concerns that the dissemination of transaction reports for highly customized trades could be misleading or of limited usefulness. However, as discussed more fully in Section VI(D)(2)(a), *infra,* the Commission believes that public dissemination of the key terms of a customized security-based swap, even without all of the details of the transaction, could provide useful information to market observers, including information concerning the pricing of similar products and information relating to the relative number and aggregate notional amounts of transactions in bespoke products versus standardized products. In addition, the Commission believes that the condition flag signaling that the transaction is a customized trade, and therefore that the reported information does not provide all of the details of the transaction, will minimize the potential for confusion and help to assure that the publicly disseminated reports of these transactions are not misleading. For these reasons, the Commission is declining, at this time, to undertake the study recommended by the commenter.

A third commenter indicated that Rule 901 should go further and require reporting of additional information necessary to calculate the price of a security-based swap that is so customized that the price cannot be calculated from the reported information.[63] The Commission generally agrees that transaction reports of customized security-based swaps should be as informative and useful as possible. However, it is not clear that the benefits of publicly disseminating all of the detailed and potentially complex information that would be necessary to calculate the price of a highly customized security-based swap would justify the costs of disseminating that information. Accordingly, Rule 901(c)(1)(v), as adopted, does not require reporting of this information, and it will not be publicly disseminated.[64]

This commenter also expressed concern that a ''composite'' security-based swap composed of two swaps grafted together could be used to avoid reporting requirements; the commenter recommended that, if at least one of the transactions could be disaggregated and reported in a format so that its price could be calculated, Regulation SBSR should require that the security-based swap be disaggregated and the component parts be reported separately.[65] In considering the commenter's concern the Commission notes the following:

To begin, the Commission understands that market participants may execute so-called ''package trades'' that are composed of multiple components, or ''legs,'' some of which may be security-based swaps. Though such package trades are executed at a single price, each leg is separately booked and processed. In these cases, Regulation SBSR does in fact require a reporting side to separately report (and for the SDR to separately disseminate) each security-based swap component of the package trade.[66]

However, if a market participant combines the economic elements of multiple instruments into one security-based swap contract, Regulation SBSR requires a single report of the transaction. The Commission understands the commenter's concerns regarding potential attempts to evade the post-trade transparency requirements. Such efforts could undermine Regulation SBSR's goals of promoting transparency and efficiency in the security-based swap markets and impede the Commission's ability to oversee those markets. The Commission does not believe, however, that either a registered SDR or a reporting side should be required to disaggregate a customized security-based swap if it consists of a single contract incorporating elements of what otherwise might have been two or more

[60] DTCC II at 9.

[61] *See id.*

[62] *See* Cleary II at 16 (recommending ''public reporting of a few key terms of a customized swap . . . [with] some indication that the transaction is customized'').

[63] *See* Better Markets I at 7.

[64] The Commission notes that Rule 901(d)(5) requires the reporting of any additional data elements included in the agreement between the counterparties that is necessary to determine the market value of a transaction. Although this information will not be publicly disseminated, it will be available to the Commission and other relevant authorities. Such relevant authorities are enumerated in Section 13(n)(5)(G) of the Exchange Act, 15 U.S.C. 78m(n)(5)(G), which requires an SDR, upon request, to make available all data obtained by the SDR, including individual counterparty trade and position data, to each appropriate prudential regulator, the Financial Stability Oversight Council, the CFTC, the Department of Justice, and any other person that the Commission determines to be appropriate, including foreign financial supervisors, foreign central banks, and foreign ministries.

[65] *See* Better Markets I at 7 (''This enhancement to the Proposed Rules is particularly important with respect to SBS comprised of two swaps grafted together. Such composite SBS can be used to avoid reporting requirements. Even worse they can be used to obfuscate the real financial implications of a transaction. Accordingly, if an SBS can be disaggregated into two or more transactions, and at least one of those disaggregated transactions can be reported in a format so that price can be calculated, then the rules should require that the SBS be disaggregated and reported in that form''); Better Markets II at 3 (stating that complex transactions must be broken down into meaningful components); Better Markets III at 4–5 (stating that the Commission should require reporting of data on disaggregated customized security-based swaps).

[66] In addition, as discussed more fully in Section VI(G), *infra,* in developing its policies and procedures, a registered SDR should consider requiring participants to identify the individual component security-based swaps of such a trade as part of a package transaction, and should consider disseminating reports of the individual security-based swap components of the package trade with a condition flag that identifies them as part of a package trade. Absent such a flag, observers of public reports of package transactions might obtain a distorted view of the market.

security-based swaps. In the absence of evidence of a significant amount of such ''composite'' security-based swap transactions and structuring other than through package trades, the Commission does not at this time believe that devising protocols for disseminating them in a disaggregated fashion would be practical. Importantly, however, and as discussed more fully in Section VI(D)(2)(a), *infra*, the primary trade information of any complex or bespoke security-based swap, including ''composite'' security-based swaps as described by the commenter, will be publicly disseminated, as required by Rule 902(a), including the specific underlying reference asset(s), reference issuer(s), or reference index for the transaction, as required by Rule 901(c)(1).[67] The Commission believes that the public dissemination of the primary trade information, even without all of the material economic terms of the transaction that could affect its pricing, could provide market observers with useful information, including information concerning the pricing of similar products and the relative number and aggregate notional amounts of transactions in complex and other bespoke transactions versus transactions in standardized products. The Commission further notes that since all of the material economic terms of a ''composite'' security-based swap must be reported to a registered SDR, including the data elements required by Rule 901(d),[68] the Commission itself will have complete access to these details.[69]

The commenter also expressed the view that Regulation SBSR should clearly define the meaning of a security-based swap that is so customized that its price is not ascertainable.[70] The Commission does not believe that it is necessary to further define the term ''customized security-based swap'' for purposes of Rule 901(c)(1)(v). The condition flag required under adopted Rule 901(c)(1)(v) will notify market participants that the security-based swap being reported does not have a product ID and is customized to the extent that the information provided in Rules 901(c)(1)(i)–(iv) does not provide all of the material information necessary to identify the security-based swap or does not contain the data elements necessary to calculate the price. Thus, market participants will know that a customized security-based swap transaction was executed, and that the information reported pursuant to Rules 901(c)(1)(i)–(iv) provides basic but limited information about the transaction. The Commission believes, further, that Rule 901(c)(1)(v) provides clear guidance with respect to when a transaction is customized to the extent that the reporting side must attach a condition flag that identifies the transaction as a bespoke transaction, *i.e.*, when the information reported pursuant to Rules 901(c)(1)(i)–(iv) does not provide all of the material information necessary to identify the security-based swap or does not contain the data elements necessary to calculate the price. Accordingly, the Commission does not believe that it is necessary, at this time, to further define what constitutes a customized security-based swap for purposes of Regulation SBSR.

c. Rule 901(c)(2)

Re-proposed Rule 901(c)(4) would have required reporting of the date and time, to the second, of the execution of a security-based swap, expressed using Coordinated Universal Time (''UTC'').[71] In the Regulation SBSR Proposing Release, the Commission stated that information concerning the time of execution would allow security-based swap transactions to be ordered properly, and would provide the Commission with a detailed record of when a security-based swap was executed.[72] The Commission further noted that, without the time of execution, market participants and relevant authorities would not know whether the transaction reports that they are seeing reflect the current state of the market.[73] In both the proposal and the re-proposal, the Commission defined ''time of execution'' to mean ''the point at which the counterparties to a security-based swap become irrevocably bound under applicable law.'' [74]

One commenter expressed the view that time of execution should be reported at least to the second, and by finer increments where practicable.[75] A second commenter raised timestamp issues in connection with proposed Rule 901(f), which would have required a registered SDR to timestamp transaction information submitted to it under Rule 901. The commenter stated that especially for markets for which there are multiple security-based swap execution facilities and markets where automated, algorithmic trading occurs, ''the sequencing of trade data for transparency and price discovery, as well as surveillance and enforcement purposes, will require much smaller increments of time-stamping.'' [76] The commenter urged the Commission to revise proposed Rule 901(f) to require a registered SDR to time stamp information that it receives in increments shorter than one second, stating that time stamps shorter than one second are technologically feasible, affordable, and in use.[77]

The Commission understands that trading in the security-based swap market does not yet occur as fast or as frequently as in the equities market, which makes recording the time of security-based swap executions in subsecond increments less necessary for surveillance purposes. While some market participants may have the capacity to record trades in subsecond intervals, others may not. Given the

[67] One commenter stated its view that ''proprietary baskets'' should qualify as non-disseminated information, and requested that Regulation SBSR specifically recognize this as an example of non-disseminated information. *See* ISDA IV at 17 (stating that reportable security-based swaps may include customized narrow-based baskets that a counterparty deems proprietary to its business and for which public disclosure would compromise its anonymity and negatively impact its trading activity). Rule 902(a), as adopted, requires a registered SDR to publicly disseminate, for each transaction, the primary trade information required to be reported by Rule 901(c), as adopted, which includes the specific underlying reference asset(s), reference issuer(s), or reference index. The Commission continues to believe that the primary trading terms of a security-based swap should be disseminated to help facilitate price discovery. *See infra* Section VI(A).

[68] *See infra* Section II(B)(3)(e) (discussing requirement in Rule 901(d)(5) that, to the extent not provided pursuant to other provisions of Rules 901(c) and 901(d), all data elements included in the agreement between the counterparties that are necessary for a person to determine the market value of the transaction must be reported).

[69] *See infra* Section V(B)(1) (noting that the Commission anticipates proposing for public comment detailed specifications of acceptable formats and taxonomies that would facilitate an accurate interpretation, aggregation, and analysis by the Commission of security-based swap data submitted to it by an SDR); *supra* Section II(A)(2)(b)(v) (explaining that the Commission will have access to regulatory reports of bespoke security-based swap transactions, which should facilitate regulatory oversight and assist relevant authorities in monitoring the exposures of security-based swap market participants).

[70] *See* Better Markets I at 7 (''The Proposed Rules also represent a critically important opportunity to shed light on the nature of 'customized' swaps. Since the inception of the debate over disclosure and clearing in connection with financial regulation, the concept of the 'customized' or 'bespoke' transactions has figured prominently, yet these terms remain poorly understood in real world terms. The Proposed Rules should clearly define the meaning of SBS that are so customized that price is not ascertainable'').

[71] UTC is defined by the International Telecommunication Union (ITU–R) and is maintained by the International Bureau of Weights and Measures (BIPM). *See http://www.itu.int/net/newsroom/wrc/2012/reports/atomic_time.aspx* (last visited September 22, 2014).

[72] *See* 75 FR 75213.

[73] *See id.*

[74] *See* re-proposed Rule 900(ff).

[75] *See* Barnard I at 2.

[76] Better Markets I at 9.

[77] *See id.*

potential costs of requiring all market participants to utilize subsecond timestamps, the Commission believes that it is not necessary or appropriate at this time to require reporting of the time of execution in subsecond increments.[78] Accordingly, the Commission is adopting Rule 901(c)(4) as proposed and re-proposed, but renumbering it as final Rule 901(c)(2). The Commission will continue to monitor developments in the security-based swap market and could in the future reconsider whether reporting time of execution in subseconds would be appropriate.

One commenter discussed the time of execution for a voice trade in the context of proposed Rule 910(a), which addressed the reporting of pre-enactment security-based swaps.[79] The commenter noted that in the Regulation SBSR Proposing Release, the Commission stated that ''proposed Rule 910(a) would not require reporting parties to report any data elements (such as the time of execution) that were not readily available. Therefore, proposed Rule 910(a) would not require reporting parties to search for or reconstruct any missing data elements.'' [80] The commenter disagreed with this assertion in the context of voice trades, stating that the time of entry of the voice trade into the system is typically provided, but not the actual execution time of the trade. The commenter stated that ''[p]roviding the actual execution time in the case of voice trades would then prove extremely challenging and invasive for the marketplace.'' [81] Similarly, one commenter requested that the ''Commission clarify that participants are not required to provide trade execution time information for pre-enactment security-based swap transactions and that going-forward, such information need only be provided when industry-wide time stamping practices are implemented.'' [82]

With respect to these concerns, the Commission notes, first, that it is not adopting Rule 910, but is proposing a new compliance schedule for Rules 901, 902, 903, 904, 905, 906, and 908 of Regulation SBSR in the Regulation SBSR Proposed Amendments Release. The Commission emphasizes, however, that proposed Rule 910(a) would not have required market participants to report information for a pre-enactment security-based swap that was not readily available, or to reconstruct that information. Thus, Rule 910(a), as proposed, would not have required market participants to provide the time of execution for an orally negotiated pre-enactment security-based swap, unless such information was readily available. Likewise, final Rule 901(i) does not require reporting of the date and time of execution for an orally negotiated pre-enactment or transitional security-based swap, unless such information is readily available.[83] However, for all other security-based swaps, including voice trades, final Rule 901(c)(2) requires reporting of the date and time of execution, to the second, of the security-based swap. The Commission noted in the Regulation SBSR Proposing Release that trades agreed to over the phone would need to be systematized by being entered in an electronic system that assigns a time stamp to report the date and time of execution of a security-based swap.[84] The Commission continues to believe that it is consistent with Congress' intent for orally negotiated security-based swap transactions to be systematized as quickly as possible.[85] The Commission notes, further, that market participants also must report the time of execution for voice-executed trades in other securities markets (*e.g.*, equities and corporate bonds).[86] Knowing the date and time of execution of a security-based swap is important for reconstructing trading activity and for market surveillance purposes. Accordingly, the Commission continues to believe that the regulatory interest in having information regarding the date and time of execution for all security-based swaps, including orally negotiated security-based swaps, justifies the burden on market participants of recording and reporting this information.

In addition, the Commission is adopting, as proposed and re-proposed, the requirement for all times of execution reported to and recorded by registered SDRs to be in UTC. In the Regulation SBSR Proposing Release, the Commission explained its reasons for proposing to require that the date and time of execution be expressed in UTC.[87] The Commission noted that security-based swaps are traded globally, and expected that many security-based swaps subject to the Commission's reporting and dissemination rules would be executed between counterparties in different time zones. In the absence of a uniform time standard, it might not be clear whether the date and time of execution were being expressed from the standpoint of the time zone of the first counterparty, the second counterparty, or the registered SDR. Mandating a common standard for expressing date and time would alleviate any potential confusion as to when the security-based swap was executed. The Commission believed that UTC was an appropriate and well known standard suitable for purposes of reporting the time of execution of security-based swaps. The Commission received no comments regarding the use of UTC for reporting the time of execution. For the reasons set out in the Regulation SBSR Proposing Release, the Commission continues to believe that UTC is appropriate for security-based swap transaction reporting. Accordingly, the Commission is adopting this requirement as proposed and re-proposed.

Finally, the Commission is adopting the definition of ''time of execution'' as proposed and re-proposed, and renumbering it as final Rule 900(ii). One commenter stated that the time at which a transaction becomes legally binding may not be the same for all products.[88] The commenter further noted that, in some cases primary terms are not formed until the security-based swap is confirmed, and that the full terms of a total return swap might not be formed until the end of the day ''and therefore the [total return swap] is not executed and confirmed until the end of the day.'' [89] A second commenter stated that ''the obligation to report should not be triggered until price, size, and other transaction terms required to be reported are available.'' [90] The Commission understands the concerns of these commenters and believes that the definition of ''time of execution'' provides sufficient flexibility to address these commenters' concerns. For example, if the key terms of a security-based swap, such as price or size, are so indefinite that they cannot be reported to a registered SDR until some time after

[78] However, a registered SDR could, in its policies and procedures, allow its participants to report using subsecond timestamps.

[79] As discussed in Section I(F), *supra,* the Commission is not adopting Rule 910.

[80] *See* 75 FR 75278–79.

[81] ISDA/SIFMA I at 11.

[82] ISDA I at 5.

[83] For pre-enactment and transitional security-based swaps, final Rule 901(i) requires reporting of the information required under Rules 901(c) and 901(d), including the date and time of execution, only to the extent that such information is available.

[84] *See* 75 FR 75213.

[85] *See id.*

[86] *See, e.g.,* FINRA Rule 6230(c)(8) (requiring transactions reported to TRACE to include the time of execution); FINRA Rule 6622(c)(5) (requiring last-sale reports for transactions in OTC Equity Securities and Restricted Securities to include the time of execution expressed in hours, minutes, and seconds).

[87] *See* 75 FR 75213.

[88] *See* ISDA/SIFMA I at 7.

[89] *Id.*

[90] Cleary II at 6. *See also* ISDA/SIFMA I at 15 (''for some transaction types . . . the price or size of the transaction cannot be determined at the time the swap is negotiated''); ISDA IV at 10.

the counterparties agree to preliminary terms, the counterparties may not have executed the security-based swap under applicable law. Alternatively, even if the counterparties determine that their preliminary agreement constitutes an execution, the reporting timeframe adopted herein, which will allow a security-based swap to be reported at any point up to 24 hours after the time of execution, should address the concerns raised by the commenters.

A third commenter urged the Commission to revise the definition to equate time of execution with ''the time of execution of the confirmation.'' [91] The Commission declines to do so. While confirmation is an important aspect of post-trade processing, performance of the actions necessary to confirm a transaction is within the discretion of the counterparties and their agents. Defining the ''time of execution'' to mean the time that a confirmation is issued could create incentives for counterparties to delay confirmation and thus the reporting of the transaction. The Commission notes that Section 13(m)(1)(A) of the Exchange Act [92] defines ''real-time public reporting'' as reporting certain security-based swap data ''as soon as technologically practicable after the time at which the security-based swap transaction has been executed.'' The Commission believes this provision is most appropriately implemented by linking obligations to the time at which the counterparties become bound to the terms of the transaction—*i.e.,* the time of execution—rather than some indefinite point in the future, such as the time when the confirmation is issued.

d. Rule 901(c)(3)

Re-proposed Rule 901(c)(7) would have required the reporting of the price of a security-based swap. Re-proposed Rule 901(d)(1)(iii) would have required the reporting of the ''amount(s) and curren(cies) of any up-front payment(s) and a description of the terms and contingencies of the payment streams of each direct counterparty to the other.'' Final Rule 901(c)(3) combines these elements and requires the reporting of ''[t]he price, including the currency in which the price is expressed and the amount(s) and currenc(ies) of any up-front payments.'' [93] The Commission believes that including in final Rule 901(c)(3) the explicit requirement to report the currency in which the price is expressed will help to clarify the information required to be reported.[94] Re-proposed Rule 901(c)(3) is being re-numbered as final Rule 901(c)(4).[95]

Rule 901(c)(3), as adopted, requires the reporting of the amount(s) and currenc(ies) of any up-front payments, a requirement that was included in re-proposed Rule 901(d)(1)(iii). The Commission believes that information concerning the amount(s) and currenc(ies) of any up-front payment(s) will help regulators and market observers understand the reported price of a security-based swap, and that the public dissemination of this information will further the transparency goals of Title VII. The Commission also believes that Rule 901(c) will be simpler if all considerations relating to the price are consolidated into a single provision. Accordingly, Rule 901(c)(3), as adopted, requires the reporting and public dissemination of the amount(s) and currenc(ies) of any up-front payment(s) along with other pricing information for the security-based swap.

As discussed in the Regulation SBSR Proposing Release, the price of a security-based swap could be expressed in terms of the commercial conventions used in that asset class.[96] The Commission recognized that the price of a security-based swap generally might not be a simple number, as with stocks, but would likely be expressed in terms of the quoting conventions of the security-based swap. For example, a credit default swap could be quoted in terms of the economic spread—which is variously referred to as the ''traded spread,'' ''quote spread,'' or ''composite spread''—expressed as a number of basis points per annum. Alternately, a credit default swap might be quoted in terms of prices representing a discount or premium over par.[97] In contrast, an equity or loan total return swap might be quoted in terms of a LIBOR-based floating rate payment, expressed as a floating rate plus a fixed number of basis points.[98] As discussed further in Section IV, *infra,* final Rule 907(a)(1) requires a registered SDR to establish, maintain, and make publicly available policies and procedures that specify the data elements of a security-based swap that must be reported, including elements that constitute the price. The Commission believes that, because of the many different conventions that exist to express the price in various security-based swap markets and new conventions that might arise in the future, registered SDRs should have flexibility to select appropriate conventions for denoting the price of different security-based swap products.

One commenter expressed concern that disseminating prices of margined and unmargined transactions together could mislead the market about the intrinsic prices of the underlying contracts.[99] Noting that the CFTC proposed a field for ''additional price notation'' that would be used to provide information, including margin, that would help market participants evaluate the price of a swap, the commenter recommended that the Commission and the CFTC harmonize their approaches to assure that the market has an accurate picture of prices.[100] The Commission agrees that publicly disseminated transaction reports should be as informative as possible. However, the Commission believes, at this time, that it could be impractical to devise additional data fields for describing the potentially complex margin requirements governing a security-based swap. Furthermore, it could be difficult if not impossible to attribute a portion of the price to a particular margin arrangement when the overall price represents the aggregation of a number of different factors into a single variable. The Commission notes that the bespoke flag required by Rule 901(c)(1)(v) is designed to inform market observers when a security-based swap is customized to the extent that the other data elements required by Rule 901(c)(1) do not provide all of the material information necessary to identify the security-based swap or provide sufficient information to calculate the price.

Another commenter expressed concern that disseminating the terms of the floating rate payment for an equity swap, which is often comprised of a benchmark rate plus or minus a spread and thus contains information about the direction of a customer transaction (positive spreads indicate a customer long swap and negative spreads indicate a customer short swap) may harm customers by offering other market participants the opportunity to anticipate their execution strategy.[101]

[91] MFA I at 5.

[92] 15 U.S.C. 78m(m)(1)(A).

[93] *Cf.* Section II(B)(3)(c), *infra* (describing Rule 901(d), which enumerates data elements that will not be subject to public dissemination).

[94] The addition of the reference to currency also is consistent with re-proposed Rule 901(c)(3), which would have required reporting of the notional amount(s) of the security-based swap and the currenc(ies) in which the notional amount(s) is expressed.

[95] *See infra* Section II(B)(2)(b)(vi)(e).

[96] *See* 75 FR 75214. Final Rule 900(z) defines ''price'' to mean ''the price of a security-based swap transaction, expressed in terms of the commercial conventions used in the asset class.''

[97] *See id.*

[98] *See id.*

[99] *See* CCMR I at 4.

[100] *See id.*

[101] *See* ISDA IV at 17.

The commenter believes that the spread value should thus be masked for equity security-based swaps when disclosing the price or terms of the floating rate payment.[102] As noted above, the Commission believes that publicly disseminated transaction reports should be as informative as possible. The floating rate payment of an equity security-based swap, including the spread, is an important part of the price of an equity security-based swap, and as such the Commission continues to believe that it should be disseminated. Not disseminating this information would undermine one of the key aspects of public dissemination, namely price discovery. The Commission further understands that in other markets—such as the cash equity market and the bond market—similar information is publically disclosed or can be inferred from public market data, which informs on the direction of the customer transaction.[103]

e. Rule 901(c)(4)

Re-proposed Rule 901(c)(3) would have required reporting of the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed. The Commission is adopting this rule as re-proposed, but re-numbering it as Rule 901(c)(4).

The Commission received two comments regarding the reporting and public dissemination of the notional amount of a security-based swap. One commenter believed that, ''in the case of some asset classes, there is not a universal definition of the notional amount of the trade. This is particularly the case where the notional amount is not confirmable information.'' [104] To address this issue, the commenter recommended that the Commission provide guidelines, such as those developed by the Federal Reserve Bank of New York, for reporting the notional amount of a security-based swap.[105]

As discussed below, final Rules 907(a)(1) and 907(a)(2) require a registered SDR to establish and maintain written policies and procedures that enumerate the specific data elements that must be reported and that specify the protocols for submitting information, respectively. The Commission believes that, read together, Rules 907(a)(1) and 907(a)(2) provide registered SDRs with flexibility to determine the appropriate conventions for reporting all required data elements, including the notional amount. Thus, although Rule 901(c) itself does not specify the precise manner for reporting a security-based swap's notional amount, the policies and procedures of registered SDRs must do so. The Commission believes that a registered SDR could choose to incorporate the guidance noted by the commenter, or other appropriate guidance, into its policies and procedures for reporting notional amounts.

Another commenter suggested that the Commission, to mitigate adverse impacts on market liquidity, should—like the CFTC—adopt masking thresholds, rather than requiring public dissemination of the precise notional amount of a security-based swap transaction.[106] The commenter noted that FINRA's Trade Reporting and Compliance Engine (''TRACE'') system [107] uses masking conventions, and suggested applying that approach to the swap and security-based swap markets by ''computing how much market risk is represented by the TRACE masking thresholds and using those numbers to map the masking thresholds into other asset classes.'' [108]

The Commission appreciates the commenter's concerns regarding the uncertainty of the potential effects of public dissemination of security-based swap transaction reports on liquidity in the security-based swap market. As discussed further in Section VII, *infra,* the rules adopted in this release will allow the reporting, on an interim basis, of a security-based swap transaction at any time up to 24 hours after the time of execution (or, if 24 hours after the time of execution would fall on a day that is not a business day, by the same time on the next day that is a business day). This timeframe is designed in part to minimize potential adverse impacts of public dissemination on liquidity during the interim phase of Regulation SBSR's implementation, as market participants grow accustomed to operating in a more transparent environment. Accordingly, the Commission does not believe that it is necessary at this time to adopt a masking convention for purposes of reporting and publicly disseminating the notional amount of security-based swap transactions.[109]

f. Rule 901(c)(5)

Rule 901(c)(10), as proposed and re-proposed, would have required the reporting side to indicate whether both counterparties to a security-based swap are security-based swap dealers. In the Regulation SBSR Proposing Release, the Commission stated its preliminary belief that such an indication would enhance transparency and provide more accurate information about the pricing of security-based swap transactions.[110] The Commission noted, further, that prices of security-based swap transactions involving a dealer and non-dealer are typically ''all-in'' prices that include a mark-up or mark-down, while interdealer transactions typically do not. Thus, the Commission believed that requiring an indication of whether a security-based swap was an interdealer transaction or a transaction between a dealer and a non-dealer counterparty would enhance transparency by allowing market participants to more accurately assess the reported price of a security-based swap.[111]

Commenters expressed mixed views regarding this proposed requirement. One commenter supported a requirement to include the counterparty type in security-based swap transaction reports.[112] Another commenter, however, recommended that the Commission eliminate the interdealer indication because ''[e]xcluding this field from the information required to be reported to [a registered SDR] in real time will bring the scope of required

[102] *See id.*

[103] In the bond markets, the side of the customer is reported on TRACE. See *http://www.finra.org/Industry/Compliance/MarketTransparency/TRACE/Announcements/P039007.* In the cash equity markets, the side of the initiator of a transaction is, for many exchanges, provided as a data element on direct data feeds. It can also be inferred according to whether the trade was executed at the bid or offer.

[104] ISDA/SIFMA I at 12.

[105] *See id.* The commenter refers to the guidelines included under ''Line Item Instructions for Derivatives and Off-Balance-Sheet Item Schedule HC–L'' in the Board of Governors of the Federal Reserve System's ''Instructions for Preparation of Consolidated Financial Statements for Bank Holding Companies Reporting Form FR Y–9C.'' *See* ISDA/SIFMA I at 12, note 13.

[106] *See* J.P. Morgan Letter at 12. *See also* ISDA IV at 16 (recommending the use of a notional cap in each asset class).

[107] TRACE is a FINRA facility to which FINRA member firms must report over-the-counter transactions in eligible fixed income securities. *See generally http://www.finra.org/Industry/Compliance/MarketTransparency/TRACE/* (last visited September 22, 2014).

[108] *Id.* at 13.

[109] The Commission anticipates soliciting comment on issues relating to block trades, including the possibility of utilizing masking thresholds, at a later date. *See infra* Section VII.

[110] *See* 75 FR 75214.

[111] *See id.*

[112] *See* Benchmark Letter at 2. The commenter also suggested that it would be useful to include an entry for ''end user,'' similar to the ''Producer/Merchant/Producer/User'' designation used in agricultural futures reports. *See id.* The Commission does not believe, at this time, that it is necessary to require a specific end-user indication. Under final Rule 901(c)(5), a transaction involving two registered security-based swap dealers must have an indication to that effect. An observer of a transaction report without that indicator will be able to infer that the transaction involved at least one side that does not have a registered security-based swap dealer.

data in line with existing dissemination functionality.'' [113] A third commenter expressed concern that disseminating information that both counterparties are security-based swap dealers would reduce the anonymity of participants, ultimately resulting in ''worse pricing and reduced liquidity for end-users.'' [114]

The Commission believes that publicly disseminating an indication of whether both sides of a security-based swap are registered security-based swap dealers would enhance transparency in the security-based swap market by helping market participants to assess the reported price of a security-based swap. Although the Commission understands the concerns about potential burdens that could result from changes to existing dissemination practices, the required indicator should not impose significant burdens. Furthermore, the Commission believes that any potential burden created by requiring the indicator will be justified by the transparency benefits of publicly disseminating this information. The Commission notes that flagging transactions between two registered security-based swap dealers does indeed provide information to the public that the transaction involved two dealers, thus restricting the set of possible counterparties. However, since a majority of security-based swap transactions presently have a dealer as one of the counterparties, an interdealer flag is unlikely to enable market observers to identify counterparties to particular transactions. Also, although there is a limited group of entities that likely would be required to register as security-based swap dealers that are currently active in the security-based swap market, this number is more than two.[115] The Commission also notes that in the bond market interdealer transactions are flagged as part of TRACE's public dissemination of corporate bond trades. Therefore, the Commission does not believe that flagging transactions between two registered security-based swap dealers would ultimately result in ''worse pricing and reduced liquidity for end-users.'' [116]

The Commission, therefore, is adopting this requirement as final Rule 901(c)(5), with one revision. The Commission has added the word ''registered'' before the term ''security-based swap dealer.'' Therefore, the final rule requires an indication only when there is a registered security-based swap dealer on both sides of the transaction. As discussed further below, the Commission seeks to avoid imposing costs on market participants for assessing whether or not they are security-based swap dealers solely for purposes of Regulation SBSR.[117] Therefore, counterparties would have to be identified for purposes of Rule 901(c)(5), as adopted, only if they are *registered* security-based swap dealers.

g. Rule 901(c)(6)

Re-proposed Rule 901(c)(9) would have required the reporting side to indicate whether or not a security-based swap would be cleared by a clearing agency. This requirement is being adopted substantially as proposed but numbered as Rule 901(c)(6), with an additional clarification, described below. In the Regulation SBSR Proposing Release, the Commission noted that the use of a clearing agency to clear a security-based swap could affect the price of the security-based swap because counterparty credit risk might be diminished significantly if the security-based swap were centrally cleared.[118] Thus, the Commission preliminarily believed that information concerning whether a security-based swap would be cleared would provide market participants with information that would be useful in assessing the reported price of the security-based swap, thereby enhancing price discovery.[119] One commenter agreed, stating that it ''will likely also be necessary to identify whether a price is associated with a bilateral trade or a cleared trade . . . as these distinctions may well have price impacts.'' [120]

The Commission continues to believe that information concerning whether a security-based swap will be cleared is useful in assessing the price of the security-based swap and will facilitate understanding of how risk exposures may change after the security-based swap is executed. Accordingly, final Rule 901(c)(6) requires the reporting side to indicate ''whether the direct counterparties intend that the security-based swap will be submitted to clearing.'' Reporting of whether the direct counterparties *intend* that the security-based swap will be submitted to clearing, rather than whether the security-based swap *will be cleared,* as originally proposed, more accurately reflects the process of entering into and clearing a security-based swap transaction. It may not be known, when the transaction is reported, whether a registered clearing agency will in fact accept the security-based swap for clearing. The Commission received no comments on this issue. The Commission believes, however, that the modified language enhances the administration of the rule.

The Commission notes that, in some cases, the identity of the registered clearing agency that clears a security-based swap could be included in the product ID of a security-based swap. If the identity of the registered clearing agency is included in the product ID, no information would have to be separately reported pursuant to Rule 901(c)(6).

h. Rule 901(c)(7)

Re-proposed Rule 901(c)(11) would have required a reporting side to indicate, if applicable, that a security-based swap transaction does not accurately reflect the market. In the Regulation SBSR Proposing Release, the Commission noted that, in some instances, a security-based swap transaction might not reflect the current state of the market.[121] This could occur, for example, in the case of a late transaction report, which by definition would not represent the current state of the market, or in the case of an inter-affiliate transfer or assignment, where the new counterparty might not have an opportunity to negotiate the terms, including the price, of taking on the position.[122] The Commission believed that there might not be an arm's length negotiation of the terms of the security-based swap transaction, and disseminating a transaction report without noting that fact would be inimical to price discovery. Accordingly, Rule 901(c)(11), as proposed and as re-proposed, would have required a reporting side to note such circumstances in its transaction report to the registered SDR.

Rule 907(a)(4), as proposed and as re-proposed, would have required a registered SDR to establish and maintain written policies and procedures that describe, among other things, how a reporting side would report security-based swap transactions that, in the estimation of the registered SDR, do not accurately reflect the market. The Commission noted its expectation that these policies and procedures would require, among other things, different

[113] DTCC V at 11.

[114] ISDA IV at 16.

[115] Historical data reviewed by the Commission suggest that, among an estimated 300 reporting sides, approximately 50 are likely to be required to register with the Commission as security-based swap dealers. *See infra* Section XXI(B)(3).

[116] *See* ISDA IV at 16.

[117] *See infra* notes 284 to 285 and accompanying text.

[118] *See* 75 FR 75214.

[119] *See id.*

[120] Cleary II at 20, note 56.

[121] *See* 75 FR 75214.

[122] *See id.* at 75214–15.

indicators being applied in different situations.[123]

One commenter suggested that Rule 901 should require the counterparties to a security-based swap to disclose specific reasons why a security-based swap does not accurately reflect the market because it would not be possible to understand the reported prices without that information.[124] The commenter also stated that the Commission, rather than registered SDRs, should specify the indicators used for such transaction reports.[125]

The Commission agrees in general that an effective regime for public dissemination should provide market observers with appropriate information to assist them in understanding the disseminated transaction information. The Commission also agrees with the commenter that it could be useful to market observers to provide more specific information about particular characteristics of or circumstances surrounding a transaction that could affect its price discovery value. Therefore, after careful consideration, the Commission is adopting the substance of re-proposed Rule 901(c)(11), but is modifying the rule text to reflect final Rule 907(a)(4), and is renumbering the requirement as Rule 901(c)(7). Rule 901(c)(7), as adopted, requires reporting of any applicable flag(s) pertaining to the transaction that are specified in the policies and procedures of the registered SDR to which the transaction will be reported. Rule 907(a)(4)(i) requires a registered SDR to establish and maintain written policies and procedures for ''identifying characteristic(s) of a security-based swap, or circumstances associated with the execution of a security-based swap, that could, in the fair and reasonable estimation of a registered security-based swap data repository, cause a person without knowledge of these characteristic(s) or circumstance(s) to receive a distorted view of the market.'' A registered SDR also must establish flags to denote these characteristic(s) or circumstance(s).[126] As discussed in Section VI(G), *infra,* the Commission generally believes that a registered SDR should consider providing condition flags identifying the following: Inter-affiliate security-based swaps; transactions resulting from netting or compression exercises; transactions resulting from a ''forced trading session'' conducted by a clearing agency; transactions reported late; transactions resulting from the default of a clearing member; and package trades. The Commission believes that these condition flags, and others that registered SDRs may adopt in the future, should provide additional information that will help to prevent market observers from receiving a distorted view of the market. The Commission believes, further, that these condition flags address the commenter's recommendation that security-based swap transaction reports identify the specific reasons why a transaction does not accurately reflect the market.

The Commission disagrees, however, with the commenter's suggestion that a Commission rule rather than the policies and procedures of a registered SDR should identify the specific characteristics or circumstances that must be reported to prevent a transaction report from presenting a distorted view of the market. The Commission continues to believe that requiring registered SDRs to develop, maintain, and require the use of condition flags, and to modify them as needed, will facilitate the development of a flexible reporting regime that is better able to respond quickly to changing conditions in the security-based swap market. This flexibility will help to assure that reported transaction information remains meaningful as the security-based swap market evolves over time.

B. Rule 901(d)—Secondary Trade Information

1. Description of Proposed and Re-Proposed Rule

Rule 901(d)(1), as proposed and as re-proposed, would have required the reporting of certain secondary trade information concerning a security-based swap. Information reported pursuant to Rule 901(d)(1) would be available to regulatory authorities only and would not be publicly disseminated. Rule 901(d)(1), as re-proposed, would have required the reporting of the following secondary trade information to a registered SDR: (1) The participant ID of each counterparty; (2) as applicable, the broker ID, desk ID, and trader ID of the direct counterparty on the reporting side; (3) the amount(s) and currenc(ies) of any up-front payment(s) and a description of the terms and contingencies of the payment streams of each direct counterparty to the other; (4) the title of any master agreement, or any other agreement governing the transaction (including the title of any document governing the satisfaction of margin obligations), incorporated by reference and the date of any such agreement; (5) the data elements necessary for a person to determine the market value of the transaction; (6) if applicable, and to the extent not provided pursuant to Rule 901(c), the name of the clearing agency to which the security-based swap will be submitted for clearing; (7) if the security-based swap is not cleared, whether the exception in Section 3C(g) of the Exchange Act [127] was invoked; (8) if the security-based swap is not cleared, a description of the settlement terms, including whether the security-based swap is cash-settled or physically settled, and the method for determining the settlement value; and (9) the venue where the security-based swap was executed.[128]

As discussed in the Regulation SBSR Proposing Release, the Commission believed that the information required to be reported by proposed Rule 901(d) would facilitate regulatory oversight and monitoring of the security-based swap market by providing comprehensive information regarding security-based swap transactions and trading activity.[129] The Commission believed, further, that this information would assist the Commission in detecting and investigating fraud and trading abuses in the security-based swap market.[130]

Re-proposed Rule 901(d)(2) specified timeframes for reporting the secondary trade information required to be reported under Rule 901(d)(1). Rule 901(d)(2), as re-proposed, would have required the reporting of secondary trade information promptly, but in no event later than: (1) 15 minutes after the time of execution of a security-based swap that is executed and confirmed electronically; (2) 30 minutes after the time of execution for a security-based swap that is confirmed electronically but not executed electronically; or (3) 24 hours after the time of execution for a security-based swap that is not executed or confirmed electronically.

2. Final Rule 901(d)

As discussed more fully below, the Commission is adopting Rules 901(d)(1)

[123] *See id.* at 75215.

[124] *See* Better Markets I at 6.

[125] *See id.* at 7 (''Such disclosure should not be left to the discretion of the SDRs, but should instead be required by the rules'').

[126] *See* Rule 907(a)(4)(ii).

[127] 15 U.S.C. 78c–3(g).

[128] Rule 901(d)(1), as re-proposed, was substantially similar to Rule 901(d)(1), as proposed, but made several technical changes. Rule 901(d)(1), as re-proposed, revised the rule to add references to the reporting side, the direct counterparty on the reporting side, and secondary trade information.

[129] *See* 75 FR 75217. Furthermore, to the extent that the Commission receives information that is reported under Rule 901(d), the Commission anticipates that it will keep such information confidential, to the extent permitted by law. *See id.* at note 59.

[130] *See id.*

substantially as re-proposed, although it is making several clarifying and technical changes to address issues raised by commenters.

The Commission is not adopting the 15-minute, 30-minute, and 24-hour timeframes in re-proposed Rule 901(d)(2). Instead, final Rule 901(d) requires a reporting side to report the information required under Rule 901(d) within the timeframes specified by Rule 901(j).[131] Because re-proposed Rule 901(d)(2) is not being adopted, re-proposed Rule 901(d)(1) is renumbered as final Rule 901(d), and re-proposed Rules 901(d)(1)(i)–(ix), which would identify the categories of secondary trade information required to be reported, are renumbered as final Rules 901(d)(1)–(9).

Rule 901(d), as adopted, requires the reporting side to report the following secondary trade information: (1) The counterparty ID or execution agent ID of each counterparty, as applicable; (2) as applicable, the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID of the direct counterparty on the reporting side; (3) to the extent not provided pursuant to Rule 901(c)(1), the terms of any fixed or floating rate payments, including the terms and contingencies of any such payments; (4) for a security-based swap that is not a clearing transaction, the title and date of any master agreement, collateral agreement, margin agreement, or any other agreement incorporated by reference into the security-based swap contract; (5) to the extent not provided pursuant to Rule 901(c) or other provisions of Rule 901(d), any additional elements included in the agreement between the counterparties that are necessary for a person to determine the market value of the transaction; (6) if applicable, and to the extent not provided pursuant to Rule 901(c), the name of the registered clearing agency to which the security-based swap will be submitted for clearing; (7) if the direct counterparties do not intend to submit the security-based swap to clearing, whether they have invoked the exception in Section 3C(g) of the Exchange Act; (8) to the extent not provided pursuant to other provisions of Rule 901(d), if the direct counterparties do not submit the security-based swap to clearing, a description of the settlement terms, including whether the security-based swap is cash-settled or physically settled, and the method for determining the settlement value; (9) the platform ID, if applicable; and (10) if the security-based swap arises from the allocation, termination, novation, or assignment of one or more existing security-based swaps, the transaction ID of the allocated, terminated, assigned, or novated security-based swap(s), except in the case of a clearing transaction that results from the netting or compression of other clearing transactions.

3. Discussion of Final Rule 901(d) and Response to Comments

a. Rule 901(d)(1)—Counterparty IDs

In the Regulation SBSR Proposing Release, the Commission expressed the view that a registered SDR ''must have a systematic means to identify and track'' all persons involved in the security-based swap transactions reported to that registered SDR.[132] The Commission intended to accomplish this, in part, through proposed Rule 901(d)(1)(i), which would have required the reporting party to report the participant ID of each counterparty to a registered SDR.[133] As proposed in Rule 900, ''participant ID'' would have been defined as ''the UIC assigned to a participant'' [134] and ''participant'' would have encompassed: (1) A U.S. person that is a counterparty to a security-based swap that is required to be reported to a registered SDR; or (2) a non-U.S. person that is a counterparty to a security-based swap that is (i) required to be reported to a registered SDR; and (ii) executed in the United States or through any means of interstate commerce, or cleared through a clearing agency that has its principal place of business in the United States.

Re-proposed Rule 901(d)(1)(i) would have required the reporting side to report the participant ID of each counterparty to a security-based swap. Re-proposed Rule 900(s) would have defined ''participant'' as ''a person that is a counterparty to a security-based swap that meets the criteria of § 242.908(b).'' Under re-proposed Rule 900(s), the following types of person would have met the criteria of Rule 908(b): (1) U.S. persons; (2) security-based swap dealers and major security-based swap participants; and (3) counterparties to a transaction ''conducted within the United States.'' [135]

The Commission received no comments on re-proposed Rule 901(d)(1)(i), but has determined to adopt, as final Rule 901(d)(1), a modified rule that will, in the Commission's estimation, better accomplish the objective of ensuring that a registered SDR can identify each counterparty to a security-based swap. As re-proposed, the reporting side would have been required to report the participant ID of its counterparty only if the counterparty met the definition of ''participant,'' which would have been limited by Rule 908(b). Under the re-proposed definition of ''participant,'' some counterparties to security-based swaps would not have become participants of the registered SDRs that receive reports of those security-based swaps under Rule 901(a). For example, if a U.S. person security-based swap dealer entered into a security-based swap with a non-U.S. person private fund in a transaction that is not conducted within the United States, the security-based swap dealer would have been a participant of the registered SDR to which the security-based swap is reported pursuant to Rule 901(a), but the private fund would not. In this circumstance, Rule 901(d)(1)(i), as re-proposed, would not have provided a mechanism for the reporting of the private fund's identity to the registered SDR; because the private fund would not have been a participant of that registered SDR it would not have received a ''participant ID.''

The Commission believes that it is necessary and appropriate for a registered SDR to obtain identifying information for all counterparties to security-based swaps that are subject to Regulation SBSR. Without this information being reported to a registered SDR, the Commission's ability to oversee the security-based swap market could be impaired because the Commission might not be able to determine the identity of each counterparty to a security-based swap reported to a registered SDR pursuant to Regulation SBSR.

Final Rule 901(d)(1) addresses this concern by requiring the reporting side to report ''the counterparty ID or the execution agent ID of each counterparty, as applicable.'' The Commission is adopting, as Rule 900(j), the term ''counterparty ID,'' which means ''the UIC assigned to a counterparty to a

[131] Rule 901(j), which specifies the timeframe for reporting of the information enumerated in Rules 901(c) and 901(d), is discussed in Section VII(B)(1) *infra.*

[132] 75 FR 75217.

[133] *See infra* Section X (discussing use of LEIs).

[134] The definition of ''participant ID'' was re-proposed, without change, in re-proposed Rule 900(s). The UIC is the unique identification code assigned to a person, unit of a person, product, or transaction. *See* Rule 900(qq). As discussed more fully in Section IV, *infra,* final Rule 907(a)(5) requires a registered SDR to establish and maintain policies and procedures for assigning UICs in a manner consistent with adopted Rule 903.

[135] *See* Cross-Border Proposing Release, 78 FR 31065 (discussing re-proposed Rule 908(b)).

security-based swap.'' [136] A ''counterparty'' is a person that is a direct or indirect counterparty of a security-based swap.[137] A ''direct counterparty'' is a person that is a primary obligor on a security-based swap,[138] and an ''indirect counterparty'' is a guarantor of a direct counterparty's performance of any obligation under a security-based swap such that the direct counterparty on the other side can exercise rights of recourse against the indirect counterparty in connection with the security-based swap; for these purposes a direct counterparty has rights of recourse against a guarantor on the other side if the direct counterparty has a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, the guarantor in connection with the security-based swap.[139] Thus, the definition of ''counterparty ID'' encompasses UICs that identify all direct and indirect counterparties to a security-based swap, even if a particular counterparty is not a participant of a registered SDR.[140]

The Commission believes final Rule 901(d)(1) will accomplish the Commission's objective of obtaining identifying information for all counterparties to a security-based swap and improve regulatory oversight and surveillance of the security-based swap market. The counterparty ID will allow registered SDRs, the Commission, and other relevant authorities to track activity by a particular market participant and facilitate the aggregation and monitoring of that market participant's security-based swap positions.

The Commission also is adopting a requirement in Rule 901(d)(1)(i) for the reporting side to report the ''execution agent ID'' as applicable.[141] This situation could arise if the identity of a counterparty is not known at the time of execution.[142] In this circumstance, the reporting side would report the execution agent ID because it would not know the counterparty ID.

Regulation SBSR requires reporting of the UIC of each counterparty to a security-based swap.[143] One commenter stated that ''each series or portfolio within each trust should be given its own LEI/UCI number to address possible confusion between series or portfolios within the same trust. Each portfolio is distinct with its own separate assets and liabilities.'' [144] The Commission agrees with this commenter and notes that Rule 901(d)(1) requires the reporting of the UIC for each counterparty to a security-based swap, whether not the counterparty is a legal person.[145] If a counterparty is an entity other than a legal person, such as a series or portfolio within a trust, or an account, Rule 901(d)(1) requires the reporting of the UIC that identifies that counterparty.

Finally, the Commission notes that although it is not adopting a definition of ''participant ID,'' the concept of a ''participant'' is still utilized in Regulation SBSR. Rule 900(u), as adopted, defines ''participant,'' with respect to a registered SDR, as ''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).'' [146] The adopted definition makes clear that a person becomes a participant of a particular registered SDR only if the person meets the criteria of Rule 908(b) *and* is a counterparty to a security-based swap that is reported to that registered SDR on a mandatory basis. A counterparty would not become a participant of *all* registered SDRs as a result of being a counterparty to a security-based swap that is subject to Regulation SBSR and reported to a particular registered SDR as required by Rule 901(a). The adopted definition also clarifies that a counterparty would not become a participant of a registered SDR as a result of any non-mandatory report [147] submitted to that registered SDR.[148] Similarly, a counterparty that meets the criteria of Rule 908(b) would not become a participant of any registered SDR if the security-based swap is reported pursuant to a substituted compliance determination under Rule 908(c), because such a security-based swap would not be reported to a registered SDR pursuant to Rule 901(a).

The final definition of ''participant'' is less comprehensive than the re-proposed definition because Rule 908(b), as adopted, is narrower than Rule 908(b), as re-proposed. As discussed in Section XV(D), *infra,* final Rule 908(b) includes U.S. persons, registered security-based swap dealers, and registered major security-based

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[136] The Commission is not adopting the re-proposed definition of ''participant ID'' as this term is not used in Regulation SBSR, as adopted.

[137] *See* Rule 900(i).

[138] *See* Rule 900(k).

[139] *See* Rule 900(p). Re-proposed Rule 900(o) would have defined ''indirect counterparty'' to mean ''a guarantor of a direct counterparty's performance of any obligation under a security-based swap.'' The Commission is adopting, consistent with the approach it took in the cross-border context, a modified definition of ''indirect counterparty'' to clarify the type of guarantor relationship that would cause a person to become an indirect counterparty for purposes of Regulation SBSR. *See* Securities Exchange Act Release No.72472 (June 25, 2014), 79 FR 47278, 47316–17 (August 12, 2014) (''Cross-Border Adopting Release''). Final Rule 900(p) defines ''indirect counterparty'' to mean a guarantor of a direct counterparty's performance of any obligation under a security-based swap such that the direct counterparty on the other side can exercise rights of recourse against the indirect counterparty in connection with the security-based swap; for these purposes, a direct counterparty has rights of recourse against a guarantor on the other side if the direct counterparty has a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, the guarantor in connection with the security-based swap. Thus, under final Rule 900(p), a person becomes an indirect counterparty to a security-based swap if the guarantee offered by the person permits a direct counterparty on the other side of the transaction to exercise rights of recourse against the person in connection with the security-based swap. The Commission believes that, if a recourse guarantee exists, it is reasonable to assume that the other side of the transaction would look both to the direct counterparty and its guarantor(s) for performance on the security-based swap. If the direct counterparty fails to fulfill its payment obligations on the security-based swap, its guarantor would be obligated to make the required payments. As noted in the Cross-Border Adopting Release, such rights may arise in a variety of contexts. The meaning of the terms ''guarantee,'' ''recourse,'' and any related terms used in Regulation SBSR is the same as the meaning of those terms in the Cross-Border Adopting Release and the rules adopted therein.

[140] The process for obtaining UICs, including counterparty IDs, is described in Section X, *infra.*

[141] *See infra* Section II(C)(3)(b)(i) (discussing execution agent ID).

[142] The Commission believes the reporting side may not know the counterparty ID of the other side if, for example, the security-based swap will be allocated after execution. Section VIII describes how Regulation SBSR applies to security-based swaps involving allocation.

[143] *See* Rule 901(d)(1); Rule 907(a)(5) (requiring a registered SDR to have written policies and procedures for assigning UICs in a manner consistent with Rule 903).

[144] Institutional Investors Letter at 6.

[145] Consequently, the word ''person,'' as used in this release, includes any counterparty to a security-based swap, including a counterparty that is not a legal person. *Cf.* Cross-Border Adopting Release, 79 FR 47312 (providing that an account, whether discretionary or not, of a U.S. person also is a U.S. person—even though accounts generally are not considered separate legal persons—and noting that this prong of the ''U.S. person'' definition focuses on the party that actually bears the risk arising from a security-based swap transaction).

[146] Re-proposed Rule 900(s) would have defined ''participant'' as ''a person that is a counterparty to a security-based swap that meets the criteria of § 242.908(b).''

[147] *See infra* Section VI(D)(1) (discussing non-mandatory reports).

[148] Assume, for example, that Fund X is a U.S. person and engages in a single uncleared security-based swap with a registered security-based swap dealer. Further assume that the registered security-based swap dealer, who has the duty to report the transaction under the reporting hierarchy, elects to submit the required transaction report to SDR P, and also submits a non-mandatory report of the transaction to SDR Q. Fund X is now a participant of SDR P but not of SDR Q. Under Rule 900(u), Fund X would not become a participant of SDR Q unless and until it enters into a future security-based swap that is reported on a mandatory basis to SDR Q.

swap participants. The Commission is not at this time taking action on the prong of re-proposed Rule 908(b) that would have caused a person to become a participant solely by being a counterparty to a security-based swap that is a transaction conducted within the United States. As a result, fewer non-U.S. persons are likely to ''meet the criteria of Rule 908(b),'' as adopted, because a non-U.S. person that is a counterparty of a security-based swap would meet the criteria of final Rule 908(b) only if that counterparty is a registered security-based swap dealer or a registered major security-based swap participant. Thus, only a U.S. person, a registered security-based swap dealer, or a registered major security-based swap participant could be a ''participant'' under Regulation SBSR.

b. Rule 901(d)(2)—Additional UICs

Rule 901(d)(1)(ii), as re-proposed, would have required reporting of, as applicable, the broker ID, desk ID, and trader ID of the direct counterparty on the reporting side. The Commission preliminarily believed that the reporting of this information would help to promote effective oversight, enforcement, and surveillance of the security-based swap market by the Commission and other relevant authorities.[149] The Commission noted, for example, that this information would allow regulators to track activity by a particular participant, a particular desk, or a particular trader. In addition, relevant authorities would have greater ability to observe patterns and connections in trading activity, or examine whether a trader had engaged in questionable activity across different security-based swap products. Such identifiers also would facilitate aggregation and monitoring of the positions of security-based swap counterparties, which could be of significant benefit for systemic risk management.[150]

Adopted Rule 901(d)(2) modifies re-proposed Rule 901(d)(1)(ii) in certain respects. First, final Rule 901(d)(2) replaces the defined term ''desk ID'' with the defined term ''trading desk ID.'' Second, final Rule 901(d)(2) now includes a requirement to report the branch ID and the execution agent ID of the direct counterparty on the reporting side, in addition to the broker ID, trading desk ID, and trader ID. In conjunction with this requirement, final Rule 900 includes the new defined terms ''branch ID'' and ''execution agent ID.'' Third, final Rule 900 includes a revised definition of ''trader ID.'' Thus, final Rule 901(d)(2) requires reporting of, ''[a]s applicable, the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID of the direct counterparty on the reporting side.'' [151]

i. Branch ID and Execution Agent ID

Rule 901(d)(2), as adopted, requires the reporting of, as applicable, the branch ID and execution agent ID of the direct counterpart on the reporting side, in addition to the broker ID, trader ID, and trading desk ID of the direct counterparty on the reporting side. The ''branch ID'' is the ''UIC assigned to a branch or other unincorporated office of a participant.'' [152] The Commission did not include a requirement to report the branch ID in Rule 901(d), as proposed or as re-proposed. However, the Commission now believes that it is appropriate to include in Regulation SBSR a new concept of the branch ID and require reporting of the branch ID, when a transaction is conducted through a branch, as part of Rule 901(d)(2), as adopted. Reporting of the branch ID, where applicable, will help identify the appropriate sub-unit within a large organization that executed a security-based swap (if a transaction were in fact conducted through that sub-unit). This information also will facilitate the aggregation and monitoring of security-based swap transactions by branch, at the level of the registered SDR and potentially within the firm itself.

Final Rule 901(d)(2) also includes another UIC, the ''execution agent ID,'' that was not included in the proposal or re-proposal. Rule 900(m), as adopted, provides that the execution agent ID is the ''UIC assigned to any person other than a broker or trader that facilitates the execution of a security-based swap on behalf of a direct counterparty.'' The Commission initially proposed to require reporting of the broker ID in order to obtain a record of an agent that facilitates a transaction, if there is such an agent. The Commission now recognizes, however, that entities other than registered brokers could act as agents in a security-based swap transaction. For example, an asset manager could be acting as an agent on behalf of a fund counterparty but likely would not be a broker-dealer. The definition of ''execution agent ID'' is designed to encompass the entities in addition to brokers that may act as agents for security-based swap counterparties. The broker ID,[153] which also must be reported under final Rule 901(d)(2), will identify a registered broker, if any, that intermediates a security-based swap transaction between two direct counterparties and itself is not a counterparty to the transaction.

The Commission believes that obtaining information about a broker or execution agent, if any, involved in the transaction will provide regulators with a more complete understanding of the transaction and could provide useful information for market surveillance purposes. The Commission notes that some security-based swap transactions may involve multiple agents. For example, an asset manager could use a broker to facilitate the execution of a security-based swap on behalf of one or more of the funds that it advises. In that case, final Rule 901(d) would require reporting of the counterparty ID of the direct counterparty (the fund), the execution agent ID (for the asset manager), and the broker ID (of the broker that intermediated the transaction).

ii. Revised Defined Terms in Rule 901(d)(2)

Rule 901(d)(1)(ii), as re-proposed, would have required the reporting of, among other things, the desk ID of the direct counterparty on the reporting side. Rule 900(i), as re-proposed, would have defined ''desk ID'' as the UIC assigned to the trading desk of a participant or of a broker of a participant. Rule 900, as re-proposed, did not include a definition of ''desk.'' Final Rule 901(d)(2) requires the reporting of the ''trading desk ID,'' rather than the ''desk ID.'' Accordingly, the defined term ''desk ID'' is being replaced in Rule 900 with the defined term ''trading desk ID,'' which Rule 900(*ll*) defines as ''the UIC assigned to the trading desk of a participant.'' Unlike re-proposed Rule 900, which provided no definition of the term ''desk,'' final Rule 900(kk) provides a definition of the term ''trading desk.'' Specifically, final Rule 900(kk) defines ''trading desk'' to mean, ''with respect to a counterparty, the smallest discrete unit of organization of the participant

[149] *See* Regulation SBSR Proposing Release, 75 FR 75217.

[150] *See id.*

[151] As discussed in greater detail in Section XIII(A), *infra,* Rule 906(a), as adopted, requires reporting to a registered SDR of the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID, as applicable, of a direct counterparty to a security-based swap that is not the reporting side. Thus, Rules 901(d)(2) and 906(a) together require reporting, as applicable, of the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID of each direct counterparty to a security-based swap.

[152] *See* Rule 900(d).

[153] ''Broker ID'' is defined as ''the UIC assigned to a person acting as a broker for a participant.'' *See* Rule 900(e).

that purchases or sells financial instruments for the account of the participant or an affiliate thereof.'' The Commission believes that adding a definition of ''trading desk'' will help to clarify the rule by describing the type of structure within an enterprise that must receive a trading desk ID. The ''trading desk ID'' concept is designed to identify, within a large organization, the smallest discrete unit that initiated a security-based swap transaction. Requiring the reporting of the trading desk ID will assist regulators in monitoring the activities and exposures of market participants. The trading desk ID could, among other things, facilitate investigations of suspected manipulative or abusive trading practices.[154]

Final Rule 901(d)(2) also requires reporting of, if applicable, the trader ID of the direct counterparty on the reporting side. Re-proposed Rule 900(gg) would have defined ''trader ID'' as ''the UIC assigned to a natural person who executes security-based swaps.'' This definition would encompass a direct counterparty that executed a security-based swap, as well as a trader acting as agent that executes a security-based swap on behalf of a direct counterparty. The Commission did not intend for the definition of ''trader ID'' to include both direct counterparties (whose counterparty IDs must be provided pursuant to Rule 901(d)(1)) and traders acting in an agency capacity that execute security-based swaps on behalf of a direct counterparty. To narrow the definition of ''trader ID'' so that it includes only traders that execute security-based swaps on behalf of direct counterparties, final Rule 900(jj) defines ''trader ID'' as ''the UIC assigned to a natural person who executes one or more security-based swaps on behalf of a direct counterparty.'' The direct counterparty would be the person, account, or fund that is the direct counterparty to the security-based swap that employs the trader.

iii. Response to Comments

One commenter supported the proposed requirement for reporting broker ID, desk ID, and trader ID, stating that these UICs would ''give regulators a capability to aggregate position and trade data in multiple ways including by individual trader to spot concentration risk and insider trading.'' [155] A second commenter argued that desk structures change relatively frequently and personnel often rotate or transfer to other firms; therefore, the effort to maintain trader ID and desk ID information in a registered SDR could exceed its usefulness.[156] The commenter also indicated that information regarding the desk ID and trader ID would be available from a firm's audit trail.[157]

The Commission questions whether consistent and robust information about a firm's desk and trader activity is available from firms' audit trails. Even if it were, the Commission believes that reporting of the trader ID and the trading desk ID—as well as the branch ID, broker ID, and execution agent ID—will help to assure that information concerning the persons involved in the intermediation and execution of a security-based swap is readily available to the Commission and other relevant authorities. This information could assist in monitoring and overseeing the security-based swap market and facilitate investigations of suspected manipulative or abusive trading practices.

Two other commenters raised issues with requiring reporting of broker, trader, and trading desk IDs.[158] One of these commenters believed that reporting these UICs would require ''great cost and effort'' from firms, including the costs associated with establishing and maintaining UICs in the absence of a global standard.[159] The commenter also noted that not all of these identifiers are required to be reported in other jurisdictions.[160] In a joint comment letter with another trade association, this commenter also stated that, because these UICs are not currently reported by any participants in the OTC derivatives markets, ''[t]he industry will need to develop standards and appropriate methodology to effectively report this information.'' [161] This comment expressed concern that the proposed requirement ''will create significant 'noise' as a result of booking restructuring events (due to either technical or desk reorganization considerations). We therefore recommend that such information be either excluded, or that participants report the Desk ID and Trader ID associated with the actual trade or lifecycle events, but not those resulting from internal reorganization events.'' [162]

The Commission recognizes that, currently, UICs for branches, execution agents, trading desks, and individual traders are generally not in use. While the Commission agrees with the commenters that there could be a certain degree of cost and effort associated with establishing and maintaining UICs, the Commission believes that such costs have already been taken into account when determining the costs of Regulation SBSR.[163] The costs of developing such UICs are included in the costs for Rule 901 (detailing the data elements that must be reported) and Rule 907 (detailing the requirement that SDRs develop policies and procedures for the reporting of the required data elements).

The Commission confirms that these UICs must be reported pursuant to Rule 901(d)(2) only in connection with the original transaction.[164]

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[154] The trading desk ID also might allow relevant authorities to determine whether a particular trading desk is engaging in activity that could disrupt the security-based swap markets. For example, in early 2012, a trading desk of JPMorgan Chase and Company known as the Chief Investment Office executed transactions in synthetic credit derivatives that declined in value by at least $6.2 billion later in the year. According to the report of the United States Senate Permanent Subcommittee on Investigations, these trades, which were unknown to the bank's regulators, were ''so large in size that they roiled world credit markets.'' Report of the United States Senate Permanent Subcommittee on Investigations, JPMorgan Chase Whale Trades: A Case History of Derivatives Risks and Abuses (March 15, 2013), available at *http://www.hsgac.senate.gov/subcommittees/investigations/hearings/chase-whale-trades-a-case-history-of-derivatives-risks-and-abuses* (last visited October 7, 2014). The existence of a trading desk ID could, in the future, facilitate the ability of relevant authorities to detect this type of trading activity.

[155] GS1 Letter at 39 (also stating that these elements ''would be most critical for performing trading oversight and compliance functions such as trading ahead analysis, assessing trader price collusion, analyzing audit trail data from multiple derivatives markets as well as underlying cash markets . . . Also, lack of unique, unambiguous and universal identification of broker, desks and traders was one of the significant deterrents to analyzing the May 6, 2010 flash crash''). Another commenter generally supported the information required to be reported pursuant to Rule 901(d). *See* Barnard I at 2.

[156] *See* DTCC II at 11.

[157] *See id.*

[158] *See* ISDA III at 2; ISDA IV at 8; ISDA/SIFMA at 11.

[159] ISDA III at 2; ISDA IV at 8.

[160] *See* ISDA IV at 8 (stating that ''[u]nder EMIR rules, broker ID is required, but not desk ID or trader ID. In Canada, only broker ID is required, but we note that reporting entities are struggling with the availability of an LEI to identify brokers that have not been subject to a mandate to obtain one''). *See also* ISDA III at 2.

[161] ISDA/SIFMA at 11.

[162] *Id. See also* ISDA IV at 8 (''We suggest that the Commission eliminate broker ID, desk ID and trader ID from the list of reportable secondary trade information. If the Commission wants to retain these fields we strongly believe a cost-benefit analysis should be conducted'').

[163] *See infra* Section XXII(C)(1) (providing the economic analysis of these requirements).

[164] Thus, a participant would not be required to ''re-report'' a transaction to the registered SDR if, for example, the trader who executed the transaction leaves the firm some time afterwards. However, the participant will be subject to the policies and procedures of the registered SDR for, among other things, assigning UICs in a manner consistent with Rule 903. *See infra* Section IV. Those policies and procedures could include a requirement for the participant to regularly notify the registered SDR

c. Rule 901(d)(3)—Payment Stream Information

Rule 901(d)(1)(iii), as proposed and re-proposed, would have required the reporting side to report the amount(s) and currenc(ies) of any up-front payment(s) and a description of the terms and contingencies of the payment streams of each direct counterparty to the other. The Commission stated that this requirement would include, for a credit default swap, an indication of the counterparty purchasing protection, the counterparty selling protection, and the terms and contingencies of their payments to each other; and, for other security-based swaps, an indication of which counterparty is long and which is short.[165] The Commission noted that this information could be useful to regulators in investigating suspicious trading activity.[166]

One commenter stated the view that proposed Rule 901(d)(1)(iii) was duplicative of proposed Rule 901(d)(1)(v), which would require reporting of the data elements necessary to determine the market value of a transaction.[167] The commenter stated, further, that proposed Rule 901(d)(1)(iii) was unclear about the required form of the description of the terms and contingencies of the payment streams, and requested further clarification of this proposed requirement.[168]

The Commission agrees with the commenter's concerns regarding the need to clarify the information required to be reported under these provisions of Rule 901. Accordingly, the Commission is revising adopted Rule 901(d)(3) to require the reporting, *to the extent not provided pursuant to Rule 901(c)(1),* of the terms of any fixed or floating rate payments, or otherwise customized or non-standardized payment streams, including the frequency and contingencies of any such payments.[169] As discussed above, adopted Rule 901(c)(1)(iv) requires the reporting side to report the terms of any *standardized* fixed or floating rate payments, and the frequency of any such payments.[170] To the extent that a security-based swap includes fixed or floating rate payments that do not occur on a regular schedule or are otherwise customized or non-standardized, final Rule 901(d)(3) requires the reporting of the terms of those payments, including the frequency and contingencies of the payments. The Commission believes that the changes to final Rule 901(d)(3) make clear that Rule 901(d)(3) requires reporting of customized or non-standardized payment streams, in contrast to the standardized payment streams required to be reported pursuant to Rule 901(c)(1)(iv). The terms required to be reported could include, for example, the frequency of any resets of the interest rates of the payment streams. The terms also could include, for a credit default swap, an indication of the counterparty purchasing protection and the counterparty selling protection, and, for other security-based swaps, an indication of which counterparty is long and which counterparty is short. The Commission believes that information concerning the non-standard payment streams of a security-based swap could be useful to the Commission or other relevant authorities in assessing the nature and extent of counterparty obligations and risk exposures. The Commission believes that the changes made to Rule 901(d)(3) will help clarify the information required to be reported under the rule and will eliminate any redundancy between the information required to be reported under Rules 901(c)(1)(iv) and 901(d)(3).

In addition, as discussed more fully below, the Commission is revising re-proposed Rule 901(d)(1)(v), which is renumbered as final Rule 901(d)(5), to indicate that Rule 901(d)(5) requires the reporting of additional data elements necessary to determine the market value of a transaction *only to the extent that the information has not been reported pursuant to Rule 901(c) or other provisions of Rule 901(d).* The Commission believes that these changes address the concern that Rule 901(d)(i)(iii) was duplicative of Rule 901(d)(1)(v).

d. Rule 901(d)(4)—Titles and Dates of Agreements

Rule 901(d)(1)(iv), as proposed, would have required reporting of the title of any master agreement, or any other agreement governing the transaction (including the title of any document governing the satisfaction of margin obligations), incorporated by reference and the date of any such agreement. Rule 901(d)(1)(v), as proposed, would have required reporting of the data elements necessary for a person to determine the market value of the transaction. The Commission noted that proposed Rule 901(d)(1)(v) would require, for a security-based swap that is not cleared, information related to the provision of collateral, such as the title and date of the relevant collateral agreement. The Commission preliminarily believed that these requirements, together with other information required to be reported under Rule 901(d), would facilitate regulatory oversight of counterparties by providing information concerning counterparty obligations.[171] The Commission re-proposed Rules 901(d)(1)(iv) and 901(d)(1)(v) without revision in the Cross-Border Proposing Release.

In proposing Rules 901(d)(1)(iv) and 901(d)(1)(v), the Commission balanced the burdens associated with reporting entire agreements against the benefits of having information about these agreements, and proposed to require reporting only of the title and date of such master agreements and any other agreement governing the transaction. Similarly, the Commission indicated that proposed Rule 901(d)(1)(v) would require the reporting of the title and date of any collateral agreements governing the transaction.[172]

One commenter disagreed with the Commission's proposed approach. This commenter expressed the view that Regulation SBSR should be more explicit in requiring reports of information concerning collateral and margin for use by regulators because this information would be important for risk assessment and other purposes.[173]

The Commission agrees that it is important for regulatory authorities to have access to information concerning the collateral and margin associated with security-based swap transactions. The Commission also is mindful,

about changes in persons or business units requiring a UIC.

[165] *See* Regulation SBSR Proposing Release, 75 FR 75218, note 62.

[166] *See id.*

[167] *See* DTCC II at 10.

[168] *See* DTCC II at 10; DTCC V at 12.

[169] As discussed above, the requirement to report the amount(s) and currenc(ies) of any up-front payments now appears in Rule 901(c)(3), rather than in Rule 901(d). Rule 901(c)(3), as adopted, requires reporting of the price of a security-based swap, including the currency in which the price is expressed and the amount(s) and currenc(ies) of any up-front payments.

[170] If information concerning the terms and frequency of any regular fixed or floating rate payments is included in the product ID for the security-based swap, the reporting side is required to report only the product ID, and would not be required to separately report the terms and frequency of any regular fixed or floating rate payments in addition to the product ID. *See* Rule 901(c)(1); Section III(B)(2)(b)(ii), *supra.*

[171] *See* Regulation SBSR Proposing Release, 75 FR 75218.

[172] *See id.* at 75218, note 63.

[173] *See* Better Markets I at 7–8 (arguing that, to facilitate oversight, security-based swap counterparties should be required to report the core data elements of their collateral arrangements, including, at a minimum: (1) The parties to the agreement; (2) the thresholds for forbearance of posted collateral applicable to each party; (3) the triggers applicable to each party that would require immediate funding (termination of forbearance); and (4) the methodology for measuring counterparty credit risk); Better Markets III at 4–5.

however, that requiring the reporting of detailed information concerning the master agreement and other documents governing security-based swaps could impose significant burdens on market participants. In addition, the Commission notes that one commenter on proposed Regulation SBSR stated that it would not be possible, in all cases, to identify the collateral associated with a particular security-based swap transaction because collateral is calculated, managed, and processed at the portfolio level rather than at the level of individual transactions.[174]

In light of these considerations, the Commission believes that, for security-based swaps that are not clearing transactions, requiring reporting of the title and date of any master agreement, collateral agreement, margin agreement, or any other agreement incorporated by reference into the security-based swap contract—but not the agreements themselves or detailed information concerning the agreements—will facilitate regulatory oversight of the security-based swap market by providing regulators with a more complete understanding of a security-based swap counterparty's obligations while not imposing significant burdens on market participants. The Commission anticipates that, if a situation arose where the Commission or another relevant authority needed to consult information about a transaction contained in one of the related agreements, the Commission could request the agreement from one of the security-based swap counterparties. Knowing the title and date of the agreement will assist relevant authorities in identifying the agreement and thereby expedite the process of obtaining the necessary information.

One commenter argued that the ''level of change'' necessary to incorporate the titles and dates of master agreements into individual trade messages was excessive and recommended that the trade level reference continue to follow the current process of referencing the lowest level governing document, which would permit the identification of all of the other relevant documents.[175] Another commenter questioned the value of requiring reporting of the title and date of party level agreements.[176] This commenter stated that, because other jurisdictions do not require reporting of the ''title and date of a Credit Support Agreement or other similar document (''CSA'') governing the collateral arrangement between the parties . . . global trade repositories do not currently have fields to support separate reporting of data pertaining to the CSA from those which define the master agreement. Equally challenging is firms' ability to report data pertaining to the CSA as the terms of these agreements are not readily reportable in electronic format nor could this be easily or accurately achieved.'' [177] Noting that other global regulators have limited their trade reporting requirements to the relevant date and type of the master agreement, the commenter believed that the information required to be reported should be limited to the identification of party level master agreements that govern all of the derivatives transactions between the parties, and should not include master confirmations or other documentation that is used to facilitate confirmation of the security-based swap.[178]

The Commission understands that reporting the titles and dates of agreements for individual security-based swap transactions may require some modification of current practices. However, the Commission believes that it is important for regulators to know such titles and dates so that the Commission and other relevant authorities would know where to obtain further information about the obligations and exposures of security-based swap counterparties, as necessary. The Commission believes that requiring reporting of the titles and dates of master agreements and other agreements governing a transaction—but not the agreements themselves or detailed information concerning the agreements—would provide regulators with access to necessary information without creating an unduly burdensome reporting obligation. Therefore, the Commission is adopting Rule 901(d)(1)(iv) substantially as proposed and re-proposed, while renumbering it final Rule 901(d)(4). With respect to the commenter's concern regarding the difficulty of reporting the terms of the documentation governing a security-based swap, the Commission emphasizes that final Rule 901(d)(4) requires reporting only of the titles and dates of the documents specified in Rule 901(d)(4), but not the terms of these agreements.

The commenter also requested additional clarity regarding the proposed requirement generally.[179] As discussed above, Rule 901(d)(1)(iv), as proposed and re-proposed, would have required reporting of ''the title of any master agreement, or any other agreement governing the transaction (including the title of any document governing the satisfaction of margin obligations), incorporated by reference and the date of any such agreement.'' The proposed rule also would have required reporting of the title and date of any collateral agreements governing the transaction.[180] Although the rule, as proposed and re-proposed, would have required reporting of the title and date of any master agreement, margin agreement, collateral agreement, and any other document governing the transaction that is incorporated by reference, the Commission agrees that it would be useful to state more precisely the information required to be reported and to clarify the scope of the rule. Rule 901(d)(4), as adopted, requires reporting of, ''[f]or a security-based swap that is not a clearing transaction, the title and date of any master agreement, collateral agreement, margin agreement, or any other agreement incorporated by reference into the security-based swap contract.'' The new language makes clear that Rule 901(d)(4) applies only to security-based swaps that are not clearing transactions (*i.e.,* security-based swaps that do not have a registered clearing agency as a direct counterparty). Any such agreements relating to a clearing transaction would exist by operation of the rules of the registered clearing agency, and therefore do not need to be reported pursuant to Regulation SBSR because the Commission could obtain information from the registered clearing agency as necessary.

e. Rule 901(d)(5)—Other Data Elements

Rule 901(d)(1)(v), as re-proposed, would have required reporting of the data elements necessary for a person to determine the market value of a transaction. The Commission is adopting Rule 901(d)(1)(v) substantially

[174] *See* ISDA/SIFMA I at 14–15. Specifically, the commenter stated that the calculation of exposure collateral ''is performed at a netted portfolio level and cannot be broken down to the transaction level—it is simply not possible to identify the specific exposure collateral or the 'exposure' associated with any particular transaction.'' *See id.* at 14. The commenter noted, further, that the independent amount, an optional additional amount of collateral that two counterparties may negotiate, ''may be specified at transaction level, at portfolio level, at some intermediate level (a combination of product type, currency and maturity, for instance), and possible a hybrid of all three. Therefore it may or may not be possible to identify the [independent amount] associated with a particular transaction, but as a general matter this association cannot be reliably made.'' *See id.* at 15.

[175] *See* DTCC II at 11.

[176] *See* ISDA IV at 8.

[177] *Id.*

[178] *See id.*

[179] *See* DTCC V at 12.

[180] *See* Regulation SBSR Proposing Release, 75 FR 75218, note 63.

as re-proposed, but renumbering it as Rule 901(d)(5) and making certain technical and clarifying changes in response to comments.

As discussed above, re-proposed Rule 901(d)(1)(iii) would have required reporting of the amount(s) and currenc(ies) of any up-front payments and the terms and contingencies of the payment streams of each direct counterparty to the other. One commenter believed that re-proposed Rule 901(d)(1)(iii) was duplicative of re-proposed Rule 901(d)(1)(v),[181] and asked the Commission to provide additional clarity on what re-proposed Rule 901(d)(1)(v) requires.[182] To address these comments, the Commission is revising adopted Rule 901(d)(5) to require the reporting, *to the extent not required pursuant to Rule 901(c) or other provisions of Rule 901(d),* of any additional data elements included in the agreement between the counterparties that are necessary for a person to determine the market value of the transaction.

Another commenter expressed concern that the requirements of re-proposed Rule 901(d)(1)(v) were vague, ''leaving reporting parties and trade repositories with the task of establishing the reportable data with potentially different result.'' [183] This commenter recommended that Commission revise the rule to clarify the requirement to report ''(i) the mark-to-market value and currency code and (ii) the date and time of the valuation in Coordinated Universal Time . . .'' [184] Further, because information necessary to determine the market value of a transaction ''is determined as part of end of day processes,'' the commenter requested that the timeframe for reporting data pertaining to market value be based on the end of the day on which the relevant data was determined.[185]

In response to these concerns, the Commission emphasizes that neither Regulation SBSR, as proposed and re-proposed, nor Regulation SBSR, as adopted, requires the reporting of the market value of a security-based swap (although the negotiated price of the actual transaction is required to be reported), either on a one-time or ongoing basis.[186] As noted above, final Rule 901(d)(5) requires reporting, to the extent not required pursuant to Rule 901(c) or other provisions of Rule 901(d), of any additional data elements included in the agreement between the counterparties that are necessary to determine the market value of the transaction. This refers to all of the contractual terms and conditions of a security-based swap that a party would need to perform its own calculation of the market value of the security-based swap using its own market data. Although the reporting side must include, as part of the initial transaction report, the information necessary to determine the market value of the transaction, Regulation SBSR does not require the reporting side to take the additional step of calculating and reporting the market value of the transaction, nor does it require the reporting side to provide any market data that would be needed to calculate the market value of the transaction.

Rule 901(d)(5) is designed to help to ensure that all of the material terms of the agreement between the counterparties that is necessary to determine the market value of a security-based swap are available to the Commission and other relevant authorities.[187] The Commission continues to believe that this requirement will facilitate regulatory oversight by giving relevant authorities the information necessary to value an entity's security-based swap positions and calculate the exposure resulting from those positions. However, the final language of Rule 901(d)(5) is designed to eliminate any overlap with other provisions of Rule 901(c) or 901(d). For example, if a security-based swap has a product ID, the Commission presumes that all information necessary to identify the security-based swap and determine the market value of the transaction could be derived from the product ID (or the identification information behind that particular product ID). Therefore, it would not be necessary to report any additional information pursuant to Rule 901(d)(5) for a security-based swap for which a product ID is reported.

In addition, the Commission is further clarifying the rule by making a technical change to indicate that final Rule 901(d)(5) requires the reporting only of data elements ''included in the agreement between the counterparties.'' The Commission believes that the rule as proposed and re-proposed—which did not include this phrase—could have been interpreted to require the reporting of information external to the agreement between the counterparties that could have helped determine the market value of the security-based swap (*e.g.,* the levels of supply and demand in the market for the security-based swap). The Commission intended, however, to require reporting only of information included in the agreement between the counterparties, not of general market information. Accordingly, final Rule 901(d)(5) requires the reporting only of data elements ''included in the agreement between the counterparties'' that are necessary for a person to determine the market value of the transaction.

Finally, one commenter believed that proposed Rule 901(d)(1)(v) should require reporting only of the full terms of a security-based swap as laid out in the trade confirmation.[188] Although the Commission agrees that the full terms of a trade confirmation could, in some cases, provide the data elements included in the agreement between the counterparties that are necessary to determine the market value of a transaction, the Commission notes that the information required to be reported pursuant Rule 901(d)(5) would not necessarily be limited to information included in the trade confirmation. Not all market participants observe the same conventions for confirming their trades. The Commission understands that confirmations for some types of trades are significantly more standardized than others. Some trades may have critical terms included in other documentation, such as master confirmation agreements or credit support annexes. Moreover, confirmation practices in the future may differ from current confirmation practices. The Commission believes, therefore, that restricting information reported in accordance with Rule 901(d)(5) to the information included in the confirmation would not provide the Commission and other relevant authorities with sufficient information regarding the market value of a security-based swap.

f. Rule 901(d)(6)—Submission to Clearing

Rule 901(d)(1)(vi), as re-proposed, would have required reporting of the following data element: ''If the security-based swap will be cleared, the name of the clearing agency.'' This information would allow the Commission to verify, if necessary, that a security-based swap was cleared, and to identify the clearing agency that cleared the transaction. The

[181] *See* DTCC II at 10.

[182] *See* DTCC V at 12.

[183] ISDA IV at 9.

[184] *Id.*

[185] *See id.*

[186] In contrast, the CFTC's swap data reporting rules require reporting parties to report the market value of swap transactions to a CFTC-registered swap data repository on a daily basis. *See* 17 CFR 45.4(a)(2).

[187] This could include—by way of example and not of limitation—information about interest rate features, commodities, or currencies that are part of the security-based swap contract.

[188] *See* DTCC II at 10.

Commission received no comments on this provision and is adopting it substantially as re-proposed, with minor clarifying changes and renumbered as Rule 901(d)(6). Rule 901(d)(6), as adopted, requires reporting of the following: ''If applicable, and to the extent not provided pursuant to paragraph (c) of this section, the name of the clearing agency to which the security-based swap will be submitted for clearing.''

For some security-based swaps, the name of the clearing agency that clears the security-based swap could be inherent in the product ID. Rule 901(d)(6), as adopted, clarifies that the name of the clearing agency to which the security-based swap will be submitted for clearing need not be reported if that information is inherent in the product ID. In addition, the new language regarding whether the security-based swap will be *submitted* for clearing reflects the possibility that a clearing agency could reject the security-based swap for clearing after it has been submitted. The Commission believes that it would be useful to know the name of the clearing agency to which the transaction is submitted, even if the clearing agency rejects the transaction.

g. Rule 901(d)(7)—Indication of Use of End-User Exception

Rule 901(d)(1)(vii), as re-proposed, would have required reporting of whether a party to the transaction invoked the so-called ''end user exception'' from clearing, which is contemplated in Section 3C(g) of the Exchange Act.[189] Section 3C(g)(6) of the Exchange Act [190] provides for the Commission to request information from persons that invoke the exception. The Commission preliminarily believed that requiring reporting of whether the exception was invoked in the case of a particular security-based swap would assist the Commission in monitoring use of the exception.[191]

One commenter argued that the Commission should not use the trade reporting mechanism ''to police the end-user exception.'' [192] The commenter expressed concern with an end user having to certify eligibility with each transaction and stated that ''it is illogical that filings by swap dealers should determine the eligibility of the end user.'' [193] The Commission acknowledges the commenter's concerns but believes that they are misplaced. Re-proposed Rule 901(d)(1)(vii) would not require reporting of any information as to the end user's eligibility to invoke the exception for a specific transaction; instead, it would require reporting only of the fact of the exception being invoked. The Commission could then obtain information from a registered SDR regarding instances of the exception being invoked and could determine, as necessary, whether to further evaluate whether the exception had been invoked properly. The Commission does not believe that it is necessary or appropriate to require information about the end user's eligibility to invoke the exception to be reported under Rule 901(d). Therefore, the Commission has determined to adopt Rule 901(d)(1)(vii) as re-proposed, but is renumbering it as Rule 901(d)(7).

h. Rule 901(d)(8)—Description of Settlement Terms

Rule 901(d)(1)(viii), as re-proposed, would have required, for a security-based swap that is not cleared, a description of the settlement terms, including whether the security-based swap is cash-settled or physically settled, and the method for determining the settlement value. In the Regulation SBSR Proposing Release, the Commission stated its preliminary belief that this information would assist relevant authorities in monitoring the exposures and obligations of security-based swap market participants.[194] One commenter expressed the view that the settlement terms could be derived from other data fields and thus recommended deletion of this data element, or in the alternative, requested additional clarity on what would be required pursuant to this provision.[195]

Re-proposed Rule 901(d)(1)(viii) is being adopted substantially as re-proposed but renumbered as final Rule 901(d)(8) and now includes certain revisions that respond to the commenter and clarify the operation of the rule. Rule 901(d)(8), as adopted, requires: ''[t]o the extent not provide pursuant to other provisions of this paragraph (d), if the direct counterparties do not submit the security-based swap to clearing, a description of the settlement terms, including whether the security-based swap is cash-settled or physically settled, and the method for determining the settlement value.'' The Commission believes that the final rule makes clear that there is no requirement to report information concerning the settlement terms of an uncleared security-based swap if the information was reported pursuant to another provision of Rule 901(d). Similarly, there is no requirement to report the settlement terms pursuant to Rule 901(d)(8) if the settlement terms are inherent in the product ID. Final Rule 901(d)(8) is designed to facilitate regulatory oversight by providing the Commission and other relevant authorities with information necessary to understand the exposures of security-based swap counterparties.

i. Rule 901(d)(9)—Platform ID

Rule 901(d)(1)(ix), as re-proposed, would have required reporting of the venue where a security-based swap was executed. This would include, if applicable, an indication that a security-based swap was executed bilaterally in the OTC market.[196] This information could be useful for a variety of purposes, including studying the development of security-based swap execution facilities (''SB SEFs'') or conducting more detailed surveillance of particular security-based swap transactions. In the latter case, the Commission or another relevant authority would find it helpful to know the execution venue, from which it could obtain additional information as appropriate.

One commenter, in discussing the entity that should assign transaction IDs, suggested that linking a trade to a particular platform potentially could result in the unintentional disclosure of the identities of the counterparties.[197] The Commission notes that information concerning the venue where a security-based swap was executed, like all secondary trade information reported under Rule 901(d), is not required to be, and thus may not be, publicly disseminated. Because the platform ID may not be publicly disseminated, there is no potential for it to unintentionally

[189] 15 U.S.C. 78c–3(g). Section 3C(g)(1) of the Exchange Act provides that the general clearing mandate set forth in Section 3C(a)(1) of the Exchange Act will not apply to a security-based swap if one of the counterparties to the security-based swap: (1) Is not a financial entity; (2) is using security-based swaps to hedge or mitigate commercial risk; and (3) notifies the Commission, in a manner set forth by the Commission, how it generally meets if financial obligations associated with entering into non-cleared security-based swaps. The application of Section 3C(g)(1) is solely at the discretion of the security-based swap counterparty that satisfies these conditions. *See* Securities Exchange Act Release No. 63556 (December 15, 2010), 75 FR 79992 (December 21, 2010).

[190] 15 U.S.C. 78c–3(g)(6).

[191] *See* Regulation SBSR Proposing Release, 75 FR 75218.

[192] Cravath Letter at 3.

[193] *Id.* at 4.

[194] *See* 75 FR 75218.

[195] *See* DTCC V at 12.

[196] *See* Regulation SBSR Proposing Release, 75 FR 75218.

[197] *See* DTCC II at 15–16.

identify the counterparties to the transaction.

The Commission continues to believe that information identifying the venue where a security-based swap was executed, whether on a trading platform or in the OTC market, is necessary information for relevant authorities to conduct surveillance in the security-based swap market and understand developments in the security-based swap market generally. Therefore, the Commission is adopting the rule substantially as re-proposed and renumbering it as final Rule 901(d)(9).

One commenter asked the Commission to clarify that re-proposed Rule 901(d)(1)(ix) would require reporting only of execution platforms required to register with the Commission or the CFTC.[198] The Commission believes that final Rule 901(d)(9) largely accomplishes this result. Specifically, the Commission has revised Rule 901(d)(9) to require reporting, if applicable, of the ''platform ID,'' rather than the ''execution venue'' more broadly. To implement this requirement, the Commission also is adopting a definition of ''platform.'' Final Rule 900(v) defines a ''platform'' as ''a national securities exchange or a security-based swap execution facility that is registered or exempt from registration.'' [199] Rule 900(w) defines ''platform ID'' as the UIC assigned to the platform on which a security-based swap is executed. The platform ID, like other UICs, must be assigned as provided in Rule 903. The Commission believes that this approach makes clear that other entities that may be involved in executing transactions, such as inter-dealer brokers, are not considered platforms for purposes of this reporting requirement.[200]

j. Rule 901(d)(10)—Transaction ID of Any Related Transaction

Regulation SBSR, as proposed and re-proposed, was designed to obtain complete and accurate reporting of information regarding a security-based swap from its execution through its termination or expiration. In the Regulation SBSR Proposing Release, the Commission noted that maintaining an accurate record of the terms of a security-based swap would require reporting of life cycle event information to a registered SDR.[201] The term ''life cycle event'' includes terminations, novations, and assignments of existing security-based swaps.[202] As discussed in greater detail in Sections V(C)(5) and VIII(A), *infra,* a new security-based swap may arise following the allocation, termination, novation, or assignment of an existing security-based swap, and that the reporting side for the new security-based swap must report the transaction to a registered SDR.[203] The Commission believes that it should be able to link any new security-based swaps that arise from the termination, novation, or assignment of an existing security-based swap to the original transaction. For example, when a single security-based swap is executed as a bunched order and then allocated among multiple counterparties, the Commission and other relevant authorities should be able to link the allocations to the executed bunched order.[204] The ability to link a security-based swap that arises from an allocation, termination, novation, or assignment back to the original security-based swap(s) will help to assure that the Commission and relevant authorities have an accurate and current representation of counterparty exposures.

To facilitate the Commission's ability to map a resulting security-based swap back to the original transaction—particularly if the original transaction and the resulting transaction(s) are reported to different registered SDRs—the Commission is adopting Rule 901(d)(10), which requires the reporting side for a security-based swap that arises from an allocation, termination, novation, or assignment of one or more existing security-based swaps, to report ''the transaction ID of the allocated, terminated, assigned, or novated security-based swap(s), except in the case of a clearing transaction that results from the netting or compression of other clearing transactions.'' [205] The Commission does not believe that it is necessary to require reporting of the transaction ID for clearing transactions that result from other clearing transactions because clearing transactions occur solely within the registered clearing agency and are used by the registered clearing agency to manage the positions of clearing members and, possibly their clients. Thus, it would not be necessary for regulatory authorities to have the ability to link together clearing transactions that result from other clearing transactions.

k. Information That Is Not Required by Rule 901(d)

One commenter, responding to a question in the Regulation SBSR Proposing Release,[206] stated that the Commission should not require reporting of the purpose of a security-based swap because it could reveal proprietary information, and because the parties to a security-based swap often will have several reasons for executing the transaction.[207] The Commission agrees that counterparties could have multiple reasons for entering into a security-based swap, and that requiring reporting of a particular reason could be impractical. Furthermore, different sides to the same transactions would likely have different reasons for entering into it. The

[198] *See* ISDA IV at 9.

[199] The Commission believes that transactions occurring on a registered SB SEF as well as an exempt SB SEF should be reported to a registered SDR. Certain entities that currently meet the definition of ''security-based swap execution facility'' are not yet registered with the Commission and will not have a mechanism for registering until the Commission adopts final rules governing the registration and core principles of SB SEFs. These entities currently operate pursuant to an exemption from certain otherwise applicable provisions of the Exchange Act. *See* Securities Exchange Act Release No. 34–64678 (June 15, 2011), 76 FR 36287, 36292–93 (June 22, 2011) (Temporary Exemptions and Other Temporary Relief, Together With Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps). In addition, the Commission has raised the possibility of granting exemptions to certain foreign security-based swap markets that otherwise would meet the definition of ''security-based swap execution facility.'' *See* Cross-Border Proposing Release, 78 FR 31056 (''The Commission preliminarily believes that it may be appropriate to consider an exemption as an alternative approach to SB SEF registration depending on the nature or scope of the foreign security-based swap market's activities in, or the nature or scope of the contacts the foreign security-based swap market has with, the United States''). The adopted definition of ''platform'' requires such entities to be identified in SDR transaction reports and thus will enable the Commission and other relevant authorities to observe transactions that occur on such exempt SB SEFs.

[200] Consistent with Rule 901(d)(9), a registered SDR could create a single identifier for transactions that are not executed on a national securities exchange or a SB SEF that is registered or exempt from registration.

[201] *See* 75 FR 75220. The Commission re-affirmed the importance of life cycle event reporting for security-based swaps in the Cross-Border Proposing Release. *See* 75 FR 31068.

[202] *See infra* Section XXI(A) (discussing the definition of ''life cycle events'').

[203] Certain terminations, such as the termination of an alpha upon acceptance for clearing, result in the creation of new security-based swaps (*e.g.,* the beta and gamma). Similarly, security-based swaps that are terminated during netting or compression exercises result in the creation of new security-based swaps. Regardless of the circumstances, if a security-based swap arises from the termination of an existing security-based swap, the reporting side for the new security-based swap must report the transaction to a registered SDR as required by Rule 901(a).

[204] *See infra* Section VIII (explaining the application of Regulation SBSR to security-based swaps involving allocations).

[205] *See infra* Section V(B) (discussing the definition of ''clearing transaction'').

[206] *See* 75 FR 75218 (question 39).

[207] *See* ISDA/SIFMA I at 12. *See also* Barnard I at 2 (stating that the commenter was ''not convinced'' that the Commission should require reporting of the purpose of a security-based swap transaction).

Commission notes, further, that it did not propose to require reporting of the purpose of the security-based swap and Rule 901, as adopted, does not include a requirement to report this information.

Two commenters recommended that the Commission require reporting of valuation data on an ongoing basis.[208] The Commission emphasizes that it did not propose to require the reporting of valuation data in either the Regulation SBSR Proposing Release or the Cross-Border Proposing Release, and that it is not adopting such a requirement at this time.[209] However, the Commission will continue to assess the reporting and public dissemination regime under Regulation SBSR and could determine to propose additional requirements, such as the reporting of valuations, as necessary or appropriate. In addition, the Commission notes that the data elements required under Rules 901(c) and 901(d) are designed to allow the public, the Commission, other relevant authorities, or a data analytics firm engaged by a relevant authority, to calculate the market value of a security-based swap at the time of execution of the trade.[210]

C. Reporting of Historical Security-Based Swaps

1. Statutory Basis and Proposed Rule

Section 3C(e)(1) of the Exchange Act [211] requires the Commission to adopt rules providing for the reporting to a registered SDR or to the Commission of security-based swaps entered into before the date of enactment of Section 3C (*i.e.,* July 21, 2010). By its terms, this provision is not limited to security-based swaps that were still open as of the date of enactment of the Dodd-Frank Act. In the Regulation SBSR Proposing Release, the Commission took the preliminary view that an attempt to collect many years' worth of transaction-level security-based swap data (including data on terminated or expired security-based swaps) would not enhance the goal of price discovery, nor would it be particularly useful to relevant authorities or market participants in implementing a forward-looking security-based swap reporting and dissemination regime.[212] The Commission also took the preliminary view that collecting, reporting, and processing all such data would involve substantial costs to market participants with little potential benefit. Accordingly, the Commission proposed to limit the reporting of security-based swaps entered into prior to the date of enactment to only those security-based swaps that had not expired as of the date of enactment of the Dodd-Frank Act (''pre-enactment security-based swaps'').

In addition, Section 3C(e)(2) of the Exchange Act [213] requires the Commission to adopt rules that provide for the reporting of security-based swaps entered into on or after the date of enactment of Section 3C (''transitional security-based swaps'').[214]

The Commission proposed Rule 901(i) to implement both of these statutory requirements. Rule 901(i), as proposed, would have required a reporting party to report all of the information required by Rules 901(c) and 901(d) for any pre-enactment security-based swap or transitional security-based swap (collectively, ''historical security-based swaps''), to the extent such information was available. Thus, Rule 901(i), as proposed and re-proposed, would have required the reporting only of security-based swaps that were open on or executed after the date of enactment (July 21, 2010). The Commission further proposed that historical security-based swaps would not be subject to public dissemination. In the Cross-Border Proposing Release, the Commission re-proposed Rule 901(i) in its entirety with only one technical revision, to replace the term ''reporting party'' with ''reporting side.''

2. Final Rule and Discussion of Comments Received

As adopted, Rule 901(i) states: ''With respect to any pre-enactment security-based swap or transitional security-based swap in a particular asset class, and to the extent that information about such transaction is available, the reporting side shall report all of the information required by [Rules 901(c) and 901(d)] to a registered security-based swap data repository that accepts security-based swaps in that asset class and indicate whether the security-based swap was open as of the date of such report.'' In adopting Rule 901(i), the Commission is making minor changes to the rule as re-proposed in the Cross-Border Proposing Release. The Commission has added the clause ''in a particular asset class'' following ''transitional security-based swap'' and the clause ''to a registered security-based swap data repository that accepts security-based swaps in that asset class.'' The security-based swap market is segregated into different asset classes, and an SDR might choose to collect and maintain data for only a single asset class. These new clauses clarify that a reporting side is not obligated to report historical security-based swaps in a particular asset class to a registered SDR that does not accept security-based swaps in that asset class. A reporting side's duty to report a historical security-based swap in a particular asset class arises only when there exists a registered SDR that accepts security-based swaps in that asset class.

The Commission also is adopting the definition of ''pre-enactment security-based swap'' as proposed and re-proposed.[215] Further, the Commission is adopting the definition of ''transitional security-based swap'' substantially as proposed and re-proposed, with one clarifying change and a technical revision to eliminate the obsolete term ''effective reporting date.'' [216] Rule

[208] *See* DTCC II at 10; Markit I at 3. A third commenter, discussing the Commission's proposed rules governing recordkeeping and reporting requirements for security-based swap dealers, major security-based swap participants, and broker-dealers (Securities Exchange Act Release No. 34–71958 (April 17, 2014), 79 FR 25194 (May 2, 2014)), urged the Commission to provide guidance regarding the methods these entities should use to produce valuation information). *See* Levin Letter at 3–4. A fourth commenter asked the Commission to confirm that there is no requirement to report valuation data on a daily basis, provided that there has been no change in the data. *See* ISDA IV at 11.

[209] *See also* Section II(B)(3)(e), *supra.*

[210] *See* Rule 901(d)(5) (requiring reporting of any additional data elements included in the agreement between the counterparties, to the extent not already provided under another provision of Rule 901(c) or 901(d), that are necessary for a person to determine the market value of the transaction); Regulation SBSR Proposing Release, 75 FR 75218 (''the reporting of data elements necessary to calculate the market value of a transaction would allow regulators to value an entity's [security-based swap] positions and calculate the exposure resulting from those provisions'').

[211] 15 U.S.C. 78c–3(e)(1).

[212] *See* 75 FR 75223–24.

[213] 15 U.S.C. 78c 3(e)(2).

[214] *See* Regulation SBSR Proposing Release, 75 FR 75224. *See also* re-proposed Rule 900(kk) (defining ''transitional security-based swap'' to mean ''any security-based swap executed on or after July 21, 2010, and before the effective reporting date'').

[215] *See* Rule 900(y).

[216] The term ''effective reporting date'' was used in the compliance schedule set out in re-proposed Rule 910, which the Commission is not adopting. The ''effective reporting date,'' would have been defined to mean, with respect to a registered [SDR], the date six months after the registration date. The ''registration date'' would have been defined to mean, with respect to a registered SDR, ''the date on which the Commission registers the security-based swap data repository, or, if the Commission registers the security-based swap data repository before the effective date of §§ 242.900 through 242.911, the effective date of §§ 242.900 through 242.911.'' *See* re-proposed Rules 900(*l*) and 900(bb), respectively. The Commission is making a conforming change to delete the defined terms ''effective reporting date'' and ''registration date'' from final Rule 900. As noted in Section I(F) above, the Commission is proposing a new compliance schedule for Rules 901, 902, 903, 904, 905, 906, and

900(nn), as adopted, defines ''transitional security-based swap'' to mean ''a security-based swap executed on or after July 21, 2010, and before the first date on which trade-by-trade reporting of security-based swaps in that asset class to a registered security-based swap data repository is required pursuant to §§ 242.900 through 242.909.'' Thus, only those security-based swaps that were open as of the date of enactment (July 21, 2010) or opened thereafter must be reported. The Commission continues to believe that the costs of reporting security-based swaps that terminated or expired before July 21, 2010, would not justify any potential benefits, particularly given the difficulty of assembling records concerning these transactions after many years. One commenter specifically agreed with the Commission's proposal to limit reporting of security-based swaps entered into prior to the date of enactment only to those that had not expired as of that date.[217]

However, this commenter also expressed concern that a blanket requirement to report all pre-enactment security-based swaps ''risks double-counting and presenting a distorted view of certain markets.'' [218] In particular, the commenter indicated that compression exercises and tri-party novations raised concerns regarding the potential for double-counting. The Commission shares the commenter's concern that double-counting could create a distorted view of the security-based swap market. Therefore, the Commission is adding new language at the end of the Rule 901(i) which provides that the reporting side of a pre-enactment or transitional security-based swap must ''indicate whether the security-based swap was open as of the date of such report.'' This information is necessary to allow a registered SDR to calculate a participant's open positions established before the time trade-by-trade reporting becomes mandatory for a particular asset class.

The commenter also stated that ''inter-affiliate security-based swaps should not be subject to reporting.'' [219] The Commission disagrees with this suggestion. As described in Section IX, *infra,* the Commission believes generally that inter-affiliate security-based swaps should be subject to regulatory reporting and public dissemination. The Commission thus believes that pre-enactment inter-affiliate security-based swaps also should be subject to regulatory reporting, assuming that such security-based swaps were opened after the date of enactment or still open as of the date of enactment. The Commission notes, however, that no information reported pursuant to Rule 901(i) will be publicly disseminated.

Having access to information regarding historical security-based swaps will help the Commission and other relevant authorities continue to develop a baseline understanding of positions and risk in the security-based swap market, starting on the date of enactment of the Dodd-Frank Act, which contemplates the regime for regulatory reporting of all security-based swaps. These transaction reports will provide a benchmark against which to assess the development of the security-based swap market over time, and help the Commission to prepare reports that it is required to provide to Congress.

One commenter, while generally supporting the Commission's proposal to require reporting of historical security-based swaps to a registered SDR, argued that only open contracts should be reported.[220] The Commission partially agrees with this comment and thus, as noted above, is requiring reporting of only pre-enactment security-based swaps that were open as of the date of enactment. However, the Commission believes that all security-based swaps entered into on or after the date of enactment should be reported—even if they expired or were terminated before trade-by-trade reporting becomes mandatory—and that the reporting side should indicate whether the security-based swap was open as of the date of such report. While reporting of terminated or expired transitional security-based swaps is not necessary for the calculation of market participants' open positions, this information will assist the Commission and other relevant authorities to create, for surveillance purposes, at least a partial audit trail [221] of transactions executed after the date of enactment and, more generally, to analyze market developments since the date of enactment.

This commenter also argued that security-based swaps ''only [in] their current state should need to be reported, without additional information like execution time.'' [222] A second commenter expressed concern that the reporting requirements for historical security-based swaps could require parties to modify existing trades that occurred in a heretofore unregulated market in order to comply with Rule 901(i).[223] A third commenter expressed concern that ''[t]he submission of non-electronic transaction confirmations [for pre-enactment security-based swaps] will be extremely burdensome for reporting entities,'' [224] and recommended instead that the Commission ''permit the reporting in a common electronic format of the principal electronic terms'' of each such pre-enactment security-based swap.[225]

For several reasons, the Commission believes that Rule 901(i) strikes a reasonable balance between the burdens placed on security-based swap counterparties and the policy goal of enabling the Commission and other relevant authorities to develop a baseline understanding of counterparties' security-based swap positions. First, the Commission notes that Rule 901(i) requires reporting of the data elements set forth in Rules 901(c) and 901(d) *only to the extent such information is available.* The Commission does not expect, nor is it requiring, reporting sides to create or re-create data related to historical security-based swaps. Thus, if the time of execution of a historical security-based swap was not recorded by the counterparties, it is not required to be reported under Rule 901(i). Similarly, Rule 901(i) does not require counterparties to modify existing transactions in any way to ensure that all data fields are complete. By limiting the reporting requirement to only that information that is available, the Commission is acknowledging that, for historical security-based swaps, certain information contemplated by Rules 901(c) and 901(d) may not be available. The Commission generally believes that the benefits of requiring security-based swap counterparties to reconstruct the missing data elements—including, for example, the time of execution—potentially several years after the time of execution—would not justify the costs.

908 of Regulation SBSR in the Regulation SBSR Proposed Amendments Release.

[217] *See* ISDA I at 2, note 1.

[218] *Id.* at 4.

[219] ISDA I at 5.

[220] *See* DTCC II at 17.

[221] The Commission notes that Rule 901(i) by its terms requires the reporting of historical security-based swaps only ''to the extent such information is available.'' Thus, if information about terminated or expired transitional security-based swaps no longer exists, it would not be required to be reported under Rule 901(i).

[222] DTCC II at 17. *See also* ISDA I at 5 (requesting that the Commission clarify that market participants are not required to provide trade execution time information for pre-enactment security-based swap transactions).

[223] *See* Roundtable Letter at 11 (stating that ''any effort to alter the terms or documentation of existing swaps would be resource intensive with potentially significant negative consequences'').

[224] Deutsche Bank Letter at 2.

[225] *Id.* at 3.

The Commission agrees with the commenter who argued that providing large volumes of non-electronic confirmations to registered SDRs is not desirable, and that the Commission instead should require reporting in a ''common electronic format.'' [226] As discussed in Section IV, *infra,* Rules 907(a)(1) and 907(a)(2) require registered SDRs to establish and maintain policies and procedures that enumerate the specific data elements and the acceptable data formats for transaction reporting, including of historical security-based swaps. The Commission expects that registered SDRs and their participants will consult regarding the most efficient and cost effective ways to report the transaction information required by Rule 901(i). Furthermore, to the extent that information regarding a historical security-based swap already has been reported to a person that will register with the Commission as an SDR—or to a person that itself will not seek registration as an SDR but will transfer the historical security-based swap information to an affiliate that registers as an SDR—Rule 901(i) would be satisfied, and would not require resubmission of that information to the registered SDR.[227]

Finally, the Commission notes an issue relating to the reporting of the counterparty ID of historical security-based swaps. As commenters have discussed,[228] certain foreign jurisdictions have privacy laws or blocking statutes that may prohibit the disclosure of the identity of a counterparty to a financial transaction, such as a security-based swap transaction. Thus, the reporting side of a cross-border security-based swap could face a dilemma: Comply with Regulation SBSR and report the identity of the counterparty and thereby violate the foreign law, or comply with the foreign law by withholding the identity of the counterparty and thereby violate Regulation SBSR. As discussed in Section XVI(B), *infra,* the Commission will consider requests for exemptions from the requirement under Rule 901(i) to report the identity of a counterparty with respect to historical security-based swaps.

[226] Deutsche Bank Letter at 2–3.

[227] One commenter, DTCC, noted that the Trade Information Warehouse could provide an affiliate that will seek registration as an SDR with information related to security-based swaps that were previously reported to the Trade Information Warehouse. *See* DTCC II at 17.

[228] *See infra* note 956.

III. Where To Report Data

A. All Reports Must Be Submitted to a Registered SDR

Section 13A(a)(1) of the Exchange Act [229] provides that ''[e]ach security-based swap that is not accepted for clearing by any clearing agency or derivatives clearing organization shall be reported to—(A) a registered security-based swap data repository described in Section 13(n); or (B) in the case in which there is no security-based swap data repository that would accept the security-based swap, to the Commission.'' Section 13(m)(1)(G) of the Exchange Act [230] provides that ''[e]ach security-based swap (whether cleared or uncleared) shall be reported to a registered security-based swap data repository.'' Rule 901(b) implements these statutory requirements.

Rule 901(b), as re-proposed, would have required reporting of the security-based swap transaction information required under Regulation SBSR ''to a registered security-based swap data repository or, if there is no registered security-based swap data repository that would accept the information, to the Commission.'' In addition, Rule 13n–5(b)(1)(ii) under the Exchange Act, adopted as part of the SDR Adopting Release, requires an SDR that accepts reports for any security-based swap in a particular asset class to accept reports for all security-based swaps in that asset class that are reported to the SDR in accordance with certain SDR policies and procedures. In view of this requirement under Rule 13n–5(b)(1)(ii) and the statutory requirement in Section 13(m)(1)(G) that all security-based swaps, whether cleared or uncleared, must be reported to a registered SDR, the Commission does not anticipate that any security-based swaps will be reported directly to the Commission.

Some commenters noted the potential advantages of designating a single registered SDR for each asset class.[231] Another commenter, however, believed that a diverse range of options for reporting security-based swap data would benefit the market and market participants.[232] These comments concerning the development of multiple registered SDRs are discussed in Section XIX, *infra.* No commenters opposed Rule 901(b), and the Commission is adopting Rule 901(b) with technical modifications to clarify the rule.[233]

[229] 15 U.S.C. 78m–1(a)(1).

[230] 15 U.S.C. 78m(m)(1)(G).

[231] *See* DTCC II at 14–15 (noting the potential for fragmentation of data and overstatement of net open interest and net exposure if security-based swaps in the same asset class are reported to multiple registered SDRs); ISDA/SIFMA I at note 12 (stating that the designation of a single registered SDR per asset would provide valuable efficiencies because there would be no redundancy of platforms or need for additional data aggregation, which would reduce the risk of errors associated with transmitting, aggregating, and analyzing data from multiple sources).

[232] *See* MFA I at 6.

[233] Rule 901(b), as re-proposed, would have required reporting of the security-based swap transaction information required under Regulation SBSR ''to a registered security-based swap data repository or, if there is no registered security-based swap data repository that would accept the information, to the Commission.'' Final Rule 901(b) provides: ''If there is no registered security-based swap data repository that will accept the report required by § 242.901(a), the person required to make such report shall instead provide the required information to the Commission.''

B. Duties of Registered SDR Upon Receiving Transaction Reports

1. Rule 901(f)—Time Stamps

Rule 901(f), as re-proposed, provided that ''[a] registered security-based swap data repository shall time stamp, to the second, its receipt of any information submitted to it pursuant to paragraph (c), (d), (e), or (i) of this section.'' The Commission preliminarily believed that this requirement would help regulators to evaluate certain trading activity.[234] For example, a reporting side's pattern of submitting late transaction reports could be an indicator of weaknesses in the reporting side's internal compliance processes. Accordingly, the Commission preliminarily believed that the ability to compare the time of execution with the time of receipt of the report by the registered SDR could be an important component of surveillance activity conducted by relevant authorities.

One commenter, noting that proposed Rule 901(f) would require time-stamping to the nearest second, argued that ''[t]ime-stamping increment should be as small as technologically practicable, but in any event no longer than fractions of milliseconds.'' [235] The commenter expressed the view that, especially in markets with multiple SB SEFs or where algorithmic trading occurs, ''the sequencing of trade data for transparency and price discovery, as well as surveillance and enforcement purposes, will require much smaller increments of time-stamping.'' [236] The Commission notes, however, that Rule 901(f) is designed to allow the Commission to learn when a transaction has been reported to a registered SDR, not when the transaction was executed. The interim phase of applying Regulation SBSR allows transactions to

[234] *See* Regulation SBSR Proposing Release, 75 FR 75221.

[235] Better Markets I at 9.

[236] *Id.*

be reported up to 24 hours after time of execution. The Commission believes that no purpose would be served by knowing the moment of reporting to the subsecond. Instead, the Commission believes that this comment is germane instead to the reporting of time of execution. Therefore, the Commission has considered this comment in connection with Rule 901(c)(2) rather than with Rule 901(f).[237]

The Commission continues to believe that requiring a registered SDR to timestamp, to the second, its receipt of any information pursuant to paragraphs (c), (d), (e), or (i) of Rule 901 is appropriate, and is adopting Rule 901(f) as re-proposed. Rule 901(f) will allow the Commission to compare the time of execution against the time of receipt by the registered SDR to ascertain if a transaction report has been submitted late.

2. Rule 901(g)—Transaction IDs

Rule 901(g), as proposed and re-proposed, would have provided that ''[a] registered security-based swap data repository shall assign a transaction ID to each security-based swap.'' The transaction ID was defined in both the proposal and re-proposal as ''the unique identification code assigned by a registered security-based swap data repository to a specific security-based swap.'' The Commission preliminarily believed that a unique transaction ID would allow registered SDRs, regulators, and counterparties to more easily track a security-based swap over its duration and would facilitate the reporting of life cycle events and the correction of errors in previously reported security-based swap information.[238] The transaction ID of the original security-based swap would allow for the linking of the original report to a report of a life cycle event. Similarly, the transaction ID would be required to be included on an error report to identify the transaction to which the error report pertained.

In proposing Rule 901(g), the Commission preliminarily believed that, because each transaction is unique, it would not be necessary or appropriate to look to an internationally recognized standards setting body for assigning such identifiers.[239] Instead, proposed Rule 901(g) would have required a registered SDR to use its own methodology for assigning transaction IDs.[240]

Two commenters generally supported use of the transaction ID.[241] One commenter stated that transaction IDs would allow for a complete audit trail, permit the observation of concentrations of trading and risk exposure at the transaction level, and facilitate more timely analysis of market events.[242] The second commenter agreed that a transaction ID would be essential for reporting life cycle event and secondary trade information, as well as corrections to reported information.[243]

Commenters expressed mixed views regarding the entity that should assign the transaction ID. One commenter stated that a platform should assign the transaction ID to assure that the identifier is assigned at the earliest point in the life of a transaction.[244] A second commenter suggested that registered SDRs should assign transaction IDs,[245] or have the flexibility to accept transaction IDs already generated by the reporting side or to assign transaction IDs when requested to do so.[246] A third commenter expressed concern that registered SDRs would assign transaction IDs in a non-standard manner, which could hinder regulators' ability to gather transaction data across registered SDRs to reconstruct an audit trail.[247] A fourth commenter, a trade association, recommended that security-based swaps be identified by a Unique Trade Identifier (''UTI'') created either by the reporting side or by a platform (including an execution venue or an affirmation or middleware or electronic confirmation platform) on behalf of the parties.[248] This commenter noted that it has worked with market participants to develop a standard for creating and exchanging a single unique transaction identifier suitable for global reporting.[249]

After careful consideration, the Commission has determined to adopt Rule 901(g) with modifications to respond to concerns raised by the commenters. Final Rule 901(g) provides that a registered SDR ''shall assign a transaction ID to each security-based swap, or establish or endorse a methodology for transaction IDs to be assigned by third parties.'' The Commission is also making a conforming change to the definition of ''transaction ID.'' Final Rule 900(mm) defines ''transaction ID'' as ''the UIC assigned to a specific security-based swap transaction.'' As re-proposed, ''transaction ID'' would have been defined as ''the unique identification code assigned by a registered security-based swap data repository to a specific security-based swap.'' [250] By eliminating the reference to a UIC ''assigned by a registered security-based swap data repository,'' the revised definition contemplates that a third party could assign a transaction ID under Regulation SBSR. However, because the Commission believes that the registered SDR is in the best position to promote the necessary uniformity for UICs that will be reported to it, the reporting side would be permitted to report a transaction ID generated by a third party only if the third party had employed a methodology for generating transaction IDs that had been established or endorsed by the registered SDR.

Rule 901(g), as adopted, provides flexibility by requiring a registered SDR either to assign a transaction ID itself or to establish or endorse a methodology for assigning transaction IDs. Thus, under adopted Rule 901(g), an SB SEF,

[237] *See supra* notes 76 and 77 and accompanying text.

[238] *See* Regulation SBSR Proposing Release, 75 FR 75221.

[239] *See id.*

[240] *See id.*

[241] *See* GS1 Proposal at 42; DTCC II at 15.

[242] *See* GS1 Proposal at 42 (also stating that transaction IDs would benefit internal compliance departments and self-regulatory organizations).

[243] *See* DTCC II at 15. Another commenter believed that proposed Regulation SBSR would require public dissemination of the transaction ID, and argued that the transaction ID should not be publicly disseminated, as it could compromise the identity of the counterparties to the security-based swap. The commenter suggested instead that an SDR could create a separate identifier solely for purposes of public dissemination. *See* ISDA IV at 17. Under Regulation SBSR, as adopted, the transaction ID is not a data element of security-based swap transaction that is required to be publicly disseminated. Thus, registered SDRs must identify transactions in public reports without using the transaction ID. *See infra* Section XII(C) (discussing requirement for registered SDRs to establish and maintain policies and procedures for disseminating life cycle events).

[244] *See* Tradeweb Letter at 5.

[245] DTCC II at 16 (arguing that this approach would ''eliminate any unintentional disclosure issues which stem from linking a trade to a specific SEF, potentially increasing the instances of unintended identification of the trade parties'').

[246] *See* DTCC V at 14.

[247] *See* GS1 Proposal at 42–43 (recommending an identification system that would allow counterparties, participants, SB SEFs, and registered SDRs to assign transaction IDs to specific transactions).

[248] *See* ISDA III at 2.

[249] *See id.* In a subsequent comment letter, this commenter indicated that it ''strongly believe[s] the party reporting the SBS should assign or provide the Transaction ID'' rather than a registered SDR. ISDA IV at 11 (stating that ''many SBS already have been reported to other global jurisdictions for which a . . . UTI (including a CFTC Unique Swap Identifier) has already been assigned by one of the parties or a central execution, affirmation or confirmation platform in accordance with industry standard practices for trade identifiers that have developed in the absence of a global regulatory standard. For the sake of efficiency and in consideration of global data aggregation, we recommend that the Commission allow a reporting party to use the UTI already established for a SBS for further reporting under SBSR and acknowledge that trades subject to reporting under SBSR may be assigned a trade identifier in accordance with existing industry UTI practices'').

[250] *See* re-proposed Rule 900(jj).

a counterparty, or another entity could assign a transaction ID, provided that it assigned the transaction ID using a methodology established or endorsed by the registered SDR. This approach will allow market participants to determine the most efficient and effective procedures for assigning transaction IDs and will accommodate the use of different processes that might be appropriate in different circumstances.[251] For example, an SB SEF might generate the transaction ID for a security-based swap executed on its facilities (provided the SB SEF does so using a methodology established or endorsed by the registered SDR[252]), while a registered SDR or security-based swap dealer counterparty might generate the transaction ID for a security-based swap that is not executed on an SB SEF.

IV. How To Report Data—Rules 901(h) and 907

A. Introduction

Designing a comprehensive system of transaction reporting and post-trade transparency for security-based swaps involves a constantly evolving market, thousands of participants, and potentially millions of transactions. The Commission does not believe that it is necessary or appropriate to specify by rule every detail of how this system should operate. On some matters, there may not be a single correct approach for carrying out the purposes of Title VII's requirements for regulatory reporting and public dissemination of security-based swap transactions.

The Commission believes that registered SDRs will play an important role in developing, operating, and improving the system for regulatory reporting and public dissemination of security-based swaps. Registered SDRs are at the center of the market infrastructure, as the Dodd-Frank Act requires all security-based swaps, whether cleared or uncleared, to be reported to them.[253] Accordingly, the Commission believes that some reasonable flexibility should be given to registered SDRs to carry out their functions—for example, to specify the formats in which counterparties must report transaction data to them, connectivity requirements, and other protocols for submitting information. Furthermore, the Commission anticipates that counterparties will make suggestions to registered SDRs for altering and improving their practices, or developing new policies and procedures to address new products or circumstances, consistent with the requirements set out in Regulation SBSR.

Accordingly, proposed Rule 907 would have required each registered SDR to establish and maintain written policies and procedures addressing various aspects of security-based swap transaction reporting. Proposed Rules 907(a)(1) and 907(a)(2) would have required a registered SDR to establish policies and procedures enumerating the specific data elements that must be reported, the acceptable data formats, connectivity requirements, and other protocols for submitting information; proposed Rule 907(a)(3) would have required a registered SDR to establish policies and procedures for reporting errors and correcting previously submitted information; proposed Rule 907(a)(4) would have required a registered SDR to establish policies and procedures for, among other things, reporting and publicly disseminating life cycle events and transactions that do not reflect the market; proposed Rule 907(a)(5) would have required a registered SDR to establish policies and procedures for assigning UICs; proposed Rule 907(a)(6) would have required a registered SDR to establish policies and procedures for obtaining ultimate parent and affiliate information from its participants; and proposed Rule 907(b) would have required a registered SDR to establish policies and procedures for calculating and publicizing block trade thresholds. The Commission also proposed to require registered SDRs to make their policies and procedures publicly available on their Web sites, and to update them at least annually.[254] Rule 901(h), as proposed and re-proposed, would have required reports to be made to a registered SDR ''in a format required by the registered security-based swap data repository, and in accordance with any applicable policies and procedures of the registered security-based swap data repository.''

Furthermore, because all security-based swaps must be reported to a registered SDR, registered SDRs are uniquely positioned to know of any instances of untimely, inaccurate, or incomplete reporting. Therefore, proposed Rule 907(e) would have required registered SDRs to have the capacity to provide the Commission with reports related to the timeliness, accuracy, and completeness of the data reported to them.

The Commission re-proposed Rule 907 as part of the Cross-Border Proposing Release with only minor conforming changes.[255] Rule 901(h) was re-proposed without revision.

B. Rules 907(a)(1), 907(a)(2), and 901(h)—Data Elements and Formats

The comments addressing Rule 907 were generally supportive of providing flexibility to registered SDRs to develop policies and procedures.[256] One commenter stated, for example, that overly prescriptive rules for how data is reported will almost certainly result in less reliable or redundant data flowing into an SDR when higher quality data is available. In this commenter's view, the Commission should not prescribe the exact means of reporting for SDRs to meet regulatory obligations, and SDRs should be afforded the flexibility to devise the most efficient, effective, and reliable methods of furnishing the Commission with the complete set of data necessary to fulfill regulatory obligations.[257] The Commission is adopting Rule 907 with some revisions noted below.

Final Rule 907(a)(1) requires a registered SDR to establish and maintain written policies and procedures that ''enumerate the specific data elements of a security-based swap that must be reported, which shall include, at a minimum, the data elements specified in [Rules 901(c) and 901(d)].'' The Commission revised Rule 907(a)(1) to make certain non-substantive changes and to move the requirement to establish policies and procedures for life cycle event reporting from final Rule 907(a)(1) to final Rule 907(a)(3).[258] Final

[251] This approach will allow a platform to assign the transaction ID in certain cases, as recommended by a commenter. *See* Tradeweb Letter at 5.

[252] Thus, the Commission only partially agrees with the commenter who believed that the registered SDR should assign transaction IDs, in order to ''eliminate any unintentional disclosure issues which stem from linking a trade to a specific SEF, potentially increasing the instances of unintended identification of the trade parties.'' DTCC II at 16. The Commission shares the commenter's concern that the transaction ID not result in the unintended identification of the counterparties. However, this would not require that the registered SDR itself issue the transaction ID in all cases; the registered SDR could allow submission of transaction IDs generated by third parties (such as SB SEFs or counterparties), provided that the registered SDR endorsed the methodology whereby third parties can generate transaction IDs. Furthermore, the Commission notes that the transaction ID is not a data element required by Rule 901(c) and thus it should not be publicly disseminated—so market observers should not be able to learn the transaction ID in any case.

[253] *See* 15 U.S.C. 13m(m)(1)(G).

[254] *See* proposed Rules 907(c) and 907(d).

[255] As initially proposed, Rule 907 used the term ''reporting party.'' As described in the Cross-Border Proposing Release, the term ''reporting party'' was replaced with ''reporting side'' in Rule 907 and throughout Regulation SBSR.

[256] *See* DTCC IV at 5. *See also* Barnard I at 3.

[257] *See* DTCC IV at 5.

[258] As initially proposed, Rule 907(a)(1) would have required policies and procedures that enumerate the specific data elements of a security-

Rule 907(a)(2) requires a registered SDR to establish and maintain written policies and procedures that ''specify one or more acceptable data formats (each of which must be an open-source structured data format that is widely used by participants), connectivity requirements, and other protocols for submitting information.'' The Commission is adopting Rule 907(a)(2) as re-proposed.

The Commission continues to believe that it is neither necessary nor appropriate to mandate a fixed schedule of data elements to be reported, or a single format or language for reporting such elements to a registered SDR. The Commission anticipates that industry standards for conveying information about security-based swap transactions will evolve over time, and the approach taken in Rule 907 is designed to allow Regulation SBSR's reporting requirements to evolve with them. The Commission further anticipates that security-based swap products with novel contract terms could be developed in the future. Establishing, by Commission rule, a fixed schedule of data elements risks becoming obsolete, as new data elements—as yet unspecified—could become necessary to reflect the material economic terms of such products. Final Rules 907(a)(1) and 907(a)(2) give registered SDRs the duty, but also the flexibility, to add, remove, or amend specific data elements or to adjust the required reporting protocols over time in a way that captures all of the material terms of a security-based swap while minimizing the reporting burden on its participants.[259] One commenter supported this approach, stating that ''[a] registered SDR should have the flexibility to specify acceptable formats, connectivity requirements and other protocols for submitting information.'' [260] The commenter added that ''[m]arket practice, including the structure of confirmation messages and detail of economic fields, evolve over time, and the SDR should have the capability to adopt and set new formats.'' [261] The Commission anticipates that feedback and ongoing input from participants will help registered SDRs to craft appropriate policies and procedures regarding data elements and reporting protocols.

The same commenter, in a subsequent comment letter, expressed concern that market participants could adopt different interpretations of the requirement to report payment stream information, which could result in inconsistent reporting to registered SDRs.[262] The Commission notes that final Rule 907(a)(1) requires a registered SDR to enumerate the specific data elements of a security-based swap that must be reported, and final 907(a)(2) requires a registered SDR, among other things, to specify acceptable data formats for submitting required information. Because Rules 907(a)(1) and 907(a)(2) provide a registered SDR with the authority to identify the specific data elements that must be reported with respect to the payment streams of a security-based swap and the format for reporting that information, the Commission does not believe that market participants will have flexibility to adopt inconsistent interpretations of the information required to be reported with respect to payment streams. Instead, persons with the duty to report transactions will be required to provide the payment stream information using the specific data elements and formats specified by the registered SDR.

One commenter argued that a uniform electronic reporting format is essential, and was concerned that Rules 901(h) and 907(a)(2) would permit multiple formats and connectivity requirements for the submission of data to a registered SDR.[263] The Commission considered the alternative of requiring a single reporting language or protocol for conveying information to registered SDRs, and three commenters encouraged the use of the FpML standard.[264] While FpML could be a standard deemed acceptable by a registered SDR pursuant to Rule 907(a)(2), the Commission does not believe that it is necessary or appropriate at this time for the Commission itself to require FpML as the only permissible standard by which reporting sides report transaction data to a registered SDR.[265] The Commission is concerned that adopting a regulatory requirement for a single standard for reporting security-based swap transaction information to registered SDRs could result in unforeseen adverse consequences, particularly if that standard proves incapable of being used to carry information about all of the material data elements of all security-based swaps, both those that exist now and those that might be created in the future. Thus, the Commission has adopted an approach that permits registered SDRs to select their own standards for how participants must report data to those SDRs. The Commission agrees with the commenter who recommended that all acceptable data formats should be open-source structured data formats.[266] The Commission believes that any reporting languages or protocols adopted by registered SDRs must be open-source structured data formats that are widely used by participants, and that information about how to use any such language or protocol is freely and openly available.[267]

The Commission believes that, however registered SDRs permit their participants to report security-based swap transaction data to the SDRs, those SDRs should be able to provide to the Commission normalized and uniform data, so that the transaction data can readily be used for regulatory purposes without the Commission itself having to cleanse or normalize the data.[268]

based swap or life cycle event that a reporting party must report. In addition, proposed Rule 907(a)(4) would have required a registered SDR to establish policies and procedures for reporting and publicly disseminating life cycle events, among other things. The Commission is consolidating the requirements to establish policies and procedures for reporting life cycle events in final Rule 907(a)(3). *See infra* Section XII(C). The Commission also revised Rule 907(a)(1) so that the final rule text refers to the data elements ''that must be reported,'' rather than the data elements that a reporting side must report.

[259] While an SDR would have flexibility regarding the data elements and the protocols for reporting to the SDR, pursuant to Rule 13n–4(a)(5), which is being adopted in the SDR Adopting Release, the data provided by an SDR to the Commission must ''be in a form and manner acceptable to the Commission. . . .'' The Commission anticipates that it will specify the form and manner that will be acceptable to it for the purposes of direct electronic access.

[260] *See* DTCC II at 20.

[261] *Id.*

[262] *See* DTCC V at 11.

[263] *See* Better Markets I at 4.

[264] *See* DTCC II at 16; ISDA I at 4; ISDA/SIFMA I at 8.

[265] *But see infra* note 268.

[266] *See* Barnard Letter at 3.

[267] One commenter argued that the Commission should not require registered SDRs to support all connectivity methods, as the costs to do so would be prohibitive. *See* DTCC II at 20. Under Rule 907(a)(2), as adopted, a registered SDR need not support all connectivity methods or data formats. A registered SDR may elect to support only one data format, provided that it is ''an open-source structured data format that is widely used by participants.''

[268] *See* SDR Adopting Release, Section VI(D)(2)(c)(ii) (''data provided by an SDR to the Commission must be in a form and manner acceptable to the Commission . . . [T]he form and manner with which an SDR provides the data to the Commission should not only permit the Commission to accurately analyze the data maintained by a single SDR, but also allow the Commission to aggregate and analyze data received from multiple SDRs. The Commission continues to consider whether it should require the data to be provided to the Commission in a particular format. The Commission anticipates that it will propose for public comment detailed specifications of acceptable formats and taxonomies that would facilitate an accurate interpretation, aggregation, and analysis of [security-based swap] data by the Commission. The Commission intends to maximize the use of any applicable current industry standards for the description of [security-based swap] data, build upon such standards to accommodate any

Continued

However, it does not follow that information must be *submitted* to a registered SDR using a single electronic reporting format. The Commission believes that a registered SDR should be permitted to make multiple reporting formats available to its participants if it chooses, provided that the registered SDR can quickly and easily normalize and aggregate the reported data in making it accessible to the Commission and other relevant authorities. If a registered SDR is not willing or able to normalize data submitted pursuant to multiple data formats, then its policies and procedures under Rule 907(a)(2) should prescribe a single data format for participants to use to submit data to the registered SDR.

The Commission believes that the policies and procedures of a registered SDR, required by Rule 907(a)(1), likely will need to explain the method for reporting if all the security-based swap transaction data required by Rules 901(c) and 901(d) are being reported simultaneously, and how to report if responsive data are being provided at separate times.[269] One way to accomplish this would be for the registered SDR to link the two reports by the transaction ID, which could be done by providing the reporting side with the transaction ID after the reporting side reports the information required by Rule 901(c). The reporting side would then include the transaction ID with its submission of data required by Rule 901(d), thereby allowing the registered SDR to match the report of the Rule 901(c) data and the subsequent report of the Rule 901(d) data.

Finally, Rule 901(h), as re-proposed, would have provided: ''A reporting side shall electronically transmit the information required under this section in a format required by the registered security-based swap data repository, and in accordance with any applicable policies and procedures of the registered security-based swap data repository.'' The Commission received only one comment on Rule 901(h), which is addressed above.[270] The Commission is adopting Rule 901(h) as re-proposed, with two minor revisions to clarify the rule. First, the rule text has been revised to refer to ''A'' reporting side instead of ''The'' reporting side. Accordingly, the Commission has revised Rule 901(h) to refer to the registered SDR to which a reporting side reports transactions. Second, Rule 901(h), as adopted, does not include the phrase ''and in accordance with any applicable policies and procedures of the registered security-based swap data repository.'' The Commission believes that it is sufficient for the rule to state that the reporting side must report the transaction information ''in a format required by'' the registered SDR.[271]

C. Rule 907(a)(6)—Ultimate Parent IDs and Counterparty IDs

As originally proposed, Rule 907(a)(6) would have required a registered SDR to establish and maintain written policies and procedures ''[f]or periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any other participant(s) with which the *counterparty* is affiliated, using ultimate parent IDs and participant IDs'' (emphasis added). The Commission re-proposed Rule 907(a)(6) with the word ''participant'' in place of the word ''counterparty.'' Re-proposed Rule 907(a)(6) would have required a registered SDR to establish and maintain written policies and procedures for periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any other participant(s) with which the counterparty is affiliated, using ultimate parent IDs and participant IDs. The Commission received one comment relating to Rule 907(a)(6), which suggested that parent and affiliate information could be maintained by a market utility rather than by one or more registered SDRs.[272]

The Commission notes that Regulation SBSR neither requires nor prohibits the development of a market utility for parent and affiliate information. Regulation SBSR requires a registered SDR to obtain parent and affiliate information from its participants and to maintain it, whether or not a market utility exists. Regulation SBSR does not prohibit SDR participants from storing parent and affiliate information in a market utility or from having the market utility report such information to a registered SDR as agent on their behalf, so long as the information is provided to the registered SDR in a manner consistent with Regulation SBSR and the registered SDR's policies and procedures.

The Commission is adopting Rule 907(a)(6) substantially as re-proposed, with a technical change to replace the word ''counterparty'' with the word ''participant'' and a conforming change to replace the reference to ''participant IDs'' with a reference to ''counterparty IDs.'' Thus, final Rule 907(a)(6) requires a registered SDR to establish and maintain written policies and procedures ''[f]or periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any participant(s) with which the *participant* is affiliated, using ultimate parent IDs and *counterparty* IDs'' (emphasis added).

V. Who Reports—Rule 901(a)

A. Proposed and Re-Proposed Rule 901(a)

Section 13(m)(1)(F) of the Exchange Act[273] provides that parties to a security-based swap (including agents of parties to a security-based swap) shall be responsible for reporting security-based swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission. Section 13(m)(1)(G) of the Exchange Act[274] provides that each security-based swap, ''whether cleared or uncleared,'' shall be reported to a registered SDR. Section 13A(a)(3) of the Exchange Act[275] specifies the party obligated to report a security-based swap that is not accepted for clearing by any clearing agency or derivatives clearing organization. Rule 901(a), as adopted, assigns to specific persons the duty to report certain security-based swaps to a registered SDR, thereby

additional data fields as may be required, and develop such formats and taxonomies in a timeframe consistent with the implementation of [security-based swap] data reporting by SDRs. The Commission recognizes that as the [security-based swap] market develops, new or different data fields may be needed to accurately represent new types of [security-based swaps], in which case the Commission may provide updated specifications of formats and taxonomies to reflect these new developments. Until such time as the Commission adopts specific formats and taxonomies, SDRs may provide direct electronic access to the Commission to data in the form in which the SDRs maintain such data'').

[269] Regulation SBSR, as proposed and re-proposed, contemplated two ''waves'' of reporting: The Rule 901(c) information would have been required to be reported in real time, while the Rule 901(d) information could have been provided later (depending on the type of transaction, perhaps as much as one day after time of execution). However, because Regulation SBSR, as adopted, requires both sets of information to be reported within 24 hours of execution, the Commission anticipates that many reporting sides will choose to report both sets of information in only a single transaction report. Under Rule 901, as adopted, a reporting side is not prohibited from reporting the Rule 901(c) information before the Rule 901(d) information, provided that the policies and procedures of the registered SDR permit this outcome, and both sets of information are reported within the timeframes specified in Rule 901(j).

[270] *See supra* note 263 and accompanying text.

[271] As noted above, the Commission anticipates that it will propose for public comment detailed specifications of acceptable formats and taxonomies that would facilitate an accurate interpretation, aggregation, and analysis by the Commission of security-based swap data submitted to it by an SDR. *See supra* note 268.

[272] *See* GS1 Proposal at 44.

[273] 15 U.S.C. 78m(m)(1)(F).

[274] 15 U.S.C. 78m(m)(1)(G).

[275] 15 U.S.C. 78mA(a)(3).

implementing Sections 13(m)(1)(F), 13(m)(1)(G), and 13A(a)(3) of the Exchange Act. In addition, in the Regulation SBSR Proposed Amendments Release, the Commission is proposing revisions to Rule 901(a), as adopted, to further implement these provisions of the Exchange Act as they apply to clearing transactions (as defined below) and transactions executed on platforms and that will be submitted to clearing.

As originally proposed, Rule 901(a) would have assigned reporting duties exclusively to one of the direct counterparties to a security-based swap based on the nationality of the counterparties. The original proposal contemplated three scenarios: Both direct counterparties are U.S. persons, only one direct counterparty is a U.S. person, or neither direct counterparty is a U.S. person.[276] Under the original proposal, if only one counterparty to a security-based swap is a U.S. person, the U.S. person would have been the reporting party. If neither counterparty is a U.S. person (and assuming the security-based swap is subject to Regulation SBSR), the counterparties would have been required to select the reporting party. Where both counterparties to a security-based swap are U.S. persons, the reporting party would have been determined according to the following hierarchy:

(i) If only one counterparty is a security-based swap dealer or major security-based swap participant, the security-based swap dealer or major security-based swap participant would be the reporting party.

(ii) If one counterparty is a security-based swap dealer and the other counterparty is a major security-based swap participant, the security-based swap dealer would be the reporting party.

(iii) With respect to any other security-based swap, the counterparties to the security-based swap would be required to select the reporting party.

Under Rule 901(a) as originally proposed, for a security-based swap between: (1) A non-registered U.S. person; and (2) a security-based swap dealer or major security-based swap participant that is a non-U.S. person, the non-registered U.S. person would have been the reporting party. The Commission preliminarily believed that, as between a U.S. person and a non-U.S. person, it was more appropriate to assign the duty to report to the U.S. person, even if the non-U.S. person was a security-based swap dealer or major security-based swap participant.[277]

In the Cross-Border Proposing Release, the Commission revised proposed Rule 901(a) in two significant ways. First, the Commission proposed to expand the scope of Regulation SBSR to require reporting (and, in certain cases, public dissemination) of any security-based swap that has a U.S. person acting as guarantor of one of the direct counterparties, even if neither direct counterparty is a U.S. person. To effectuate this requirement, the Cross-Border Proposing Release added the following new defined terms: ''direct counterparty,'' ''indirect counterparty,'' ''side,'' and ''reporting side.'' A ''side'' was defined to mean a direct counterparty of a security-based swap and any indirect counterparty that guarantees the direct counterparty's performance of any obligation under the security-based swap.[278] The Commission revised proposed Rule 901(a) to assign the duty to report to a ''reporting side,'' rather than a specific counterparty. Re-proposed Rule 901(a) generally preserved the reporting hierarchy of Rule 901(a), as originally proposed, while incorporating the ''side'' concept to reflect the possibility that a security-based swap might have an indirect counterparty that is better suited for carrying out the reporting duty than a direct counterparty. Thus, Rule 901(a), as re-proposed in the Cross-Border Proposing Release, would have assigned the reporting obligation based on the status of each person on a side (*i.e.*, whether any person on the side is a security-based swap dealer or major security-based swap participant), rather than the status of only the direct counterparties. Second, the Commission proposed to expand the circumstances in which a security-based swap dealer or major security-based swap participant that is not a U.S. person would incur the duty to report a security-based swap.

Under Rule 901(a), as originally proposed, a non-U.S. person that is a direct counterparty to a security-based swap that was not executed in the United States or through any means of interstate commerce never would have had a duty to report the security-based swap, even if the non-U.S. person was a security-based swap dealer or major security-based swap participant or was guaranteed by a U.S. person. As re-proposed in the Cross-Border Proposing Release, Rule 901(a) re-focused the reporting duty primarily on the status of the counterparties, rather than on their nationality or place of domicile. Under re-proposed Rule 901(a), the nationality of the counterparties would determine who must report only if neither side included a security-based swap dealer or major security-based swap participant. In such case, if one side included a U.S. person while the other side did not, the side with the U.S. person would have been the reporting side. Similar to the original proposal, however, if both sides included a U.S. person or neither side included a U.S. person, the sides would have been required to select the reporting side.

B. Final Rule 901(a)

Rule 901(a), as adopted, establishes a ''reporting hierarchy'' that specifies the side that has the duty to report a security-based swap.[279] The reporting side, as determined by the reporting hierarchy, is required to submit the information required by Regulation SBSR to a registered SDR.[280] The reporting side may select the registered SDR to which it makes the required

[276] *See* proposed Rules 901(a)(1)–(3); Regulation SBSR Proposing Release, 75 FR 75211.

[277] *See* Regulation SBSR Proposing Release, 75 FR 75211.

[278] *See* re-proposed Rule 900(ee); Cross-Border Proposing Release, 78 FR 31211. The Commission is adopting this term in Rule 900(hh) with a minor modification to more clearly incorporate the definition of ''indirect counterparty.'' Final 900(hh) defines ''side'' to mean ''a direct counterparty and any guarantor of that direct counterparty's performance who meets the definition of indirect counterparty in connection with the security-based swap.'' Final Rule 900(p) defines ''indirect counterparty'' to mean ''a guarantor of a direct counterparty's performance of any obligation under a security-based swap such that the direct counterparty on the other side can exercise rights of recourse against the indirect counterparty in connection with the security-based swap; for these purposes a direct counterparty has rights of recourse against a guarantor on the other side if the direct counterparty has a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, the guarantor in connection with the security-based swap.''

[279] However, Rule 901(a) does not address who has the reporting duty for the following types of security-based swaps: (1) A clearing transaction; (2) a security-based swap that is executed on a platform and that will be submitted to clearing; (3) a security-based swap where neither side includes a registered security-based swap dealer, a registered major security-based swap participant, or a U.S. person; and (4) a security-based swap where one side consists of a non-registered U.S. person and the other side consists of a non-registered non-U.S. person.

[280] Final Rule 900(gg) defines ''reporting side'' to mean ''the side of a security-based swap identified by § 242.901(a)(2).'' Rule 900(cc), as re-proposed, would have defined ''reporting side'' to mean ''the side of a security-based swap having the duty to report information in accordance with §§ 242.900 through 911 to a registered security-based swap data repository, or, if there is no registered security-based swap data repository that would receive the information, to the Commission.'' Final Rule 900(gg) modifies the definition to define the reporting side by reference to final Rule 901(a), which identifies the person that will be obligated to report a security-based swap to a registered SDR under various circumstances.

report. However, with respect to any particular transaction, all information required to be reported by Rule 901(a)(2)(ii), as adopted, must be reported to the same registered SDR. In the Regulation SBSR Proposed Amendments Release, issued as a separate release, the Commission is proposing additional provisions of Rule 901(a) that would assign reporting responsibilities for clearing transactions and platform-executed security-based swaps that will be submitted to clearing. The Commission also anticipates soliciting further comment on reporting duties for a security-based swap where neither side includes a registered security-based swap dealer or major security-based swap participant and neither side includes a U.S. person or only one side includes a U.S. person.[281]

1. Reporting Hierarchy

Final Rule 901(a)(2)(ii) adopts the reporting hierarchy largely as proposed in the Cross-Border Proposing Release, but limits its scope. The reporting hierarchy in Rule 901(a), as proposed and as re-proposed in the Cross-Border Proposing Release, did not contain separate provisions to address reporting responsibilities for two kinds of security-based swaps that are described in the Regulation SBSR Proposed Amendments Release: Clearing transactions and security-based swaps that are executed on a platform and that will be submitted to clearing. The Regulation SBSR Proposed Amendments Release solicits comment on proposed rules that address the reporting of these types of security-based swaps. The reporting hierarchy in Rule 901(a)(2)(ii), as adopted, applies to security-based swaps that are covered transactions.[282] The reporting hierarchy is designed to locate the duty to report with counterparties who are most likely to have the resources and who are best able to support the reporting function.

Specifically, final Rule 901(a)(2)(ii) provides that, for a covered transaction, the reporting side will be as follows:

(A) If both sides of the security-based swap include a registered security-based swap dealer, the sides shall select the reporting side.

(B) If only one side of the security-based swap includes a registered security-based swap dealer, that side shall be the reporting side.

(C) If both sides of the security-based swap include a registered major security-based swap participant, the sides shall select the reporting side.

(D) If one side of the security-based swap includes a registered major security-based swap participant and the other side includes neither a registered security-based swap dealer nor a registered major security-based swap participant, the side including the registered major security-based swap participant shall be the reporting side.

(E) If neither side of the security-based swap includes a registered security-based swap dealer or registered major security-based swap participant: (1) If both sides include a U.S. person, the sides shall select the reporting side. (2) [Reserved].[283]

The following examples explain the operation of final Rule 901(a)(2)(ii). For each example, assume that the relevant security-based swap is not executed on a platform.

- *Example 1.* A non-registered U.S. person executes a security-based swap with a registered security-based swap dealer that is a non-U.S. person. Neither side has a guarantor. The registered security-based swap dealer is the reporting side.
- *Example 2.* Same facts as Example 1, except that the non-registered U.S. person is guaranteed by a registered security-based swap dealer. Because both sides include a person that is a registered security-based swap dealer, the sides must select which is the reporting side.
- *Example 3.* Two private funds execute a security-based swap. Both direct counterparties are U.S. persons, neither is guaranteed, and neither is a registered security-based swap dealer or registered major security-based swap participant. The sides must select which is the reporting side.

In Rule 901(a)(2)(ii), as adopted, the Commission has included the word ''registered'' before each instance of the terms ''security-based swap dealer'' and ''major security-based swap participant.'' A person is a security-based swap dealer or major security-based swap participant if that person meets the statutory definition of that term, regardless of whether the person registers with the Commission.[284] A person meeting one of those statutory definitions must register with the Commission in that capacity. However, persons meeting one of the statutory definitions cannot register in the appropriate capacity until the Commission adopts registration rules for these classes of market participant. The Commission has proposed but not yet adopted registration rules for security-based swap dealers and major security-based swap participants. Thus, currently, there are no registered security-based swap dealers even though many market participants act in a dealing capacity in the security-based swap market.

Including the word ''registered'' before each instance of the terms ''security-based swap dealer'' and ''major security-based swap participant'' in final Rule 901(a)(2)(ii) means that it will not be necessary for a person to evaluate whether it meets the definition of ''security-based swap dealer'' or ''major security-based swap participant'' solely in connection with identifying which counterparty must report a

[281] The Commission notes that Rule 901(a), as adopted, does address how the reporting duty is assigned when both sides include a U.S. person and neither side includes a registered security-based swap dealer or a registered major security-based swap participant. In that case, the sides would be required to select which is the reporting side. *See* Rule 901(a)(2)(ii)(E)(1).

[282] *See supra* notes 11–12 and accompanying text.

[283] This provision, as set forth in the Cross-Border Proposing Release, would have provided: ''If neither side of the security-based swap includes a security-based swap dealer or major security-based swap participant: (i) If both sides include a U.S. person or neither side includes a U.S. person, the sides shall select the reporting side. (ii) If only one side includes a U.S. person, that side shall be the reporting side.'' The Commission anticipates seeking further comment on how Title VII should apply to non-U.S. persons who engage in certain security-based swap activities in the United States, particularly dealing activities. Accordingly, the Commission is not deciding at this time how Regulation SBSR will apply to (1) transactions where there is no U.S. person, registered security-based swap dealer, or registered major security-based swap participant on either side; and (2) transactions where there is no registered security-based swap dealer or registered major security-based swap participant on either side and there is a U.S. person on only one side. One commenter recommended that this proposed part of the hierarchy be revised to refer only to cases where both sides are U.S. persons, as the commenter did not believe that a security-based swap for which neither party is a security-based swap dealer, major security-based swap participant, or a U.S. person would be subject to reporting under Regulation SBSR. *See* ISDA IV at 19. As discussed, the Commission is not adopting this provision of proposed Rule 901(a). The Commission anticipates seeking further comment on how Title VII should apply to non-U.S. persons who engage in certain security-based swap activities in the United States, particularly dealing activities, and is not deciding at this time how Regulation SBSR will apply to transactions where there is no U.S. person, registered security-based swap dealer, or registered major security-based swap participant on either side. The Commission notes that, under final Rule 908(a)(1)(ii), a security-based swap is subject to regulatory reporting and public dissemination if it was accepted for clearing by a clearing agency having its principal place of business in the United States. *See infra* Section XV(C)(4).

[284] *See* Section 3(a)(71) of the Exchange Act, 15 U.S.C. 78c(a)(71) (defining ''security-based swap dealer''); Section 3(a)(67) of the Exchange Act, 15 U.S.C. 78c(a)(67) (defining ''major security-based swap participant''). *See also* 17 CFR 240.3a71–2 (describing the time at which a person will be deemed to be a security-based swap dealer); 17 CFR 240.3a67–8 (describing the time at which a person will be deemed to be a major security-based swap participant).

security-based swap under Regulation SBSR.[285]

A result of the Commission's determination to apply duties in Rule 901(a)(2)(ii) based on registration status rather than on meeting the statutory definition of ''security-based swap dealer'' or ''major security-based swap participant'' is that, until such persons register with the Commission as such, all covered transactions will fall within Rule 901(a)(2)(ii)(E). In other words, under the adopted reporting hierarchy, because neither side of the security-based swap includes a *registered* security-based swap dealer or *registered* major security-based swap participant, the sides shall select the reporting side.

2. Other Security-Based Swaps

Rule 901(a), as proposed and re-proposed in the Cross-Border Proposing Release, did not differentiate between platform-executed security-based swaps and other types of security-based swaps in assigning the duty to report. Similarly, the proposed and re-proposed rule would have assigned reporting obligations without regard to whether a particular security-based swap was cleared or uncleared.[286] In the Regulation SBSR Proposing Release, the Commission expressed a preliminary view that cleared and uncleared security-based swaps should be subject to the same reporting procedures.[287] The Commission preliminarily believed that security-based swap dealers and major security-based swap participants generally should be responsible for reporting security-based swap transactions of all types, because they are more likely than other counterparties to have appropriate systems in place to facilitate reporting.[288]

Commenters raised a number of concerns about the application of the reporting hierarchy to platform-executed security-based swaps that will be submitted to clearing and clearing transactions.[289] The Commission has determined that final resolution of these issues would benefit from further consideration and public comment. Accordingly, in the Regulation SBSR Proposed Amendments Release, the Commission is proposing amendments to Rule 901(a) that would assign the reporting obligation for clearing transactions and platform-executed security-based swaps that will be submitted to clearing.

To differentiate between security-based swaps that are subject to the reporting hierarchy in Rule 901(a)(2)(ii) and those that are not, the Commission is defining a new term, ''clearing transaction,'' in Rule 900(g). A ''clearing transaction'' is ''a security-based swap that has a registered clearing agency as a direct counterparty.'' [290] This definition encompasses all security-based swaps that a registered clearing agency enters into as part of its security-based swap clearing business. The definition includes, for example, any security-based swaps that arise if a registered clearing agency accepts a security-based swap for clearing, as well as any security-based swaps that arise as part of a clearing agency's internal processes, such as security-based swaps used to establish prices for cleared products and security-based swaps that result from netting other clearing transactions of the same product in the same account into an open position.[291]

Two models of clearing—an agency model and a principal model—are currently used in the swap markets. In the agency model, which predominates in the U.S. swap market, a swap that is accepted for clearing—often referred to in the industry as an ''alpha''—is terminated and replaced with two new swaps, known as ''beta'' and ''gamma.'' The Commission understands that, under the agency model, one of the direct counterparties to the alpha becomes a direct counterparty to the beta, and the other direct counterparty to the alpha becomes a direct counterparty to the gamma. The clearing agency would be a direct counterparty to each of the beta and the gamma.[292] This release uses the terms ''alpha,'' ''beta,'' and ''gamma'' in the same way that they are used in the agency model of clearing in the U.S. swap market.[293] The Commission notes that, under Regulation SBSR, an alpha is not a ''clearing transaction,'' even though it is submitted for clearing, because it does not have a registered clearing agency as a direct counterparty.[294]

[285] As the Commission noted in the Cross-Border Adopting Release, the assessment costs for making such evaluations are likely to be substantial. *See* Cross-Border Adopting Release, 79 FR 47330–34. The Commission's approach here is consistent with the approach described in the Cross-Border Adopting Release, where the Commission noted that security-based swap dealers and major security-based swap participants ''will not be subject to the requirements applicable to those dealers and major participants until the dates provided in the applicable final rules.'' 79 FR 47368. *See also* Intermediary Definitions Adopting Release, 77 FR 30700.

[286] *See* 75 FR 75211.

[287] *See id.*

[288] *See id.*

[289] *See infra* Section V(C) for an overview of these comments. A detailed summary of and response to these comments appears in the Regulation SBSR Proposed Amendments Release.

[290] In connection with the definition of ''clearing transaction,'' the Commission is adopting a definition of ''registered clearing agency.'' Final Rule 900(ee) defines ''registered clearing agency'' to mean ''a person that is registered with the Commission as a clearing agency pursuant to section 17A of the Exchange Act (15 U.S.C. 78q–1) and any rules or regulations thereunder.'' In addition, the Commission is not adopting re-proposed Rule 900(h), which would have defined the term ''derivatives clearing organization'' to have the same meaning as provided under the Commodity Exchange Act. This term is not used in Regulation SBSR, as adopted, so the Commission is not including a definition of the term in Rule 900.

[291] Under Rule 900(g), a security-based swap that results from clearing is an independent security-based swap and not a life cycle event of a security-based swap that is submitted to clearing. Thus, Rule 901(e), which addresses the reporting of life cycle events, does not address what person has the duty to report the clearing transactions that arise when a security-based swap is accepted for clearing.

[292] If both direct counterparties to the alpha are clearing members, the direct counterparties would submit the transaction to the clearing agency directly and the resulting beta would be between the clearing agency and one clearing member, and the gamma would be between the clearing agency and the other clearing member. The Commission understands, however, that, if the direct counterparties to the alpha are a clearing member and a non-clearing member (a ''customer''), the customer's side of the trade would be submitted for clearing by a clearing member acting on behalf of the customer. When the clearing agency accepts the alpha for clearing, one of the resulting swaps—in this case, assume the beta—would be between the clearing agency and the customer, with the customer's clearing member acting as guarantor for the customer's trade. The other resulting swap—the gamma—would be between the clearing agency and the clearing member that was a direct counterparty to the alpha. *See, e.g.*, Byungkwon Lim and Aaron J. Levy, ''Contractual Framework for Cleared Derivatives: The Master Netting Agreement Between a Clearing Customer Bank and a Central Counterparty,'' 10 Pratt's Journal of Bankruptcy Law (October 2014) 509, 515–17 (describing the clearing model for swaps in the United States).

[293] In the principal model of clearing, which the Commission understands is used in certain foreign swap markets, a customer is not a direct counterparty of the clearing agency. Under this model, a clearing member would clear a security-based swap for a customer by entering into a back-to-back swap with the clearing agency: The clearing member would become a direct counterparty to a swap with the customer, and then would become a counterparty to an offsetting swap with the clearing agency. In this circumstance, unlike in the agency model of clearing, the swap between the direct counterparties might not terminate upon acceptance for clearing.

[294] This release does not address the application of Section 5 of the Securities Act of 1933, 15 U.S.C. 77a *et seq.* (''Securities Act''), to security-based swap transactions that are intended to be submitted to clearing (*e.g.*, alpha transactions, in the agency model of clearing). Rule 239 under the Securities Act, 17 CFR 230.239, provides an exemption for certain security-based swap transactions involving an eligible clearing agency from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provisions. This exemption does not apply to security-based swap transactions not involving an eligible clearing agency, including a transaction that is intended to be submitted to clearing, regardless of whether the security-based swaps subsequently are cleared by an eligible clearing agency. *See* Exemptions for Security-Based Swaps Issued By Certain Clearing Agencies, Securities Act Release No. 33–9308 (March 30, 2012), 77 FR 20536 (April 5, 2012).

C. Discussion of Comments and Basis for Final Rule

The Commission requested and received comment on a wide range of issues related to Rule 901(a), as proposed and re-proposed in the Cross-Border Proposing Release. As described in more detail below, commenters addressed a number of topics, including the application of Rule 901(a) to sides rather than direct counterparties, the role of agents in the reporting process, the application of Rule 901(a) to cleared security-based swaps, and the types of entities that should be required to report security-based swaps.

1. Application of the Reporting Hierarchy to Sides

The Commission received a number of comments on the reporting hierarchy in proposed Rule 901(a).[295] As described in the Cross-Border Proposing Release, a number of commenters objected to the reporting hierarchy in Rule 901(a), as originally proposed, on the grounds that it would unfairly impose reporting burdens on non-registered U.S.-person counterparties that enter into security-based swaps with non-U.S.-person security-based swap dealers or major security-based swap participants.[296] In the Cross-Border Proposing Release, the Commission re-proposed a modified reporting hierarchy in response to the commenters' concerns.[297]

The Commission believes that a non-registered person should not incur the duty to report a security-based swap when a registered security-based swap dealer or registered major security-based swap participant, directly or indirectly, is on the other side of the transaction, and is adopting the reporting hierarchy in Rule 901(a)(2)(ii) to effect this result. Rule 901(a), as adopted, is designed to assign reporting duties to the person best positioned to discharge those duties. The Commission believes that registered security-based swap dealers and registered major security-based swap participants, regardless of whether they are U.S. persons, will have greater technological capability than non-registered persons to report security-based swaps as required by Regulation SBSR. Accordingly, the Commission is adopting the reporting hierarchy in Rule 901(a)(2)(ii) largely as re-proposed to give registered security-based swap dealers and registered major security-based swap participants reporting obligations, regardless of whether they are U.S. persons. Furthermore, the Commission believes that it is appropriate to assign the duty to report to the side that includes a non-U.S. person registered security-based swap dealer or major security-based swap participant, even as an indirect counterparty, if neither the direct or indirect counterparty on the other side includes a registered security-based swap dealer or a registered major security-based swap participant. The fact that a person is a registered security-based swap dealer or registered major security-based swap participant implies that the person has substantial contacts with the U.S. security-based swap market and thus would understand that it could incur significant regulatory duties arising from its security-based swap business, or has voluntarily registered and chosen to undertake the burdens associated with such registration. The fact that a person is a registered security-based swap dealer or registered major security-based swap participant also implies that the person has devoted substantial infrastructure and administrative resources to its security-based swap business, and thus would be more likely to have the capability to carry out the reporting function than a non-registered counterparty.

In response to the Cross-Border Proposing Release, one commenter raised concerns about burdens that the re-proposed reporting hierarchy might place on U.S. persons.[298] This commenter noted that certain non-U.S. persons might engage in security-based swap dealing activities in the United States below the *de minimis* threshold for security-based swap dealer registration. The commenter expressed the view that an unregistered non-U.S. person that is acting in a dealing capacity likely would have ''greater technological capability and resources available to fulfill the reporting function'' than an unregistered U.S. person that is not acting in a dealing capacity.[299] The commenter suggested that, when an unregistered U.S. person enters into a security-based swap with an unregistered non-U.S. person that is acting in a dealing capacity, it ''would be more efficient and fair'' to allow the counterparties to choose the reporting side than to assign the reporting obligation to the unregistered U.S. person.[300]

The Commission acknowledges these comments. The Commission did not propose, and is not adopting, rules that would permit counterparties to choose to impose reporting burdens on the unregistered non-U.S. person that is acting in a dealing capacity in this scenario. The Commission believes that the issue of whether the counterparties should be able to choose the reporting side when an unregistered non-U.S. person acts in a dealing capacity with respect to a security-based swap involving an unregistered U.S. person would benefit from further comment. Accordingly, Rule 901(a)(2)(ii), as adopted, does not assign a reporting side for security-based swaps involving an unregistered non-U.S. person and an unregistered U.S. person.

Other commenters focused on the Commission's proposal to introduce the ''side'' concept to the reporting hierarchy. In response to the Cross-Border Proposing Release, three comments recommended that direct counterparties bear reporting duties, rather than sides (*i.e.,* that guarantors of direct counterparties not incur reporting responsibilities).[301] One of these commenters recommended that a non-U.S. company that provides its U.S. affiliate with a guarantee should not be subject to reporting responsibilities because the non-U.S. company would be outside the Commission's jurisdiction.[302] Another commenter noted that non-U.S. guarantors should not cause a security-based swap to become reportable.[303] The Commission generally agrees with these comments. As discussed in more detail in Section XV(C)(5), *infra,* Rule 908(a) of Regulation SBSR makes clear that a non-U.S. person guarantor would not cause a security-based swap to become reportable, unless the guarantor is a registered security-based swap dealer or a registered major security-based swap participant.[304] Moreover, Rule 908(b)

[295] *See* ISDA/SIFMA I at 19; DTCC II at 8; ICI I at 5 (stating that security-based swap dealers are the only market participants that currently have the standardization necessary to report the required security-based swap data); SIFMA I at 3 (arguing that an end user should not incur higher transaction costs or potential legal liabilities depending on the domicile of its counterparty); Vanguard Letter at 6 (stating that non-U.S. person security-based swap dealers and major security-based swap participants would be more likely to have appropriate systems in place to facilitate reporting than unregistered counterparties).

[296] *See* Cross-Border Proposing Release, 78 FR 31066. *See also* note 295, *supra* (describing the relevant comments).

[297] *See* re-proposed Rule 901(a); Cross-Border Proposing Release, 78 FR 31066, 31212.

[298] *See* IIB Letter at 26.

[299] *See id.*

[300] *See id.*

[301] *See* JSDA Letter at 6; ISDA III; ISDA IV at 3–4.

[302] *See* JSDA Letter at 6.

[303] *See* ISDA IV at 4 (recommending that the Commission should not include non-U.S. person guarantors in the definition of ''indirect counterparty'').

[304] Section XV(C)(5), *infra,* explains why the Commission has determined that security-based swaps having non-U.S. person guarantors that are registered as security-based swap dealers or major

provides that, notwithstanding any other provision of Regulation SBSR, a non-U.S. person guarantor of a security-based swap that is reportable would not incur any obligation under Regulation SBSR, including a reporting obligation under Rule 901(a)(2)(ii), unless the guarantor is a registered security-based swap dealer or a registered major security-based swap participant. Thus, for a security-based swap involving, on one side, the guaranteed U.S. affiliate of an unregistered non-U.S. person, only the guaranteed U.S. affiliate could incur reporting obligations under Regulation SBSR.[305]

The Commission disagrees with the broader point made by the commenters, however, and continues to believe that it is appropriate to adopt a final rule that places the reporting duty on the reporting side, rather than on a specific counterparty on the reporting side. The Commission notes that Rule 908(b)—which is discussed in more detail in Section XV, *infra*—limits the types of counterparties that incur obligations under Regulation SBSR to U.S. persons, registered security-based swap dealers, and registered major security-based swap participants. A person that does not fall within one of the categories enumerated in Rule 908(b) incurs no duties under Regulation SBSR. Accordingly, there may be situations where the direct counterparty on the reporting side—rather than the indirect counterparty, as in the commenter's example—would not fall within Rule 908(b) and therefore would incur no obligation under Regulation SBSR.[306] There will be cases where all counterparties on the reporting side fall within Rule 908(b). In these cases, Rule 901(a)(2)(ii), as adopted, provides reasonable flexibility to the counterparties on the reporting side to determine the specific person who will carry out the function of reporting the security-based swap on behalf of the reporting side. As stated in the Cross-Border Proposing Release, the Commission ''understands that many reporting parties already have established linkages to entities that may register as registered SDRs, which could significantly reduce the out-of-pocket costs associated with establishing the reporting function.'' [307] A reporting side could leverage these existing linkages, even if the entity that has established connectivity to the registered SDR is an indirect counterparty to the transaction.

The other commenters argued that incorporating indirect counterparties into current reporting practices could take considerable effort, because these practices, developed for use with the CFTC's swap data reporting regime, do not consider the registration status of indirect counterparties.[308] The commenter recommended that the industry should be permitted to use existing reporting party determination logic because negotiating the identity of the reporting side on a trade-by-trade basis would not be feasible.[309] Furthermore, one commenter noted that there is no industry standard source for information about indirect counterparties. As a result, ''despite the requirement for participants to [provide] this information to [a registered SDR], there is a chance that the parties . . . could come up with a different answer as to which of them is associated with an indirect counterparty.'' [310]

The Commission acknowledges these commenters' concerns, but continues to believe that it is appropriate for the reporting hierarchy to take into account both the direct and indirect counterparties on each side. Even without an industry standard source for information about indirect counterparties, counterparties to security-based swaps will need to know the identity and status of any indirect counterparties on a trade-by-trade basis to determine whether the transaction is subject to Regulation SBSR under final Rule 908(a).[311] By considering the status of indirect counterparties when assigning reporting obligations, Regulation SBSR is designed to reduce reporting burdens on non-registered persons without imposing significant new costs on other market participants, even though market participants may need to modify their reporting workflows. The Commission believes that market participants could adapt the mechanisms they develop for purposes of adhering to Rule 908(a) to facilitate compliance with the reporting hierarchy in Rule 901(a)(2)(ii). For example, the documentation for the relevant security-based swap could alert both direct counterparties to the fact that one counterparty's obligations under the security-based swap are guaranteed by a registered security-based swap dealer or registered major security-based swap participant. The counterparties can use that information to identify which side would be the reporting side for purposes of Regulation SBSR.

The Commission further believes that incorporating indirect counterparties into current reporting workflows is unlikely to cause substantial disruption to existing reporting logic because the status of an indirect counterparty likely will alter reporting practices in few situations. Most transactions in the security-based swap market today involve at least one direct counterparty who is likely to be a security-based swap dealer.[312] In such case, the current industry practice of determining the reporting side based only on the status of direct counterparties is likely to produce a result that is consistent with Rule 901.[313] The Commission understands that, in the current security-based swap market, market participants that are likely to be non-registered persons transact with each other only on rare occasions. In these circumstances, the status of an indirect counterparty could cause one side to become the reporting side, rather than leaving the choice of reporting side to the counterparties. For example, if a registered security-based swap dealer or registered major security-based swap participant guarantees one side of such a trade, the side including the non-registered person and the guarantor would, under Rule 901(a)(2), be the reporting side. The Commission believes that, if a registered security-based swap dealer or registered major security-based swap participant is willing to accept the responsibility of guaranteeing the performance of duties

security-based swap participants should be reportable under Regulation SBSR.

[305] If the non-U.S. person guarantor is a registered security-based swap dealer or major security-based swap participant, the exclusion in Rule 908(b) would not apply, and both the direct and indirect counterparties would jointly incur the duty to report.

[306] Rule 908(a) describes when Regulation SBSR applies to a security-based swap having at least one side that includes a non-U.S. person. *See infra* Section XV(C).

[307] 78 FR 31066 (citing Regulation SBSR Proposing Release, 75 FR 75265).

[308] *See* ISDA III; ISDA IV at 3–4 (noting also that Canada's swap data reporting regime resembles the CFTC's swap data reporting regime in so far as it does not consider the status of indirect counterparties).

[309] *See* ISDA III.

[310] *Id. See also* ISDA IV at 3–4.

[311] *See infra* Section XV.

[312] *See* Cross-Border Adopting Release, 79 FR 47293 (noting that transactions between two ISDA-recognized dealers represent the bulk of trading activity in the single-name credit default swap market).

[313] Assume, for example, that a security-based swap dealer executes a transaction with a non-registered person, and that current industry practices default the reporting obligation to the security-based swap dealer. This result is consistent with Rule 901(a)(2)(ii)(B), which states that the side including the registered security-based swap dealer will be the reporting side for such transactions. Assume, however, that the non-registered direct counterparty is guaranteed by another registered security-based swap dealer. Because both sides include a registered security-based swap dealer, Rule 901(a)(2)(ii)(A) requires the sides to select the reporting side. Agreeing to follow current industry practices—and locating the duty on the side that has the direct counterparty that is a registered security-based swap dealer—would be consistent with Rule 901(a)(2)(ii)(A).

under a security-based swap contract, it should also be willing to accept the responsibility of having to report that security-based swap to satisfy Regulation SBSR. In any event, the Commission believes that, if a guarantor's security-based swap activities are extensive enough that it must register as a security-based swap dealer or major security-based swap participant, it would have systems in place to ensure that it complies with the regulatory obligations attendant to such registration, including any reporting obligations for security-based swaps.

Finally, one commenter requested that the Commission provide guidance that reporting parties could follow when the reporting hierarchy instructs them to select the reporting side.[314] The Commission does not believe at this time that it is necessary or appropriate for the Commission itself to provide such guidance, because the determination of which counterparty is better positioned to report these security-based swaps is likely to depend on the facts and circumstances of the particular transaction and the nature of the counterparties. Rule 901(a)(2)(ii), as adopted, instructs the sides to select the reporting side only when the two sides are of equal status (*i.e.,* when both sides include a registered security-based swap dealer or when neither side includes a registered security-based swap dealer or registered major security-based swap participant). The Commission understands that, under existing industry conventions, market participants who act in a dealing capacity undertake the reporting function. Thus, the Commission believes that Rule 901(a)(2)(ii), as adopted, is not inconsistent with these current industry practices. Furthermore, the Commission would not be averse to the development and use of new or additional industry standards that create a default for which side would become the reporting side in case of a ''tie,'' provided that both sides agree to use such standards.

2. Reporting by Agents

In the Regulation SBSR Proposing Release, the Commission noted that Rule 901(a) would not prevent a reporting party from entering into an agreement with a third party to report a security-based swap on behalf of the reporting party.[315] Several commenters strongly supported the use of third-party agents to report security-based swaps.[316]

Four commenters addressed the types of entities that may wish to report security-based swaps on behalf of reporting parties. One commenter stated that platforms, clearing agencies, brokers, and stand-alone data reporting vendors potentially could provide reporting services to security-based swap counterparties.[317] Another commenter requested that the Commission clarify that a security-based swap counterparty that was not the reporting party under Rule 901(a) would be able to agree contractually to report a security-based swap on behalf of the reporting party under Rule 901(a).[318] A third commenter noted that many market participants will look to third-party service providers to streamline the reporting process.[319] One commenter, however, recommended that the Commission should consider limiting the use of third-party reporting service providers to SB SEFs or other reporting market intermediaries, such as exchanges, because allowing unregulated third parties with potentially limited experience could lead to incomplete or inaccurate security-based swap reporting.[320]

Although the Commission agrees that security-based swap transaction information must be reported in a timely and accurate manner to fulfill the transparency and oversight goals of Title VII, the Commission does not believe that it is necessary, at this time, to allow only regulated intermediaries to perform reporting services on behalf of a reporting side. The Commission believes that reporting sides have a strong incentive to ensure that agents who report on their behalf have the capability and dedication to perform this function. In this regard, the Commission notes that any reporting side who contracts with a third party, including the non-reporting side, to report a security-based swap transaction on its behalf would retain the obligation to ensure that the information is provided to a registered SDR in the manner and form required under Regulation SBSR. Thus, a reporting side could be held responsible if its agent reported a security-based swap transaction to a registered SDR late or inaccurately.

In addition, the Commission believes that allowing entities other than regulated intermediaries to provide reporting services to reporting persons could enhance competition and foster innovation in the market for post-trade processing services. This could, in turn, encourage more efficient reporting processes to develop over time as technology improves and the market gains experience with security-based swap transaction reporting. Accordingly, Rule 901(a), as adopted, does not limit the types of entities that may serve as reporting agents on behalf of reporting sides of security-based swaps. Furthermore, nothing in Rule 901(a), as adopted, prohibits the reporting side from using the non-reporting side to report as agent on its behalf.[321]

3. Reporting Clearing Transactions

In establishing proposed reporting obligations, Regulation SBSR, as proposed and as re-proposed, did not differentiate between cleared and uncleared security-based swaps. Accordingly, cleared and uncleared security-based swaps would have been treated in the same manner for purposes of reporting transactions to a registered SDR. Multiple commenters addressed the reporting of cleared and uncleared security-based swaps. Two commenters supported the Commission's proposal to assign reporting obligations for cleared security-based swaps through the reporting hierarchy in all circumstances.[322] These commenters noted that the Commission's proposal would allow security-based swap counterparties, rather than clearing agencies, to choose the registered SDR that receives data about their security-based swaps.[323] Other commenters objected to the proposal on statutory and operational grounds.[324] Two commenters argued that Title VII's security-based swap reporting provisions and Regulation SBSR should

[314] *See* Better Markets I at 10.

[315] *See* 75 FR 75211.

[316] *See* Barnard I at 2; DTCC II at 7; DTCC III at 13 (allowing third-party service providers to report security-based swaps would reduce the regulatory burden on counterparties and would assure prompt compliance with reporting obligations); ISDA/SIFMA I at 17 (noting that portions of the OTC derivatives market likely would rely on third-party agents to meet their reporting obligations); MarkitSERV I at 9; MarkitSERV II at 7–8; MarkitSERV III at 4–5.

[317] *See* ISDA/SIFMA I at 17 (explaining that there likely would be competition to provide reporting services and that market participants would be able to contract with appropriate vendors to obtain the most efficient allocation of reporting responsibilities).

[318] *See* SIFMA I at 2, note 3.

[319] *See* MarkitSERV IV at 3.

[320] *See* Tradeweb Letter at 4–5.

[321] *See* SIFMA I at 2, note 3.

[322] *See* DTCC VI at 8–9; MarkitSERV III at 4–5. *See also* DTCC VII *passim* (suggesting operational difficulties that could arise if a person who is not a counterparty to a security-based swap has the duty to report); DTCC VIII (noting that ''there has been a long held view that the SEC proposed model [for security-based swap data reporting] provides for a better defined process flow approach that achieves data quality, assigns proper ownership of who should report, and provides the most cost efficiencies for the industry as a whole'').

[323] *See* DTCC VI at 8–9; MarkitSERV III at 3–5.

[324] *See* CME/ICE Letter at 2–4; ICE Letter at 2–5; CME II at 4; ISDA IV at 5.

not extend to clearing transactions.[325] In the alternative, they argued that, if the Commission requires clearing transactions to be reported to a registered SDR, the clearing agency that clears a security-based swap should have the duty to report the associated clearing transactions to a registered SDR of its choice because, ''in contrast to uncleared [security-based swaps], the Clearing Agency is the sole party who holds the complete and accurate record of transactions and positions for cleared [security-based swaps] and in fact is the only entity capable of providing accurate and useful positional information on cleared [security-based swaps] for systemic risk monitoring purposes.''[326]

After careful consideration of the comments, the Commission has determined not to apply the reporting hierarchy in Rule 901(a)(2)(ii), as adopted, to clearing transactions.[327] In the Regulation SBSR Proposed Amendments Release, the Commission is proposing to revise Rule 901(a) to assign reporting duties for clearing transactions.[328] However, the reporting hierarchy in Rule 901(a)(2)(ii), as adopted, applies to alpha transactions that are not executed on a platform.[329]

One commenter expressed the view that reporting the alpha ''adds little or no value to an analysis of market exposure since it is immediately replaced by the beta and gamma and cannot exist unless the swap is cleared.'' [330] This commenter argued, therefore, that alpha transactions should not be reported to registered SDRs. The Commission disagrees with this comment, and believes instead that having a record of all alphas at registered SDRs will ensure that registered SDRs receive complete information about security-based swap transactions that are subject to the Title VII reporting requirement. This requirement is designed, in part, to provide valuable information about the types of counterparties active in the security-based swap market. Reconstructing this information from records of betas and gammas would be less efficient and potentially more prone to error than requiring reports of the alpha in the first instance. Furthermore, requiring reporting of the alpha transaction eliminates the need to address issues that would arise if there is a delay between the time of execution of the alpha and the time that it is submitted to clearing, or if the transaction is rejected by the clearing agency.

This commenter also stated that, if the alpha is reported, the ''key to improving data quality is to have a single party responsible for reporting a cleared transaction, and thus with respect to whether reporting for purposes of public dissemination and/or reporting to a [registered SDR], the clearing agency should be responsible for the alpha once it is accepted for clearing.'' [331] This commenter believed that this approach allows the data pertaining to the execution of the alpha to be more easily and accurately linked to the resulting beta and gamma.[332] The Commission also sees the importance in being able to link information about the alpha to a related beta and gamma. However, the Commission does not believe that relying solely on the clearing agency to report transaction information is the only or the more appropriate way to address this concern. As discussed in Section II(B)(3)(j), *supra,* the Commission is adopting in Rule 901(d)(10) a requirement that the reports of new security-based swaps (such as a beta and gamma) that result from the allocation, termination, novation, or assignment of one or more existing security-based swaps (such as an alpha) must include the transaction ID of the allocated, terminated, assigned, or novated security-based swap(s). This requirement is designed to allow the Commission and other relevant authorities to link related transactions across different registered SDRs.

4. Reporting by a Platform

Commenters expressed mixed views regarding reporting by platforms. Some commenters, addressing Rule 901(a) as originally proposed, recommended that the Commission require a platform to report security-based swaps executed on or through its facilities.[333] One of these commenters stated that a platform would be in the best position to ensure the accurate and timely reporting of a transaction executed on its facilities.[334] Another commenter expressed the view that having platforms report security-based swaps would facilitate economies in the marketplace by reducing the number of reporting entities.[335]

Four commenters, however, recommended that the Commission not impose reporting requirements on platforms.[336] Three of these commenters argued that certain practical considerations militate against assigning reporting duties to platforms.[337] Specifically, these commenters believed that a platform might not have all of the information required to be reported under Rules 901(c) and 901(d).[338] These commenters further noted that, even if a platform could report the execution of a security-based swap, it would lack information about life cycle events.[339] The third commenter stated that it could be less efficient for a platform to report than to have counterparties report.[340]

After careful consideration of the issues raised by the commenters, the Commission has determined not to apply the reporting hierarchy in Rule 901(a)(2)(ii), as adopted, to platform-executed transactions that will be submitted to clearing. In the Regulation SBSR Proposed Amendments Release, the Commission is proposing to assign reporting duties for platform-executed security-based swaps that will be

[325] *See* CME/ICE Letter at 2, 4; CME II at 4.

[326] CME/ICE Letter at 3–4. *See also* ICE Letter at 2–5 (arguing that a clearing agency would be well-positioned to issue a termination message for a swap that has been accepted for clearing and subsequently report the security-based swaps that result from clearing); DTCC X (arguing for allowing the reporting side to determine which SDR to report to for cleared security-based swaps); ISDA IV at 5 (expressing the view that ''the clearing agency is best-positioned to report cleared [security-based swaps] timely and accurately as an extension of the clearing process'').

[327] As stated above, a clearing transaction is a security-based swap that has a registered clearing agency as a direct counterparty.

[328] Rule 901(a), as adopted, reserves Rule 901(a)(2)(i) for assigning reporting obligations for clearing transactions.

[329] Reporting requirements for platform-executed alphas are discussed in Section V(C)(4), *infra,* and in the Regulation SBSR Proposed Amendments Release.

[330] ISDA IV at 6.

[331] *Id.*

[332] *Id.*

[333] *See* ICI I at 5; Tradeweb Letter at 3–4; Vanguard Letter at 2, 7.

[334] *See* Tradeweb Letter at 3. This commenter also stated that the counterparties to a transaction executed on a platform should be relieved of any reporting obligations because they would not be in a position to control or confirm the accuracy of the information reported or to control the timing of the platform's reporting. *See id.* at 3–4.

[335] *See* Vanguard Letter at 7.

[336] *See* ISDA/SIFMA I at 18; ISDA IV at 7; MarkitSERV III at 4; WMBAA II at 6.

[337] *See* ISDA/SIFMA I at 18; ISDA IV at 7; WMBAA II at 6.

[338] *See id.*

[339] *See* WMBAA II at 6 (observing that it would take a platform at least 30 minutes to gather and confirm the accuracy of all required information and recommending that the reporting party should be able to contract with a SB SEF to report a security-based swap on its behalf); ISDA/SIFMA I at 17–18 (noting that a platform may not know whether a security-based swap submitted for clearing had been accepted for clearing); ISDA IV at 7 (noting that certain aspects of the CFTC regime for reporting bilateral swaps executed on facility have been challenging due to the difficulty for SEFs to know and report certain trade data that is not essential to the trade execution, and because of the shared responsibility for reporting since the SEF/DCM is responsible for the initial creation data reporting and the SD/MSP is responsible for the continuation data reporting).

[340] *See* MarkitSERV III at 4.

submitted to clearing.[341] If the security-based swap will not be submitted to clearing, the platform would have no reporting obligation, and the reporting hierarchy in final Rule 901(a)(2)(ii) would apply.[342] The Commission notes that Section 13A(a)(3) of the Exchange Act provides that, for a security-based swap not accepted by any clearing agency, one of the counterparties must report the transaction. The reporting hierarchy of final Rule 901(a)(2)(ii) implements that provision and clarifies which side has the duty to report. The Commission believes that, in the case of security-based swaps that will not be submitted to clearing, the counterparties either will know each other's identity at the time of execution or the they will learn this information from the platform immediately or shortly after execution,[343] which will allow them to determine which side will incur the duty to report under Rule 901(a)(2)(ii), as adopted.

5. Reporting of a Security-Based Swap Resulting From a Life Cycle Event

Rule 901(e)(1)(i) requires the reporting side for a security-based swap to report a life cycle event of that security-based swap—such as a termination, novation, or assignment—to the registered SDR to which it reported the original transaction.[344] Certain life cycle events may result in the creation of a new security-based swap. The Commission is modifying Rule 901(a) to identify the reporting side for this new security-based swap.[345]

Rule 901(e), as adopted, identifies the reporting side for a life cycle event. Rule 901(e) does not, however, address who will be the reporting side for a new security-based swap that arises from a life cycle event (such as a termination) of an existing security-based swap.[346] To identify the reporting side for the new security-based swap, the Commission is modifying the introductory language of final Rule 901(a) to provide that a ''security-based swap, including a security-based swap that results from the allocation, termination, novation, or assignment of another security-based swap, shall be reported'' as provided in the rest of the rule.[347] This change responds to a commenter who suggested that reporting obligations be reassessed upon novation based on the current registration status of the remaining party and the new party to the security-based swap.[348] The reporting side designated by Rule 901(a) for the new transaction could be different from the reporting side for the original transaction.[349] The reporting side for the new security-based swap would be required to report the transaction within 24 hours of the time of creation of the new security-based swap.[350]

Rule 901(d)(10) requires the reporting side for the new security-based swap to report the transaction ID of the original security-based swap as a data element of the transaction report for the new security-based swap.[351] The Commission believes that this requirement will allow the Commission and other relevant authorities to link the report of a new security-based swap that arises from the allocation, termination, novation, or assignment of an existing security-based swap to the original security-based swap. As a result of these links, the Commission believes that it is not necessary or appropriate to require that a security-based swap that arises from the allocation, termination, novation, or assignment of an existing security-based swap be reported to the same registered SDR that received the transaction report of the original transaction. Thus, the reporting side for a security-based swap that arises as a result of the allocation, termination, novation, or assignment of an existing security-based swap could report the resulting new security-based swap to a registered SDR other than the registered SDR that received the report of the original security-based swap.

VI. Public Dissemination—Rule 902

A. Background

In addition to requiring regulatory reporting of all security-based swaps, Regulation SBSR seeks to implement Congress's mandate for real-time public dissemination of all security-based swaps. Section 13(m)(1)(B) of the Exchange Act authorizes the Commission ''to make security-based

[341] Rule 901(a), as adopted, reserves Rule 901(a)(1) for assigning reporting obligations for platform-executed security-based swaps that will be submitted to clearing.

[342] *See* ISDA IV at 7 (recommending that for a bilateral transaction executed on a platform that is not intended for clearing, one of the counterparties should be responsible for reporting, per the proposed reporting hierarchy).

[343] Market participants typically are unwilling to accept the credit risk of an unknown counterparty and therefore generally would not execute a security-based swap anonymously, unless the transaction would be cleared. Based on discussions with market participants, however, the Commission understands that certain temporarily registered CFTC SEFs offer ''work-up'' sessions that allow for anonymous execution of uncleared swaps in a limited circumstance. In a ''work-up'' session, after a trade is executed, other SEF participants may be given the opportunity to execute the same product at the same price. In a typical work-up session, the SEF would ''flash'' the execution to other SEF participants, who could then submit long or short interest to trade at the same price. The Commission understands that such interest could be submitted anonymously, and that a participant in a work-up session must agree to accept the credit risk of any other participant, if the work-up is conducted in a product that is not cleared. The Commission understands that the platform will inform each participant that executes a trade of the identity of its counterparty shortly after completion of the work-up session.

[344] However, a reporting side is not required to report whether or not a security-based swap has been accepted for clearing. *See infra* Section XII(A) (discussing life cycle event reporting).

[345] Security-based swaps resulting from an allocation are discussed in greater detail in Section VIII(A) *infra*.

[346] As re-proposed, paragraphs (1) and (2) of Rule 901(e) would have identified the reporting side for a security-based swap resulting from a life cycle event, if the reporting side for the initial security-based swap ceased to be a counterparty to the security-based swap resulting from the life cycle event. The Commission believes that these proposed provisions are unnecessary in light of the reporting hierarchy in Rule 901(a). Therefore, as described above, the Commission has determined that security-based swap counterparties should use the reporting hierarchy in Rule 901(a) to determine the reporting side for all security-based swaps, including security-based swaps that result from a life cycle event to another security-based swap.

[347] As proposed, this introductory language read ''[t]he reporting party shall be as follows.'' In the Cross-Border Proposing Release, the Commission proposed to modify this language to be ''[t]he reporting side for a security-based swap shall be as follows.''

[348] *See* ISDA IV at 7.

[349] Assume, for example, that a registered security-based swap dealer and a hedge fund execute a security-based swap. The execution does not occur on a platform and the transaction will not be submitted to clearing. Under Rule 901(a)(2)(ii)(B), as adopted, the registered security-based swap dealer is the reporting side for the transaction. Assume further that three days after execution the registered security-based swap dealer and the hedge fund agree that the registered security-based swap dealer will step out of the trade through a novation and will be replaced by a registered major security-based swap participant. Pursuant to Rule 901(e), as adopted, the registered security-based swap dealer would be required to report the novation to the same registered SDR that received the initial report of the security-based swap. At this point, the transaction between the registered security-based swap dealer and the hedge fund is complete and the registered security-based swap dealer would have no further reporting obligations with respect to the transaction. Under Rule 901(a)(2)(ii)(D), as adopted, the registered major security-based swap participant is the reporting side for the security-based swap that results from the novation of the transaction between the registered security-based swap dealer and the hedge fund. The registered major security-based swap participant is the reporting side for the resulting transaction.

[350] If the time that is 24 hours after the time of the creation of the new security-based swap would fall on a day that is not a business day, the report of the new security-based swap would be due by the same time on the next day that is a business day. *See* Rule 901(j).

[351] Rule 901(d)(10) provides that if a ''security-based swap arises from the allocation, termination, novation, or assignment of one or more existing security-based swaps,'' the reporting side must report ''the transaction ID of the allocated, terminated, assigned, or novated security-based swap(s), except in the case of a clearing transaction that results from the netting or compression of other clearing transactions.'' *See supra* Section II(C)(3)(k) (discussing Rule 901(d))(10)).

swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.'' [352] Section 13(m)(1)(C) of the Exchange Act [353] authorizes the Commission to provide by rule for the public availability of security-based swap transaction, volume, and pricing data as follows:

(1) With respect to those security-based swaps that are subject to the mandatory clearing requirement described in Section 3C(a)(1) of the Exchange Act (including those security-based swaps that are excepted from the requirement pursuant to Section 3C(g) of the Exchange Act),[354] the Commission shall require real-time public reporting for such transactions; [355]

(2) With respect to those security-based swaps that are not subject to the mandatory clearing requirement described in Section 3C(a)(1) of the Exchange Act, but are cleared at a registered clearing agency, the Commission shall require real-time public reporting for such transactions;

(3) With respect to security-based swaps that are not cleared at a registered clearing agency and which are reported to a SDR or the Commission under Section 3C(a)(6),[356] the Commission shall require real-time public reporting for such transactions, in a manner that does not disclose the business transactions and market positions of any person; and

(4) With respect to security-based swaps that are determined to be required to be cleared under Section 3C(b) of the Exchange Act but are not cleared, the Commission shall require real-time public reporting for such transactions.[357]

Furthermore, Section 13(m)(1)(D) of the Exchange Act [358] authorizes the Commission to require registered entities (such as registered SDRs) to publicly disseminate the security-based swap transaction and pricing data required to be reported under Section 13(m) of the Exchange Act. Finally, Section 13(n)(5)(D)(ii) of the Exchange Act [359] requires SDRs to provide security-based swap information ''in such form and at such frequency as the Commission may require to comply with public reporting requirements.''

In view of these statutory provisions, the Commission proposed Rule 902—Public Dissemination of Transaction Reports. In the Regulation SBSR Proposing Release, the Commission expressed its belief that the best approach would be to require market participants to report transaction information to a registered SDR and require registered SDRs to disseminate that information to the public.[360] Many commenters expressed general support for public dissemination of security-based swap information.[361] In addition, as discussed more fully below, the Commission received a large number of comments addressing specific aspects of public dissemination of transaction reports.[362]

The current market for security-based swaps is opaque. Dealers know about order flow that they execute, and may know about other dealers' transactions in certain instances, but information about executed transactions is not widespread. Market participants—particularly non-dealers—have to rely primarily on their understanding of the market's fundamentals to arrive at a price at which they would be willing to assume risk. The Commission believes that, by reducing information asymmetries between dealers and non-dealers and providing more equal access to all post-trade information in the security-based swap market, post-trade transparency could help reduce implicit transaction costs and promote greater price efficiency.[363] The availability of post-trade information also could encourage existing market participants to increase their activity in the market and encourage new participants to join the market—and, if so, increase liquidity and competition in the security-based swap market. In addition, all market participants will have more comprehensive information with which to make trading and valuation determinations.

Security-based swaps are complex derivative products, and there is no single accepted way to model a security-based swap for pricing purposes. The Commission believes that post-trade pricing and volume information will allow valuation models to be adjusted to reflect how other market participants have valued a security-based swap product at a specific moment in time. Public dissemination of last-sale

[352] 15 U.S.C. 78m(m)(1)(B). Section 13m(1)(E) of the Exchange Act, 15 U.S.C. 78m(m)(1)(E), requires the Commission rule for real-time public dissemination of security-based swap transactions to: (1) ''specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts'' and (2) ''specify the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public.'' The treatment of block trades is discussed in Section VII, *infra.*

[353] 15 U.S.C. 78m(m)(1)(C).

[354] 15 U.S.C. 78c–3(g).

[355] Section 3C(a)(1) of the Exchange Act, 15 U.S.C. 78c–3(a)(1), provides that it shall be unlawful for any person to engage in a security-based swap unless that person submits such security-based swap for clearing to a clearing agency that is registered under the Exchange Act or a clearing agency that is exempt from registration under the Exchange Act if the security-based swap is required to be cleared. Section 3C(g)(1) of the Exchange Act, 15 U.S.C. 78c–3(g)(1), provides that requirements of Section 3C(a)(1) will not apply to a security-based swap if one of the counterparties to the security-based swap (1) is not a financial entity; (2) is using security-based swaps to hedge or mitigate commercial risk; and (3) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared security-based swaps.

[356] The reference in Section 13(m)(1)(C)(iii) of the Exchange Act to Section 3C(a)(6) of the Exchange Act is incorrect. Section 3C of the Exchange Act does not contain a paragraph (a)(6). *See generally Am. Petroleum Institute* v. *SEC,* 714 F.3d 1329, 1336–37 (DC Cir 2013) (explaining that ''[t]he Dodd Frank Act is an enormous and complex statute, and it contains'' a number of ''scriveners' errors'').

[357] Section 3C(b)(1) of the Exchange Act requires the Commission to review on an ongoing basis each security-based swap, or any group, category, type, or class of security-based swap to make a determination that such security-based swap, or group, category, type, or class of security-based swap should be required to be cleared.

[358] 15 U.S.C. 78m(m)(1)(D).

[359] 15 U.S.C. 78m(n)(5)(D)(ii).

[360] *See* 75 FR 75227.

[361] *See* Barnard I at 3 (recommending full post-trade transparency as soon as technologically and practically feasible, with an exemption to permit delayed reporting of block trades); CII Letter at 2 (''the transparency resulting from the implementation of the proposed rules would not only lower systemic risk and strengthen regulatory oversight, but also, importantly for investors, enhance the price discovery function of the derivatives market''); DTCC II at 17–18 (noting that the proposed rules are designed to balance the benefits of post-trade transparency against the potentially higher costs of transferring or hedging a position following the dissemination of a report of a block trade); Ethics Metrics Letter at 3 (last-sale reporting of security-based swap transactions will ''provide material information to eliminate inefficiencies in pricing [financial holding company] debt and equity in the U.S. capital markets''); FINRA Letter at 1 (stating that the proposed trade reporting and dissemination structure, and the information it would provide to regulators and market participants, are vital to maintaining market integrity and investor protection); Getco Letter at 3 (noting that in the absence of accurate and timely post-trade transparency for most security-based swap transactions only major dealers will have pricing information and therefore new liquidity providers will not participate in the security-based swap market); ICI I at 1–2 (stating that market transparency is a key element in assuring the integrity and quality of the security-based swap market); Markit I at 4 (stating that security-based swap data should be made available on a non-delay basis to the public, media, and data vendors); MFA I at 1 (supporting the reporting of security-based swap transaction data to serve the goal of market transparency); SDMA I at 4 (''Post-trade transparency is not only a stated goal of the Dodd-Frank Act it is also an instrumental component in establishing market integrity. By creating real time access to trade information for all market participants, confidence in markets increases and this transparency fosters greater liquidity''); ThinkNum Letter *passim;* Shatto Letter *passim.*

[362] *See infra* notes 377 to 386 and accompanying text and Section VI(D).

[363] *See infra* Section XXII(C)(2)(a). *See also infra* note 1255 (discussing implicit transaction costs).

information also will aid dealers in deriving better quotations, because they will know the prices at which other market participants have traded. Last-sale information also will aid end users and other non-registered entities in evaluating current quotations by allowing them to request additional information if a dealer's quote differs from the prices of the most recent transactions. Furthermore, smaller market participants that view last-sale information will be able to test whether quotations offered by dealers before the last sale were close to the price at which the last sale was executed. In this manner, post-trade transparency will promote price competition and more efficient price discovery in the security-based swap market.

The Commission is adopting Rule 902 with certain modifications and technical changes discussed in more detail below. Final Rule 902(a) sets forth the basic duty of a registered SDR to publicly disseminate transaction reports. Final Rule 902(c) sets forth certain types of security-based swaps and certain other information about security-based swaps that a registered SDR shall not publicly disseminate. Final Rule 902(d), the so-called ''Embargo Rule,'' is designed to promote fair access to information about executed security-based swaps.[364]

Rule 902(b), as proposed and re-proposed, would have established a mechanism for registered SDRs to publicly disseminate transaction reports of block trades. As discussed in more detail in Section VII, *infra,* the Commission is not adopting thresholds for determining what constitutes a block trade. Accordingly, the Commission believes that it is not necessary or appropriate at this time to adopt rules specifically addressing the public dissemination of block trades.

B. Registered SDR's Duty To Disseminate—Rule 902(a)

Rule 902(a), as proposed and re-proposed, would have required a registered SDR to publicly disseminate a transaction report of any security-based swap immediately upon receipt of transaction information about the security-based swap, except in the case of a block trade.[365] Further, Rule 902(a), as initially proposed, provided that the transaction report would consist of ''all the information reported by the reporting party pursuant to § 242.901, plus any indicator or indicators contemplated by the registered security-based swap data repository's policies and procedures that are required by § 242.907.'' Rule 902(a) was revised and re-proposed as part of the Cross-Border Proposing Release to add that a registered SDR would not have an obligation to publicly disseminate certain types of cross-border security-based swaps that are required to be reported but not publicly disseminated.[366]

Commenters generally were supportive of the Commission's approach of requiring registered SDRs to be responsible for public dissemination of security-based swap transaction reports.[367] One commenter, for example, stated that allowing other types of entities to have the regulatory duty to disseminate data could lead to undue complications for market participants.[368] In addition, the commenter expressed the view that real-time public dissemination of security-based swap data is a ''core function'' of registered SDRs, and that permitting only registered SDRs to publicly disseminate security-based swap data would help to assure the accuracy and completeness of the data.[369] However, one commenter appeared to recommend that a clearing agency should be responsible for public dissemination of ''relevant pricing data for a security-based swap subject to clearing.'' [370]

The Commission has carefully analyzed the comments and is adopting the approach of requiring public dissemination through registered SDRs. The Commission believes that this approach will promote efficiency in the security-based swap market, or at least limit inefficiency.[371] Section 13(m)(1)(G) of the Exchange Act [372] provides that ''[e]ach security-based swap (whether cleared or uncleared) shall be reported to a registered security-based swap data repository.'' Thus, security-based swaps would have to be reported to registered SDRs regardless of the mechanism that the Commission chooses for public dissemination. By requiring registered SDRs to carry out the task of public dissemination, the Commission will not require reporting steps beyond those already required by the Exchange Act. Furthermore, the Commission believes that assigning registered SDRs the duty to publicly disseminate will help promote efficiency and consistency of post-trade information. Market observers will not have to obtain market data from potentially several other sources—such as SB SEFs, clearing agencies, or the counterparties themselves—to have a full view of security-based swap market activity.

1. Format of Disseminated Data

In the Regulation SBSR Proposing Release, the Commission acknowledged that multiple uniquely formatted data feeds could impair the ability of market participants to receive, understand, or compare security-based swap transaction data and thus undermine its value.[373] Furthermore, the Commission suggested that one way to address that issue would be to dictate the exact format and mode of providing required security-based swap data to the public, while acknowledging various problems with that approach.[374] The Commission proposed, however, to identify in proposed Rules 901(c) and 901(d) the categories of information that would be required to be reported, and to require registered SDRs to establish and maintain policies and procedures that, among other things, would specify the data elements that would be required to be reported.[375] The Commission preliminarily believed that this approach would promote the reporting of uniform, material information for each security-based swap, while providing flexibility to account for

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[364] Final Rule 902(d) provides that ''[n]o person shall make available to one or more persons (other than a counterparty or post-trade processor) transaction information relating to a security-based swap before the primary trade information about the security-based swap is submitted to a registered security-based swap data repository.''

[365] The Commission recognized, however, that there may be circumstances when a registered SDR's systems might be unavailable for publicly disseminating transaction data. In such cases, proposed Rule 902(a) would have required a registered SDR to disseminate the transaction data immediately upon its re-opening. *See* Regulation SBSR Proposing Release, 75 FR 75228. Rule 904 of Regulation SBSR deals with hours of operation of registered SDRs and related operational procedures. *See infra* Section XI.

[366] This carve-out was necessitated by re-proposed Rule 908(a), which contemplated situations where a security-based swap would be required to be reported to a registered SDR but not publicly disseminated. *See* 78 FR 31060.

[367] *See* FINRA Letter at 5; DTCC II at 18 (stating that SDRs should be able to disseminate data effectively and should be the sole source of data dissemination); DTCC IV at 4; MarkitSERV I at 7–8 (stating that only registered SDRs, or their agents, should be permitted to disseminate security-based swap data); Thomson Reuters Letter at 6–7 (stating that publication and dissemination of security-based swap transaction information should be the responsibility of registered SDRs rather than SB SEFs).

[368] *See* DTCC II at 18.

[369] *See* DTCC IV at 4.

[370] *See* ISDA IV at 6 (stating that ''as regards public dissemination of relevant pricing data for a SBS subject to clearing, such reporting should be done by the clearing agency when a SBS is accepted for clearing and the clearing agency reports for the beta and gamma'').

[371] *See infra* Section XXII(B)(2).

[372] 15 U.S.C. 78m(m)(1)(G).

[373] *See* 75 FR 75227.

[374] *See id.*

[375] *See id.* at 75213.

changes to the security-based swap market over time.[376]

Two commenters generally supported the Commission's approach of providing registered SDRs with the flexibility to define the relevant data fields.[377] However, one commenter stated that the final rules should clearly identify the data fields that will be publicly disseminated.[378] Another commenter emphasized the importance of presenting security-based swap information in a format that is useful for market participants, and expressed concern that proposed Regulation SBSR did ''nothing to ensure that the data amassed by individual SDRs is aggregated and disseminated in a form that is genuinely useful to traders and regulators and on a nondiscriminatory basis.'' [379] This commenter further believed that to provide meaningful price discovery, data must be presented in a format that allows market participants to view it in near-real time, fits onto the limited space available on their trading screens, and allows them to view multiple markets simultaneously.[380]

The Commission has carefully considered these comments and continues to believe that it is not necessary or appropriate at this time for the Commission to dictate the format and mode of public dissemination of security-based swap transaction information by registered SDRs. Therefore, Rule 902(a), as adopted, provides registered SDRs with the flexibility to set the format and mode of dissemination through its policies and procedures, as long as the reports of security-based swaps that it publicly disseminates include the information required to be reported by Rule 901(c), plus any ''condition flags'' contemplated by the registered SDR's policies and procedures under Rule 907.[381] The Commission notes that it anticipates proposing for public comment detailed specifications of acceptable formats and taxonomies that would facilitate an accurate interpretation, aggregation, and analysis by the Commission of security-based swap data submitted to it by an SDR. The Commission intends to maximize the use of any applicable current industry standards for the description of security-based swap data, and build upon such standards to accommodate any additional data fields as may be required.

2. Timing of Public Dissemination

Rule 902(a), as re-proposed, would have required a registered SDR to publicly disseminate a transaction report of a security-based swap immediately upon (1) receipt of information about the security-based swap from a reporting side, or (2) re-opening following a period when the registered SDR was closed, unless the security-based swap was a block trade or a cross-border security-based swap that was required to be reported but not publicly disseminated. One commenter agreed with the proposed requirement, stating that reported security-based swap transaction information ''should be made available on a non-delayed basis to the public, media, and data vendors.'' [382]

The Commission is adopting the requirement contained in Rule 902(a), as re-proposed, that a registered SDR must disseminate a transaction report of a security-based swap ''immediately upon receipt of information about the security-based swap, or upon re-opening following a period when the registered security-based swap data repository was closed.'' [383] ''Immediately,'' as used in this context, implies a wholly automated process to accept the incoming information, process the information to assure that only information required to be disseminated is disseminated, and disseminate a trade report through electronic means.

3. Dissemination of Life Cycle Events

Rule 902(a), as adopted, provides that, in addition to transaction reports of security-based swaps, a registered SDR ''shall publicly disseminate . . . a life cycle event or adjustment due to a life cycle event.'' Rule 902(a), as proposed and re-proposed, did not specifically refer to such information, but, as noted in the Regulation SBSR Proposing Release, proposed Rule 907(a)(4) would have required a registered SDR to ''establish and maintain written policies and procedures describing how reporting parties shall report—and, consistent with the enhancement of price discovery, how the registered SDR shall publicly disseminate—reports of, and adjustments due to, life cycle events.'' [384] One commenter argued that the Commission should limit public dissemination to new trading activity and should exclude maintenance or life cycle events.[385] The Commission disagrees, and believes instead that, if information about a security-based swap is publicly disseminated but subsequently one or more of the disseminated data elements is revised due to a life cycle event (or an adjustment due to a life cycle event), the revised information would provide market observers a more accurate understanding of the market. The Commission, therefore, is clarifying Rule 902(a) to make clear the requirement to disseminate life cycle events. Final Rule 902(a) provides, in relevant part, that a registered SDR ''shall publicly disseminate a transaction report of the security-based swap or a life cycle event or adjustment due to a life cycle event immediately upon receipt.'' [386]

4. Correction of Minor Drafting Error

Rule 902(a), as initially proposed and re-proposed, provided that the transaction report that is publicly disseminated ''shall consist of all the information reported pursuant to *Rule 901,* plus any indicator or indicators contemplated by the registered security-based swap data repository's policies and procedures that are required by Rule 907'' (emphasis added). However, in the Regulation SBSR Proposing Release, the Commission specified that the transaction report that is disseminated should consist of all the information reported pursuant to *Rule*

[376] *See id.*

[377] *See* Barnard I at 2 (stating that the categories of information required to be reported under the proposed rules should be ''complete and sufficient so that its dissemination will enhance transparency and price discovery''); MarkitSERV I at 10 (expressing support for the Commission's ''proposal to provide [registered] SDRs with the authority to define the relevant fields on the basis of general guidelines as set out by the SEC'').

[378] *See* ISDA/SIFMA I at 10. *See also* ISDA IV at 9 and Section II(2)(a), *supra,* for a response.

[379] Better Markets II at 2–3 (also arguing that the Commission should require disclosure of the component parts of a complex transaction to prevent market participants from avoiding transparency by creating complex composite transactions).

[380] *See* Better Markets I at 3; Better Markets II at 4.

[381] The Commission notes that final Rule 902(a) references ''condition flags,'' rather than ''indicator or indicators,'' as was proposed, to conform with Rule 907, as adopted.

[382] Markit I at 4.

[383] *See infra* Section XI (discussing Rule 904, which deals with hours of operation of registered SDRs and related operational procedures).

[384] Regulation SBSR Proposing Release, 75 FR 75237.

[385] *See* ISDA/SIFMA I at 12. *See also* ISDA IV at 13 (arguing that only life cycle events that result in a change to the price of a security-based swap should be subject to public dissemination, and requesting that ''any activity on a [security-based swap] that does not affect the price of the reportable [security-based swap]'' be excluded from public dissemination).

[386] To enhance the usefulness of a public transaction report of a life cycle event, final Rule 907(a)(3) requires a registered SDR to have policies and procedures for appropriately flagging public reports of life cycle events. *See infra* Section XII(C). This requirement is designed to promote transparency by allowing market observers to distinguish original transactions from life cycle events.

901(c).[387] The statement from the preamble of the Regulation SBSR Proposing Release is correct. The Commission did not intend for all of the information reported pursuant to Rule 901 to be publicly disseminated;[388] this would include, for example, regulatory data reported pursuant to Rule 901(d) and information about historical security-based swaps reported pursuant to Rule 901(i). The Commission is correcting this drafting error so that final Rule 902(a) explicitly states that the ''transaction report shall consist of all the information reported pursuant to § *242.901(c),* plus any condition flags contemplated by the registered security-based swap data repository's policies and procedures that are required by § 242.907'' (emphasis added).

5. Use of Agents by a Registered SDR To Carry Out the Public Dissemination Function

One commenter discussed the appropriateness of third-party service providers carrying out the public dissemination function on behalf of registered SDRs.[389] The Commission believes that, in the same way that reporting sides may engage third-party agents to report transactions on their behalf, registered SDRs may engage third-party providers to carry out the public dissemination function on their behalf. In both cases, the entity with the legal duty would remain responsible for compliance with Regulation SBSR if its agent failed to carry out the function in a manner stipulated by Regulation SBSR. Thus, reporting sides and registered SDRs should engage only providers that have the capacity and reliability to carry out those duties.

C. Definition of ''Publicly Disseminate''

In the Regulation SBSR Proposing Release, the Commission defined ''publicly disseminate'' in Rule 900 to mean ''to make available through the Internet or other electronic data feed that is widely accessible and in machine-readable electronic format.'' The Commission re-proposed this definition renumbering it Rule 900(y), in the Cross-Border Proposing Release.

The Commission received no comment letters directly discussing the proposed definition, although as noted above many commenters commented on various other aspects of public dissemination, including the format of disseminated data [390] and timing of public dissemination.[391] The Commission is adopting the definition of ''publicly disseminate'' as proposed and re-proposed. The Commission continues to believe that, to satisfy the statutory mandate for public dissemination, security-based swap transaction data must be widely accessible in a machine-readable electronic format. These data are too numerous and complex for direct human consumption and thus will have practical use only if they can be downloaded and read by computers. The definition of ''publicly disseminate'' recognizes the Internet as one, but not the only, possible electronic medium to make these data available to the public.

D. Exclusions From Public Dissemination—Rule 902(c)

1. Discussion of Final Rule

Rule 902(c), as proposed and re-proposed, set forth three kinds of information that a registered SDR would be prohibited from disseminating. First, in Rule 902(c)(1), the Commission proposed that a registered SDR would be prohibited from disseminating the identity of any counterparty to a security-based swap. This would implement Section 13(m)(1)(E)(i) of the Exchange Act,[392] which requires the Commission's rule providing for the public dissemination of security-based swap transaction and pricing information to ensure that ''such information does not identify the participants.'' The Commission received three comments that generally urged the Commission to ensure the anonymity of security-based swap counterparties, either through non-dissemination of the identity of any counterparty or by limiting public dissemination of other data elements they believed could lead to disclosure of counterparties' identities.[393] To address the commenters' concerns, the Commission is adopting Rule 902(c)(1) as proposed and re-proposed, with one conforming change.[394] Final Rule 902(c)(1) explicitly prohibits a registered SDR from disseminating the identity of any counterparty. Further, Rule 902(a) explicitly provides for the public dissemination of a transaction report that consists only of ''the information reported pursuant to § 242.901(c), plus any condition flags contemplated by the registered security-based swap data repository's policies and procedures that are required by § 242.907.'' Limiting the publicly disseminated trade report to these specific data elements is designed to further avoid disclosure of any counterparty's identity, including the counterparty ID of a counterparty, even in thinly-traded markets.[395]

Second, the Commission proposed in Rule 902(c)(2) that, with respect to a security-based swap that is not cleared at a clearing agency and that is reported to a registered SDR, a registered SDR would be prohibited from disseminating any information disclosing the business transactions and market positions of any person. This would implement Section 13(m)(1)(C)(iii) of the Exchange Act,[396] which provides that, with respect to the security-based swaps that are not cleared and which are reported to an SDR or the Commission, ''the Commission shall require real-time public reporting . . . in a manner that does not disclose the business transactions and market positions of any person.'' The Commission received no comments that directly addressed proposed Rule 902(c)(2), although one commenter noted that ''all market participants have legitimate interests in the protection of their confidential and identifying financial information.'' [397] By prohibiting a registered SDR from disseminating any information disclosing the business transactions and market positions of any person, the Commission believes that Rule 902(c)(2) will help preserve the confidential information of market participants, in

[387] *See* 75 FR 75212–13.

[388] Two comments specifically noted this lack of clarity. *See* ISDA/SIFMA I at 12; ISDA IV at 14.

[389] *See* MarkitSERV I at 7–8.

[390] *See supra* Section VII(B)(1).

[391] *See supra* Section VII(B)(2).

[392] 15 U.S.C. 13m(m)(1)(E)(i). This section is applicable to security-based swaps that are subject to Sections 13(m)(1)(C)(i) and (ii) of the Exchange Act—*i.e.,* security-based swaps that are subject to the mandatory clearing requirement in Section 3C(a)(1) and security-based swaps that are not subject to the mandatory clearing requirement in Section 3C(a)(1) but are cleared.

[393] *See* Deutsche Bank Letter at 6 (asking the SEC and CFTC to impose strict requirements on an SDR's handling, disclosure, and use of identifying information); DTCC II at 9 (noting that trading volume in most single name credit derivatives is ''extremely thin'' and disclosing small data samples, particularly from narrow time periods, may not preserve the anonymity of the trading parties); ISDA/SIFMA I at 12; MFA I at 2 (arguing that participant IDs should not be included in any publicly disseminated transaction report to protect identities and proprietary trading strategies of security-based swap market participants).

[394] Re-proposed Rule 902(c)(1) would have prohibited a registered SDR from publicly disseminating the identity of either counterparty to a security-based swap. Final Rule 902(c)(1) prohibits a registered SDR from publicly disseminating the identity of *any* counterparty to a security-based swap. Final Rule 900(i) defines counterparty to mean ''a person that is a direct counterparty or indirect counterparty of a security-based swap.'' This conforming change to Rule 902(c)(1) makes clear that a registered SDR may not publicly disseminate the identity of any counterparty—direct or indirect—of a security-based swap.

[395] *See infra* Section VI(D)(1)(f) (discussing public dissemination of thinly-traded products).

[396] 15 U.S.C. 13(m)(1)(C)(iii).

[397] Deutsche Bank Letter at 6.

addition to implementing Section 13(m)(1)(C)(iii) of the Exchange Act. Accordingly, the Commission is adopting Rule 902(c)(2) as proposed and re-proposed.

Third, the Commission preliminarily believed that it would be impractical and unnecessary for a registered SDR to publicly disseminate reports of historical security-based swaps reported pursuant to Rule 901(i), and therefore included this exclusion in proposed Rule 902(c)(3).[398] The Commission received no comments regarding proposed Rule 902(c)(3). The Commission continues to believe that it would be impractical for a registered SDR to publicly disseminate reports of historical security-based swaps reported pursuant to Rule 901(i). Accordingly, the Commission is adopting Rule 902(c)(3) as proposed and re-proposed.

The Commission calls particular attention to the relationship between Rules 901(i), 901(e), and 902. Rule 901(i) requires reporting of historical security-based swaps to a registered SDR. Rule 902(c)(3) provides that the initial transaction reported pursuant to Rule 901(i) shall not be publicly disseminated. A historical security-based swap might remain open after market participants are required to begin complying with the requirement in Rule 901(e) to report life cycle events.[399] If a life cycle event of a historical security-based swap relating to any of the primary trade information—*i.e.,* the data elements enumerated in Rule 901(c)—occurs after public dissemination is required for security-based swaps in a particular asset class, Rule 902(a) would require the registered SDR to publicly disseminate a report of that life cycle event, plus any condition flags required by the registered SDR's policies and procedures under Rule 907. In other words, Rule 902(c)(3)'s exclusion from public dissemination for historical security-based swaps applies only to the initial transaction, not to any life cycle event of that historical security-based swap relating to the primary trade information that occurs after public dissemination in that asset class is required. Therefore, life cycle events relating to the primary trade information of historical security-based swaps must, after the public dissemination requirement goes into effect, be publicly disseminated.[400]

At the same time, correcting an error in the Rule 901(c) information relating to a historical security-based swap would *not* trigger public dissemination of a corrected report. Rule 905 applies to all information reported pursuant to Regulation SBSR, including historical security-based swaps that must be reported pursuant to Rule 901(i). Rule 905(b)(2) requires the registered SDR to publicly disseminate a correction of a transaction only if the corrected information falls within Rule 901(c) and the transaction previously was subject to a public dissemination requirement. Historical security-based swaps are not subject to the public dissemination requirement; therefore, corrections to Rule 901(c) information in historical security-based swaps are not subject to public dissemination either.

Rule 902(a), as proposed, would have provided that a registered SDR shall publicly disseminate a transaction report of a security-based swap reported to it, ''[e]xcept in the case of a block trade.'' Rule 902(a), as re-proposed, would have retained the exception for block trades and added a second exception, for ''a trade that is required to be reported but not publicly disseminated.'' [401] In final Regulation SBSR, the Commission is revising Rules 902(a) and 902(c) to consolidate into a single rule—Rule 902(c)—all the types of security-based swaps and the kinds of information that a registered SDR is prohibited from disseminating. Therefore, Rule 902(a), as adopted, now provides that a registered SDR shall publicly disseminate a transaction report of a security-based swap ''except as provided in paragraph (c) of this section.''

In addition to adopting subparagraphs (1), (2), and (3) of Rule 902(c), as proposed and re-proposed, the Commission is modifying Rule 902(c) to expand the number of exclusions from public dissemination from three to seven. First, the Commission is adding Rule 902(c)(4), which prohibits a registered SDR from disseminating a non-mandatory report, and is adding a new Rule 900(r) to define ''non-mandatory report'' as any information provided to a registered SDR by or on behalf of a counterparty other than as required by Regulation SBSR. Situations may arise when the same transaction may be reported to two separate registered SDRs. This could happen, for example, if the reporting side reports a transaction to one registered SDR, as required by Rule 901, but the other side elects to submit the same transaction information to a second registered SDR. The Commission has determined that any non-mandatory report should be excluded from public dissemination because the mandatory report of that transaction will have already been disseminated, and the Commission seeks to avoid distorting the market by having two public reports issued for the same transaction.[402]

Second, the Commission is adding Rule 902(c)(5), which prohibits a registered SDR from disseminating any information regarding a security-based swap that is subject to regulatory reporting but not public dissemination under final Rule 908(a) of Regulation SBSR.[403] Rule 902(a), as re-proposed, would have prohibited a registered SDR from publicly disseminating information concerning a cross-border security-based swap that is required to be reported but not publicly disseminated. The Commission received no comments on this specific provision, and is relocating it from re-proposed Rule 902(a) to final Rule 902(c)(5). Rule 902(c)(5), as adopted, will prohibit a registered SDR from disseminating ''[a]ny information regarding a security-based swap that is required to be reported pursuant to §§ 242.901 and 242.908(a)(1) but is not required to be publicly disseminated pursuant to § 242.908(a)(2).''

Third, the Commission is adding Rule 902(c)(6), which prohibits a registered SDR from disseminating any information regarding certain types of clearing transactions.[404] Regulation SBSR, as proposed and re-proposed, did not provide any exemption from public dissemination for clearing transactions. However, the Commission has determined that publicly disseminating reports of clearing transactions that arise from the acceptance of a security-based swap for clearing by a registered clearing agency or that result from netting other clearing transactions would be unlikely to further Title VII's transparency objectives. Any security-based swap transaction, such as an

[398] 75 FR 75286.

[399] *See* Regulation SBSR Proposed Amendments Release, Section VII (proposing a new compliance schedule for Regulation SBSR).

[400] For example, a termination of a historical security-based swap—occurring after public dissemination in that asset class becomes required—would have to be publicly disseminated. A termination represents the change in the notional amount of the transaction from a positive amount to zero. Because the notional amount is a Rule 901(c) element, the termination of the historical security-based swap would have to be publicly disseminated.

[401] This second exception was necessitated by revisions to Rule 908 made in the Cross-Border Proposing Release that would have provided that certain cross-border security-based swaps would be subject to regulatory reporting but not public dissemination. *See* 78 FR 31215.

[402] *See infra* Section XIX (explaining how a registered SDR can determine whether the report it receives is a non-mandatory report).

[403] *See infra* Section XV(A).

[404] Rule 900(f) defines ''clearing transaction'' as ''a security-based swap that has a registered clearing agency as a direct counterparty.''

alpha, that precedes a clearing transaction must be publicly disseminated. Clearing transactions, such as the beta and the gamma, that result from clearing a security-based swap or from netting clearing transactions together do not have price discovery value because they are mechanical steps taken pursuant to the rules of the clearing agency. Therefore, the Commission believes that non-dissemination of these clearing transactions is appropriate in the public interest and consistent with the protection of investors.

Fourth, the Commission is adding Rule 902(c)(7), which prohibits a registered SDR from disseminating any information regarding the allocation of a security-based swap. As discussed in more detail in Section VIII, *infra,* the Commission has determined that, to comply with this prohibition, a registered SDR will satisfy its public dissemination obligations for a security-based swap involving allocation by disseminating only the aggregate notional amount of the executed bunched order that is subsequently allocated. The Commission believes that this is an appropriate means of public dissemination, because the price and size of the executed bunched order were negotiated as if the transaction were a single large trade, rather than as individual smaller trades. In the Commission's view, public dissemination of the allocations would not enhance price discovery because the allocations are not individually negotiated.[405] Furthermore, although the Commission has taken the approach in other situations of requiring public dissemination of the transaction but with a condition flag to explain the special circumstances related to the transaction,[406] for the reasons stated above, the Commission does not believe that this approach is appropriate here. Rule 902(c)(7)'s exception to public dissemination for the individual allocations also is designed to address commenter concerns that publicly disseminating the sizes of individual allocations could reveal the identities or business strategies of fund groups that execute trades on behalf of multiple client funds.[407] For similar reasons, Rule 902(c)(7), as adopted, prohibits a registered SDR from publicly disseminating the fact that an initial security-based swap has been terminated and replaced with several smaller security-based swaps as part of the allocation process.[408] The Commission believes that any marginal benefit of publicly disseminating this type of termination event would not be justified by the potential risk to the identity or business strategies of fund groups that execute trades on behalf of multiple client funds.[409]

Registered SDRs will need to rely on the information provided by reporting sides to determine whether Rule 902(c) excludes a particular report from public dissemination. As described in more detail in Section VI(G), Rule 907(a)(4)(iv) requires a registered SDR, among other things, to establish and maintain written policies and procedures directing its participants to apply to the transaction report a condition flag designated by the registered SDR to indicate when the report of a transaction covered by Rule 902(c) should not be publicly disseminated.[410] A registered SDR would not be liable for a violation of Rule 902(c) if it disseminated a report of a transaction that fell within Rule 902(c) if the reporting side for that transaction failed to appropriately flag the transaction as required by Rule 907(a)(4).

2. Other Exclusions From Public Dissemination Sought by Commenters

Several commenters advanced arguments against public dissemination of various types of security-based swaps. The Commission notes at the outset that the statutory provisions that require public dissemination of security-based swap transactions state that all security-based swaps shall be publicly disseminated.

a. Customized Security-Based Swaps

Several commenters expressed the view that transaction information regarding customized security-based swaps should not be publicly disseminated because doing so would not enhance price discovery, would be of limited use to the public, or could be confusing or misleading to market observers.[411] However, one commenter urged the Commission to require public dissemination of all of the information necessary to calculate the price of a customized security-based swap.[412]

Section 13(m)(1)(C) of the Exchange Act[413] authorizes the Commission to provide by rule for the public availability of security-based swap transaction, volume, and pricing data for four types of security-based swaps, which together comprise the complete universe of potential security-based swaps. With respect to ''security-based swaps that are not cleared at a registered clearing agency and which are reported to a security-based swap data repository''—which category would include customized or bespoke security-

[405] The size in which a transaction is executed could significantly affect the price of the security-based swap. Thus, all other things being equal, the price negotiated for a large trade could be significantly different from the price negotiated for a small trade. Publicly disseminating the prices of small trades that are allocated from the bunched order execution might not provide any price discovery value for another small trade if it were to be negotiated individually. Nor does the Commission believe that publicly disseminating the prices and sizes of the allocations would provide any more price discovery than a single print of the bunched order execution, because the allocations result from a single negotiation for the bunched order size. However, if ''child'' transactions of a larger ''parent'' transaction are priced differently from the parent transaction, these child transactions would not fall within the exclusion in Rule 902(c)(7).

[406] *See infra* Section IX (discussing requirements for public dissemination of inter-affiliate security-based swaps).

[407] *See* MFA I at 2–3 (''we are concerned that post-allocation [security-based swap] data, if publicly disseminated, will allow any of the fund's counterparties to identify transactions that the fund executed with others. Counterparties are often aware of an investment manager's standard fund allocation methodology and therefore, reporting transactions at the allocated level with trade execution time will make evident an allocation scheme that other participants can easily associate with a particular investment manager'').

[408] Ordinarily, the termination of a security-based swap that has been publicly disseminated would itself be an event that must be publicly disseminated. *See* Rule 902(a) (generally providing that a registered SDR shall publicly disseminate a transaction report of a security-based swap ''or a life cycle event or adjustment due to a life cycle event'' immediately upon receiving an appropriate transaction report).

[409] For the reasons noted above, the Commission believes that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to exclude these types of information from public dissemination under Regulation SBSR.

[410] Rule 907(a)(4) provides registered SDRs with some discretion in determining how a reporting side must flag reported data that will be excluded from public dissemination. *See infra* Section VI(G).

[411] *See* Barclays Letter at 3; Cleary II at 6, 16 (stating that public reporting of customized security-based swaps would not aid price discovery, and that the Commission should require the public dissemination of key terms of a customized transaction and an indication that it is customized); DTCC II at 9 (noting the difficulty of comparing price data across transactions that are non-standard and have different terms); ISDA/SIFMA I at 11 (stating that customized security-based swaps provide little to no price discovery value and should not be subject to public dissemination); MFA I at 3 (arguing that Congress did not intend to require public dissemination of comprehensive information for customized security-based swaps and that price discovery serves a purpose only if there is a broad market for the relevant transaction, which is not the case with customized security-based swaps).

[412] *See* Better Markets I at 7; Better Markets II at 3 (stating that many transactions characterized as too complex for reporting or dissemination are, in fact, composites of more straightforward transactions, and that there should be disclosure of information concerning these components to provide meaningful transparency and to prevent market participants from avoiding disclosure by creating composite transactions).

[413] 15 U.S.C. 13(m)(1)(C)(iii).

based swaps—Section 13(m)(1)(C) provides that ''the Commission *shall require real-time public reporting for such transactions,* in a manner that does not disclose the business transactions and market positions of any person'' (emphasis added).

The Commission does not believe that the commenters who argued against disseminating reports of bespoke transactions have provided sufficient justification for an exception to public dissemination. To the contrary, the Commission believes that dissemination of transaction reports of customized security-based swaps could still provide useful information to market observers. Although all of the material elements of a bespoke transaction necessary to understand the market value might not be publicly disseminated, it is an overstatement to argue categorically that bespoke transactions would have no price discovery value, as certain commenters suggested.[414] The disseminated price could, for example, still have an anchoring effect on price expectations for future negotiations in similar or related products, even in thinly-traded markets. Furthermore, even if it is difficult to compare price data across customized transactions, by disseminating reports of all bespoke transactions, market observers can understand the relative number and aggregate notional amounts of transactions in bespoke products versus standardized products.

The Commission recognizes, however, that market observers should have information that permits them to readily distinguish transactions in standardized products from transactions in bespoke security-based swaps. Accordingly, Rule 901(c)(1)(v) provides that, when reporting a transaction to a registered SDR, the reporting side must attach a flag to indicate whether a security-based swap is customized to the extent that the other information provided pursuant to Rule 901(c) does not provide all of the material information necessary to identify the security-based swap or does not contain the data elements necessary to calculate the price of the security-based swap. In addition, final Rule 907(a)(4) requires a registered SDR to establish policies and procedures concerning the use of appropriate flags on disseminated transaction reports that are designed to assist market observers in interpreting the relevance of a transaction.

b. Inter-Affiliate Transactions

Several commenters argued that the Commission should not require public dissemination of inter-affiliate security-based swaps. Issues relating to regulatory reporting and public dissemination of inter-affiliate transactions are discussed in Section IX, *infra.*

c. Security-Based Swaps Entered Into in Connection With a Clearing Member's Default

One commenter argued that reports of security-based swaps effected in connection with a clearing agency's default management processes following the default of a clearing member should not be publicly disseminated in real time.[415] This commenter believed that public dissemination of these transactions could undermine a clearing agency's default management processes and have a negative effect on market stability, particularly because a default likely would occur during stressed market conditions. Accordingly, the commenter recommended that reports of security-based swaps entered into in connection with a clearing agency's default management processes be made available to the Commission in real time but not publicly disseminated until after the default management processes have been completed, as the Commission determines appropriate.

The Commission believes that, at present, the commenter's concerns are addressed by the Commission's approach for the interim phase of Regulation SBSR, which offers reporting sides up to 24 hours after the time of execution to report a security-based swap.[416] The Commission believes that this approach strikes an appropriate balance between promoting post-trade transparency and facilitating the default management process, and is broadly consistent with the commenter's suggestion to allow for public dissemination after the default management process has been completed. Further, the commenter suggested that such transactions typically occur in large size; thus, transactions entered into by surviving clearing members might qualify for any block exception, if the Commission were to promulgate such an exception in the future. The Commission intends to revisit the commenter's concern in connection with its consideration of block thresholds and other potential rules relating to block trades.

d. Total Return Security-Based Swaps

Three commenters argued that there should be no public dissemination of total return security-based swaps (''TRSs''), which offer risks and returns proportional to a position in a security, securities, or loan(s) on which a TRS is based.[417] One of these commenters argued that ''TRS pricing information is of no value to the market because it is driven by many considerations including the funding levels of the counterparties to the TRS and therefore may not provide information about the underlying asset for the TRS.'' [418] Another commenter suggested that the fact that TRSs are hedged in the cash market, where trades are publicly disseminated, would mitigate the incremental price discovery benefit of public dissemination of the TRSs.[419] Similarly, a third commenter argued that requiring public dissemination of an equity TRS transaction would not enhance transparency, and could confuse market participants, because the hedging transactions are already publicly disseminated.[420]

The Commission has carefully considered these comments but believes that these commenters have not provided sufficient justification to support a blanket exclusion from public dissemination for TRSs. The Commission believes, rather, that market observers should be given an opportunity to decide how to interpret the relevance of a disseminated trade to the state of the market, and reiterates that relevant statutory provisions state that all security-based swaps shall be publicly disseminated. These statutory provisions do not by their terms distinguish such public dissemination

[414] *See supra* note 411.

[415] *See* LCH.Clearnet Letter at 2 (explaining that, to manage a defaulting clearing member's portfolio, a clearing agency would rely on its non-defaulting members to provide liquidity for a small number of large transactions that would be required to hedge the defaulting member's portfolio, and the ability of non-defaulting members to provide liquidity for these transactions would be impaired if the transactions were reported publicly before the members had an opportunity to mitigate the risks of the transactions).

[416] *See* Rule 901(j); Section VII(B), *infra.* If 24 hours after the time of execution would fall on a day that is not a business day, reporting would be required by the same time on the next day that is a business day.

[417] *See* Barclays Letter at 2–3; Cleary II at 13–14; ISDA/SIFMA I at 13.

[418] ISDA/SIFMA I at 13.

[419] *See* Cleary II at 13–14. The primary concern of this commenter with respect to equity TRSs was the proposed exclusion of equity TRSs from the reporting delay for block trades. *See id.* The Commission expects to consider this comment in connection with its consideration of rules for block trades.

[420] *See* Barclays Letter at 3. The commenter also expressed more general concerns regarding the potential consequences of reduced liquidity in the equity TRS market, noting that if liquidity in the equity TRS market is impaired, liquidity takers could migrate away from a diversified universe of security-based swap counterparties to a more concentrated group of prime brokers, which could increase systemic risk by concentrating large risk positions with a small number of prime brokers. *See* Barclays Letter at 8.

based on particular characteristics of a security-based swap.

The Commission also has considered the argument advanced by one of the commenters that requiring instantaneous public dissemination of an equity TRS transaction could confuse market participants, because the hedging transactions are already publicly disseminated.[421] The Commission disagrees that dissemination of both transactions (*i.e.,* the initial transaction and the hedge) would cause confusion. In other securities markets, public dissemination of initial transactions and their hedges occur on a regular basis.[422] Valuable information could be obtained by observing whether transactions in related products executed close in time have the same or different prices.[423] The commenter who expressed concerns about potential negative consequences of reduced liquidity in the equity TRS market provided no evidence to support its claim.[424]

e. Transactions Resulting From Portfolio Compression

One group of commenters argued that transactions resulting from portfolio compression exercises do not reflect trading activity, contain no market information, and thus should be excluded from public dissemination.[425] One member of that group requested clarification that only trades representing the end result of a netting or compression would need to be reported. This commenter expressed the view that publicly disseminating original transactions as well as the transactions that result from netting or compression would result in double-counting and could present a distorted view of the market.[426]

The Commission recognizes that portfolio compression is designed to mitigate risk between counterparties by reducing gross exposures, and any new security-based swaps executed as a result reflect existing net exposures and might not afford market participants an opportunity to negotiate new terms. Nevertheless, there may be some value in allowing market observers to see how often portfolio compressions occur and how much net exposure is left after much of the gross exposure is terminated. Furthermore, it is possible that new positions arising from a compression exercise could be repriced, and thus offer new and useful pricing information to market observers. Therefore, the Commission is not convinced that there would be so little value in disseminating such transactions that they all should be excluded from public dissemination, even though the original transactions that are netted or compressed may previously have been publicly disseminated. With respect to the commenter's concern regarding double-counting, the Commission notes that Rule 907(a)(4) requires a registered SDR to have policies and procedures for flagging special circumstances surrounding certain transactions, which could include transactions resulting from portfolio compression. The Commission believes that market observers should have the ability to assess reports of transactions resulting from portfolio compressions, and that a condition flag identifying a transaction as the result of a portfolio compression exercise would help to avoid double-counting.

f. Thinly Traded Products

Three commenters expressed concern about the potential impact of real-time public dissemination on thinly traded products.[427] One of these commenters suggested that ''security-based swaps traded by fewer than ten market makers per month should be treated as illiquid and subject to public reporting only on a weekly basis.''[428] The Commission disagrees with this suggestion. In other classes of securities—*e.g.,* listed equity securities, OTC equity securities, listed options, corporate bonds, municipal bonds—all transactions are disseminated in real time, and there is no delayed reporting for products that have only a limited number of market makers. The Commission is not aware of characteristics of the security-based swap market that are sufficiently different from those other markets to warrant delayed reporting because of the number of market makers. Furthermore, given the high degree of concentration in the U.S. security-based swap market, many products have fewer than ten market makers. Thus, the commenter's suggestion—if accepted by the Commission—could result in delayed reporting for a substantial percentage of security-based swap transactions, which would run counter to Title VII's goal of having real-time public dissemination for all security-based swaps (except for block trades). Finally, as noted above, the Title VII provisions that mandate public dissemination on a real-time basis do not make any exception for security-based swaps based on the number of market makers.

Another commenter expressed concern that mandating real-time reporting of thinly-traded products and illiquid markets could increase the price of entering into a derivatives contract to hedge risk by facilitating speculative front-running.[429] Another commenter expressed concern about the impact of real-time post-trade transparency for illiquid security-based swaps on pre-trade transparency that currently exists in the form of indicative prices provided by dealers to their clients (known as ''runs'').[430] This commenter requested that the Commission provide illiquid security-based swaps with an exception from real-time reporting and instead allow for delays roughly commensurate with the trading frequency of the security-based swap.[431] Under the adopted rules, counterparties generally will have up to 24 hours after the time of execution to report security-based swap transactions. This reporting timeframe is designed, in part, to minimize the potential for market disruption resulting from public dissemination of any security-based swap transaction during the interim phase of Regulation SBSR. The Commission anticipates that, during the interim period, it will collect and analyze data concerning the sizes of transactions that potentially affect liquidity in different segments of the market in connection with considering block thresholds.

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[421] *See* Barclays Letter at 3.

[422] For example, a trade in a listed single-stock option is frequently hedged by a trade in the underlying stock. Each trade is disseminated via the relevant consolidated tape.

[423] For example, a difference in prices between an equity TRS and the underlying securities might suggest mispricing of either leg of the trade, signaling to market participants the existence of economic rents they could subsequently compete away. Additionally, price discrepancies also could be related to fees or liquidity premiums charged by equity TRS dealers. *See infra* Section XXII(B)(2)(a).

[424] *See* Barclays Letter at 8.

[425] *See* ISDA/SIFMA I at 12. *See also* DTCC II at 20 (stating, with respect to portfolio compression activities, that ''an exact pricing at individual trade level between parties is not meaningful and, therefore, these transactions should not be disseminated''); ISDA IV at 13.

[426] *See* ISDA I at 4–5.

[427] *See* Bachus/Lucas Letter at 2; ISDA IV at 14; UBS Letter at 1. These comments also are discussed in Section VII(B) *infra.*

[428] UBS Letter at 1, note 5.

[429] *See* Bachus/Lucas Letter at 2.

[430] *See* ISDA IV at 14 (expressing concern that the combination of name-attributed runs and a rapidly disseminated set of post-trade information would make it relatively easy for many participants to reconstruct the identity of parties to a particular transaction, which may reduce dealers' willingness to disseminate pre-trade price information in the form of runs, thereby reducing pre-trade transparency).

[431] *See id.*

E. Dissemination of Block Transactions—Rule 902(b)

Rule 902(b), as proposed and re-proposed, would have required a registered SDR to publicly disseminate a transaction report for a block trade (except for the notional amount of the transaction) immediately upon receipt of the information about the block trade from the reporting party, along with the transaction ID and an indicator that the report represented a block trade. Rule 902(b) would further have required the registered SDR to disseminate a complete transaction report for the block trade, including the full notional amount of the transaction, within specified timeframes ranging from eight to 26 hours after execution, depending on the time when the security-based swap was executed. Thus, under Rule 902(b), as proposed and re-proposed, market participants would learn the price of a security-based swap block trade in real time, and would learn the full notional amount of the transaction on a delayed basis.[432]

For the reasons discussed in detail in Section VII(B), *infra,* the Commission is not adopting Rule 902(b).

F. The Embargo Rule—Rule 902(d)

Rule 902(d), as proposed, would have provided that ''[n]o person other than a registered security-based swap data repository shall make available to one or more persons (other than a counterparty) transaction information relating to a security-based swap before the earlier of 15 minutes after the time of execution of the security-based swap; or the time that a registered security-based swap data repository publicly disseminates a report of that security-based swap.'' In other words, the information about the security-based swap transaction would be ''embargoed'' until a registered SDR has in fact publicly disseminated a report of the transaction (or until such time as a transaction should have been publicly disseminated). Rule 902(d) is also referred to as the ''Embargo Rule.'' Rule 902(d) was not revised as part of the Cross-Border Proposing Release, and was re-proposed in exactly the same form as had been initially proposed.

Under Regulation SBSR, only registered SDRs must publicly disseminate security-based swap transaction data to the public. However, other persons with knowledge of a transaction—the counterparties themselves or the venue on which a transaction is executed—also might wish to disclose information about the transaction to third parties (whether for commercial benefit or otherwise). An unfair competitive advantage could result if some market participants could obtain security-based swap transaction information before others. Regulation SBSR, by carrying out the Congressional mandate to publicly disseminate all security-based swap transactions, is intended to reduce information asymmetries in the security-based swap market and to provide all market participants with better information—and better access to information—to make investment decisions. Therefore, the Commission proposed Rule 902(d), which would have imposed a partial and temporary restriction on sources of security-based swap transaction information other than registered SDRs.

Three commenters supported the view that market participants (including SB SEFs) should not be permitted to distribute their security-based swap transaction information before such information is disseminated by a registered SDR.[433] However, three other commenters strongly opposed the proposed Embargo Rule.[434] Other commenters expressed a concern that the proposed Embargo Rule would make it more difficult for SB SEFs to offer ''work-up'' [435] functionality.[436] This ''work-up'' process, according to one of the commenters, is designed to foster liquidity in the security-based swap market and to facilitate the execution of larger-sized transactions.[437]

The Commission has carefully reviewed the comments received and has determined to revise the Embargo Rule to provide that the act of sending a report to a registered SDR—not the act of the registered SDR actually disseminating it—releases the embargo. Rule 902(d), as adopted, provides: ''No person shall make available to one or more persons (other than a counterparty *or a post-trade processor*) transaction information relating to a security-based swap *before the primary trade information about the security-based swap is sent to a registered security-based swap data repository*'' (emphasis added).

The Commission agrees with the majority of commenters that it would be beneficial for security-based swap market participants to have the ability to disseminate and receive transaction data without being constrained by the time when a registered SDR disseminates the transaction information. The Commission understands that, in some cases, entities that are likely to become SB SEFs may want to broadcast trades executed electronically across their platforms to all subscribers, because knowing that two counterparties have executed a trade at a particular price can, in some cases, catalyze trading by other counterparties at the same price. Allowing dissemination of transaction information to occur simultaneously

[432] The only difference between Rule 902(b) as proposed and as re-proposed was that the term ''reporting party'' was changed to ''reporting side.''

[433] *See* Markit II at 4 (stating that if SB SEFs were permitted to disseminate data elements of a security-based swap transaction, confusion and data fragmentation would inevitably result, which would ultimately undermine the goal of increased transparency); Barnard I at 4 (stating that market participants should be prohibited from distributing their market data prior to the dissemination of that data by a registered SDR to prevent the development of a two-tier market); ISDA IV at 17 (stating that ''it is unclear why any person should be allowed to make the data available to another market data source ahead of the time that [an SDR] is allowed to publicly disseminate such transaction,'' and recommending that proposed Rule 902(d) be revised to refer only to the time that an SDR disseminates a report of the security-based swap).

[434] *See* GFI Letter at 2; SDMA II at 4; WMBAA Letter at 8–9.

[435] *See* GFI Letter at 3 (''A typical workup transaction begins when two market participants agree to transact at a certain price and quantity. The transaction does not necessarily end there, however, and the two participants then have the opportunity to transact further volume at the already-established price. Thereafter, other market participants may join the trade and transact with either the original counterparties to the trade or with other firms if they agree to trade further volume at the established price''); SDMA II at 3 (''Trade work ups are a common practice in which the broker looks for additional trading interest at the same time a trade is occurring—or ''flashing'' on the screen—in the same security at the same price. The ability to view the price of a trade as it is occurring is critical to broker's ability to locate additional trading interest. The immediate flash to the marketplace increases the probability that additional buyers and sellers, of smaller or larger size, will trade the same security at the same time and price''); WMBAA II at 3 (''Work-up enables traders to assess the markets in real-time and make real-time decisions on trading activity, without the fear of moving the market one way or another'').

[436] *See* GFI Letter at 3; SDMA II at 3 (if ''the SB SEF is prohibited from 'flashing' the price of a trade as it occurs and the brokers must wait until after the SB SDR has disclosed the price, the broker's window of opportunity to locate additional trading interest will close''); WMBAA II at 3.

[437] *See* GFI Letter at 3.

with transmission to a registered SDR will allow SB SEF participants to see last-sale information for the particular markets on which they are trading, which could facilitate the work-up process and thus enhance price discovery.

One commenter expressed concern, however, that permitting the distribution of market data prior to dissemination of the information by a registered SDR could result in the development of a two-tier market.[438] Although the Commission generally shares the commenter's concern about information asymmetries, the Commission does not believe that Rule 902(d), as adopted, raises that concern. Certain market participants might learn of a completed transaction before others who rely on public dissemination through a registered SDR. However, the time lag is likely to be very small because Rule 902(a) requires a registered SDR to publicly disseminate a transaction report ''immediately upon receipt of information about the security-based swap.'' The Commission understands that, under the current market structure, trading in security-based swaps occurs for the most part manually (rather than through algorithmic means) and infrequently. Thus, obtaining knowledge of a completed transaction through private means a short time before others learn of the transaction from a registered SDR is unlikely, for the foreseeable future, to provide a significant advantage. Furthermore, as discussed above regarding the ''work-up'' process, the most likely recipients of direct information about the completed transaction are other participants of the SB SEF. Thus, an important segment of the market—*i.e.,* competitors of the counterparties to the original transaction in the work up who are most likely to have an interest in trading the same or similar products—are still benefitting from post-trade transparency, even if it comes via the work-up process on the SB SEF rather than through a registered SDR.

Two commenters raised arguments related to the ownership of the security-based swap transaction data and were concerned that the proposed Embargo Rule would place improper restrictions on the use of security-based swap market data.[439] One of these commenters recommended that the Commission revise the Embargo Rule ''in such a way that . . . the security-based swap counterparties and SB SEFs [would] continue to have the ability to market and commercialize their own proprietary data.'' [440] The other commenter recommended that the Commission make clear that nothing in the final rules is intended ''to impose or imply any limit on the ability of market participants . . . to use and/or commercialize data they create or receive in connection with the execution or reporting of swap data.'' [441]

The Commission declines to revise Rule 902(d) in the manner suggested by these commenters. As the Commission notes in the SDR Adopting Release, ''the issue of who owns the data is not particularly clear cut, particularly when value is added to it.'' [442] If the Commission were to revise the rule in the manner suggested by commenters, it would seem to make a presumption about who owns the data, which may be viewed as the Commission favoring one business model over another. As further noted in the SDR Adopting Release, the Commission does not support any particular business model [443] and, therefore, does not believe it is necessary or appropriate to revise the rule as suggested by these commenters.

As originally proposed, the Embargo Rule had an exception for disseminating the transaction information to counterparties, as the counterparties to the transaction should be allowed to receive information about their own security-based swap transactions irrespective of whether such information has been reported to or disseminated by a registered SDR. However, two commenters noted that SB SEFs also will need to provide transaction data to entities involved in post-trade processing, irrespective of whether the embargo has been lifted.[444] The Commission recognizes that, after a trade is executed, there are certain entities that perform post-trade services—such as matching, confirmation, and reporting—that may need to receive the transaction information before it is sent to a registered SDR. For example, a third party could not act as agent in reporting a transaction to a registered SDR on behalf of a reporting side if it could not receive information about the executed transaction before it was submitted to the registered SDR. In the Regulation SBSR Proposing Release, the Commission stated that counterparties to a security-based swap could rely on agents to report security-based swap data on their behalf.[445] Without an exception, such use of agents could be impeded, an action the Commission did not intend. Accordingly, the Commission is revising the Embargo Rule to add an explicit exception for ''post-trade processors.'' The Commission is also adding a new paragraph (x) to final Rule 900, which defines ''post-trade processor'' as ''any person that provides affirmation, confirmation, matching, reporting, or clearing services for a security-based swap transaction.''

Finally, one commenter recommended a carve-out from Rule 902(d) not only for counterparties, but also for their affiliates, ''to allow for internal communication of SBS data.'' [446] Rule 902(d)—as proposed, re-proposed, and adopted—includes a carve-out for counterparties, which could include affiliates, to the extent that an affiliate is an indirect counterparty as defined in Rule 900. The Commission continues to believe that it is necessary for counterparties to know when they have executed a trade. The Commission further notes that Rule 902(d), as adopted, contains an exception for post-trade processors,[447] which could include post-trade processors that are affiliates of the counterparties. Thus, Rule 902(d) would not prohibit a counterparty to a security-based swap transaction from providing the transaction information to an affiliate before providing it to a registered SDR, if that affiliate will serve as the counterparty's agent for reporting the transaction to the registered SDR. However, Rule 902—as proposed, re-proposed, and adopted—includes no broad carve-out for all affiliates of the counterparties. The Commission does not see a basis for allowing such a broad

[438] *See* Barnard I at 4.

[439] *See* WMBAA II at 8; Tradeweb Letter II at 6.

[440] WMBAA II at 8.

[441] Tradeweb Letter II at 6.

[442] SDR Adopting Release, Section VI(D)(3)(c)(iii) (citing difficulties associated with determining ownership of data as one of several reasons for not adopting, at this time, a rule prohibiting an SDR and its affiliates from using, for commercial purposes, security-based swap data that the SDR maintains without obtaining express written consent from both counterparties to the security-based swap transaction or the reporting party). *See also* Securities Exchange Act Release 63825 (February 2, 2011), 76 FR 10948 (February 28, 2011) at 10961–7 (''SB SEF Proposing Release'') (discussing the proposed imposition of certain requirements on SB SEFs with respect to services provided and fees charged).

[443] *See* SDR Adopting Release, Section III(D) (discussing business models of SDRs).

[444] *See* BlackRock Letter at 9; ISDA IV at 17 (recommending a carve-out from Rule 902(d) for third-party service providers that one or both counterparties use for execution, confirmation, trade reporting, portfolio reconciliation and other services that do not include the public dissemination of security-based swap data).

[445] *See* 75 FR 75211–12.

[446] ISDA IV at 17.

[447] *See* Rule 900(x) (defining ''post-trade processor'' as ''any person that provides affirmation, confirmation, matching, reporting, or clearing services for a security-based swap transaction'').

exception for all affiliates, which could undermine the purpose of Rule 902(d), as discussed above.

G. Condition Flags—Rule 907(a)(4)

Rule 907(a)(4), as originally proposed, would have required a registered SDR to establish and maintain written policies and procedures ''describing how reporting parties shall report and, consistent with the enhancement of price discovery, how the registered security-based swap depository shall publicly disseminate, reports of, and adjustments due to, life cycle events; security-based swap transactions that do not involve an opportunity to negotiate any material terms, other than the counterparty; and any other security-based swap transactions that, in the estimation of the registered security-based swap data depository, do not accurately reflect the market.'' The Commission re-proposed Rule 907(a)(4) in the Cross-Border Proposing Release with only minor technical revisions.[448]

One commenter expressed the view that a registered SDR should have the flexibility to determine and apply special indicators.[449] Another commenter suggested that, to be meaningfully transparent, security-based swap transaction data should include ''condition flags'' comparable to those used in the bond market.[450] As discussed more fully below, the Commission agrees that such ''condition flags'' could provide additional transparency to the security-based swap market. The Commission believes that the condition flags that registered SDRs will develop pursuant to final Rule 907(a)(4) could provide information similar to the information provided by the condition flags used in the bond market. The registered SDR's condition flags could include, for example, flags indicating that a security-based swap was an inter-affiliate transaction or a transaction entered into as part of a trade compression.

A third commenter suggested that a registered SDR should not have discretion to determine whether a particular transaction reflects the market, as the registered SDR may not have sufficient information to make such a determination.[451] The Commission agrees with the commenter that a registered SDR may not have sufficient information to ascertain whether a particular transaction ''do[es] not accurately reflect the market,'' as would have been required under Rule 907(a)(4), as originally proposed. Therefore, the Commission will not require the registered SDR to have policies and procedures for attaching an indicator that merely conveys that the transaction, in the estimation of the registered SDR, does not accurately reflect the market.

Instead, the Commission believes that requiring the registered SDR to provide information about any special circumstances associated with a transaction report could help market observers better understand the report and enhance transparency. For example, Rule 901(c)(1)(v), as adopted, requires a reporting side to attach a flag if a security-based swap is customized to the extent that other information provided for the swap does not provide all of the material information necessary to identify the customized security-based swap or does not contain the data elements necessary to calculate the price.[452] In addition, Rule 905(b)(2), as adopted, requires a registered SDR that receives a correction to information that it previously disseminated publicly to publicly disseminate a corrected transaction report with an indication that the report relates to a previously disseminated transaction.[453]

The Commission, therefore, is adopting Rule 907(a)(4) with certain additional language to respond to the comments and to clarify how Rule 907(a)(4) should apply in circumstances contemplated by but not fully addressed in the original proposal or the re-proposal. The Commission has revised Rule 907(a)(4) as follows: New subparagraph (i) requires the registered SDR to have policies and procedures for ''identifying characteristic(s) of a security-based swap, or circumstances associated with the execution or reporting of the security-based swap, that could, in the fair and reasonable estimation of the registered security-based swap data repository, cause a person without knowledge of these characteristic(s) or circumstances to receive a distorted view of the market.'' This language retains the idea that the appropriate characteristics or circumstances remain ''in the estimation of'' the registered SDR, but requires the SDR's exercise of this discretion to be ''fair and reasonable'' to emphasize that the estimation should not result in flags that would not allow market observers to better understand the transaction reports that are publicly disseminated. Rule 907(a)(4)(i), as adopted, also widens the scope of transactions to which the provision applies.[454] This provision grants a registered SDR the flexibility to determine which special circumstances require flags and to change that determination over time, if warranted.[455] Subparagraph (ii) provides that the registered SDR's policies and procedures must ''establish[ ] flags to denote such characteristic(s) or circumstance(s),'' explicitly incorporating the concept of condition flags suggested by the commenter.[456] Subparagraph (iii) requires policies and procedures ''directing participants to apply such flags, as appropriate, in their reports'' to the registered SDR. Finally, subparagraph (iv) requires these policies and procedures to address, in part, ''applying such flags to disseminated reports to help to prevent a distorted view of the market.''

The Commission also is adopting Rule 907(a)(4) with certain additional language in subparagraph (iv) that clarifies the handling of security-based swap information that is required to be reported under Rule 901 but which a registered SDR is required by Rule 902(c) not to publicly disseminate. As noted above, even in the initial proposal, the Commission contemplated that certain information would fall into this category.[457] Rule 907(a), as originally proposed, would have required a registered SDR to establish and maintain policies and procedures that addressed, among other things, the public dissemination of security-based swap data. Carrying out that duty in a manner consistent with Rule 902—and, in particular, with Rule 902(c)—will necessarily require a registered SDR to differentiate reported information that is required to be publicly disseminated from reported information that is

[448] The Commission changed the words ''reporting parties'' to ''reporting sides'' and ''depository'' to ''repository.''

[449] *See* Barnard I at 3.

[450] *See* MarkitSERV I at 10.

[451] *See* DTCC II at 20.

[452] *See supra* Section II(B)(2)(b)(vi).

[453] *See infra* Section XX(B).

[454] This revision to Rule 907(a)(4) also removes the references to public dissemination of life cycle events that were proposed and re-proposed. These references have been relocated to final Rule 907(a)(3). Rule 907(a)(3), as proposed and re-proposed, addressed only the reporting and public dissemination of error reports. Life cycle events are similar to error reports in that they reflect new information that relates to a previously executed security-based swap. Therefore, Rule 907(a)(3), as adopted, now requires a registered SDR to have policies and procedures for ''specifying procedures for reporting life cycle events and corrections to previously submitted information, making corresponding updates or corrections to transaction records, and applying an appropriate flag to the transaction report to indicate that the report is an error correction required to be disseminated by [Rule 905(b)(2)] or is a life cycle event, or any adjustment due to a life cycle event, required to be disseminated by [Rule 902(a)].'' *See infra* Section XII(C).

[455] *See* Barnard I at 3.

[456] *See* MarkitSERV I at 10.

[457] *See* Regulation SBSR Proposing Release, 75 FR 75234–35.

required not to be publicly disseminated.[458] The new language in final Rule 907(a)(4)(iv)(B) calls attention to this particular requirement. Rule 907(a)(4)(iv)(B), as adopted, requires the registered SDR to have policies and procedures for suppressing from public dissemination a transaction referenced in Rule 902(c).[459]

In addition to the requirements for indications in the case of error reports or bespoke transactions, the Commission believes that registered SDRs generally should include the following in its list of condition flags:

• *Inter-affiliate security-based swaps.* As discussed in detail in Section VI(D), *infra,* the Commission is not exempting inter-affiliate transactions from public dissemination. However, the Commission believes it could be misleading if market observers did not understand that a transaction involves affiliated counterparties.

• *Transactions resulting from netting or compression exercises.*[460] The Commission believes that market observers should be made aware that these transactions are related to previously existing transactions and generally do not represent new risks being assumed by the counterparties.

• *Transactions resulting from a ''forced trading session'' conducted by a clearing agency.*[461] The Commission believes that it would be helpful for market observers to understand that such transactions may not be available to market participants outside of the forced trading session.

• *Transactions reported more than 24 hours after execution.* The Commission believes that there is price discovery value in disseminating the transaction report, particularly in cases where there are few or no other recent last-sale reports in that product. However, all market observers should understand that the report is no longer timely and thus may not reflect the current market at the time of dissemination.

• *Transactions resulting from default of a clearing member.* The Commission believes that the fact that the transaction was necessitated by a clearing agency's need to have surviving clearing members assume the positions of a defaulting clearing member is important information about understanding the transaction and market conditions generally.

• *Package trades.* ''Package trade'' is a colloquial term for a multi-legged transaction of which a security-based swap constitutes one or more legs. Market observers should be made aware that the reported price of a security-based swap that is part of a package trade might reflect other factors—such as the exchange of an instrument that is not a security-based swap—that are not reflected in the transaction report of the security-based swap itself.

This list is by way of example and not of limitation. There are likely to be other types of transactions or circumstances associated with particular transactions that may warrant a condition flag. The Commission anticipates that each registered SDR will revise its list over time as the security-based swap market evolves and registered SDRs and market participants gain greater insight into how to maximize the effectiveness of publicly disseminated transaction reports.

VII. Block Trades and the Interim Phase of Regulation SBSR

Section 13m(1)(E) of the Exchange Act[462] requires the Commission rule for real-time public dissemination of security-based swap transactions to: (1) ''Specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts'' and (2) ''specify the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public.'' In addition, Section 13m(1)(E)(iv) of the Exchange Act[463] requires the Commission rule for real-time public dissemination of security-based swap transactions to contain provisions that ''take into account whether the public disclosure [of transaction and pricing data for security-based swaps] will materially reduce market liquidity.''[464]

As discussed further below, the Commission is neither proposing nor adopting rules relating to block trades at this time. However, the rules, as adopted, establish an interim phase of Regulation SBSR. During this first phase, as described below, reporting sides—with certain minor exceptions—will have up to 24 hours (''T+24 hours'') after the time of execution to report a transaction. The registered SDR that receives the transaction information would then be required to publicly

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[458] One commenter noted its view that Rule 907(a)(4), as proposed, seemed to delegate to the discretion of the SDR whether and how certain security-based swap activity would be publicly disseminated, and requested that the Commission clearly establish in Regulation SBSR that certain security-based swap activity is not subject to public dissemination. *See* ISDA IV at 13. The Commission believes that the rules as adopted do clearly establish what security-based swap activity is not subject to public dissemination. Rule 902(a), as adopted, requires the registered SDR to publicly disseminate a transaction report of a security-based swap, or a life cycle event or adjustment due to a life cycle event, immediately upon receipt of information about the security-based swap, except as provided in Rule 902(c). Rule 902(c) provides a list of information and types of security-based swap transactions that a registered security-based swap shall not disseminate. *See supra* Section VI(D).

[459] Under Rule 907(a)(4)(iv), the registered SDR's policies and procedures must direct the reporting side to apply appropriate flags to transaction reports. In the case of a report falling within Rule 902(c), the reporting side for the relevant transaction is required to use the flag that signals to the registered SDR that the report should not be publicly disseminated. The Commission notes that Rule 907(a)(4) affords registered SDRs some discretion to determine precisely how a reporting side must flag reported data that will be excluded from public dissemination under Rule 902(c). For example, a registered SDR may determine not to require a specific ''do not disseminate'' tag for historical security-based swaps if it is clear from context that they are historical security-based swaps and not current transactions. As described in Section VI(D) above, the Commission does not believe that a registered SDR would violate Rule 902(c) if it disseminated a report of a transaction that fell within Rule 902(c) if the reporting side fails to appropriately flag the transaction.

[460] This applies only to transactions resulting from netting or compression exercises other than through a registered clearing agency. Security-based swaps resulting from netting or compression exercises carried out by a registered clearing agency are not subject to public dissemination. *See* Rule 902(c)(6). *See also supra* Section VI(D)(1) (explaining Rule 902(c)(6)); Section VI(D)(2)(v) (explaining why the Commission believes that transactions resulting from portfolio compression—other than clearing transactions—should be publicly disseminated).

[461] Entities that the Commission previously exempted from certain Exchange Act requirements, including clearing agency registration, have informed the Commission that they undertake ''forced trading'' sessions in order to promote accuracy in the end-of-day valuation process. *See, e.g.,* Securities Exchange Act Release No. 59527 (March 6, 2009), 74 FR 10791, 10796 (March 12, 2009) (Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With Request on Behalf of ICE U.S. Trust LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments) (describing ''forced trading sessions'' conducted by a clearing agency as follows: ''ICE Trust represents that, in connection with its clearing and risk management process, it will calculate an end-of-day settlement price for each Cleared CDS in which an ICE Trust Participant has a cleared position, based on prices submitted by ICE Trust Participants. As part of this mark-to-market process, ICE Trust will periodically require ICE Trust Participants to execute certain CDS trades at the applicable end-of-day settlement price. Requiring ICE Trust Participants to trade CDS periodically in this manner is designed to help ensure that such submitted prices reflect each ICE Trust Participant's best assessment of the value of each of its open positions in Cleared CDS on a daily basis'').

[462] 15 U.S.C. 78m(m)(1)(E).

[463] 15 U.S.C. 78m(m)(1)(E)(iv).

[464] These statutory mandates apply only with respect to *cleared* security-based swaps. The Dodd-Frank Act does not require the Commission to specify block thresholds or dissemination delays or to take into account how public disclosure will materially reduce market liquidity with respect to *uncleared* security-based swaps. For security-based swaps that are not cleared but are reported to an SDR or the Commission under Section 3C(a)(6) of the Exchange Act, ''the Commission shall require real-time public reporting for such transactions, in a manner that does not disclose the business transactions and market positions of any person.'' 15 U.S.C. 78m(1)(C)(iii).

disseminate a report of the transaction immediately thereafter.

The Commission recognizes that the introduction of mandated post-trade transparency in the security-based swap market could have a significant impact on market participant behavior and the provision of liquidity. The interim phase is designed, among other things, to generate information about how market participants behave in an environment with post-trade transparency. Furthermore, once the first phase is implemented, reporting sides will be required under Regulation SBSR to report, among other things, the time of execution of their security-based swap transactions. As described in a staff analysis of the inventory management of dealers in the market for single-name CDS based on transaction data from DTCC–TIW, security-based swap transaction data currently stored in DTCC–TIW include the time of reporting, but not the time of the execution.[465] Having the execution time instead of only the reporting time will enable staff to perform a more robust and granular analysis of any hedging that may or may not occur within the first 24-hour period after execution. After collecting and analyzing data that are more granular and reflect the reactions of market participants to T+24 hour post-trade transparency, the Commission anticipates that it will undertake further rulemaking to propose and adopt rules related to block trades and the reporting and public dissemination timeframe for non-block trades.

A. Proposed Rules Regarding Block Trades

The Commission did not propose specific thresholds for block trades in the Regulation SBSR Proposing Release. Instead, the Commission described general criteria that it would consider when setting specific block trade thresholds in the future.[466] The Commission stated that it ''preliminarily believes that the general criteria for what constitutes a large notional security-based swap transaction must be specified in a way that takes into account whether public disclosure of such transactions would materially reduce market liquidity, but presumably should be balanced by the general mandate of Section 13(m)(1) of the Exchange Act, which provides that data on security-based swap transactions must be publicly disseminated in real time, and in a form that enhances price discovery.'' [467] The Commission further stated: ''For post-trade transparency to have a negative impact on liquidity, market participants would need to be affected in a way that either: (1) Impacted their desire to engage in subsequent transactions unrelated to the first; or (2) impacted their ability to follow through with further actions after the reported transaction has been completed that they feel are a necessary consequence of the reported transaction.'' [468]

The Commission noted, with respect to the first case, that post-trade dissemination of transaction prices could lead to narrower spreads and reduce participants' willingness to trade. However, the Commission noted that liquidity could be enhanced if market participants increased their trading activity as a result of the new information. Because it would be difficult, if not impossible, to estimate with certainty which factor would prevail in the evolving security-based swap market, the Commission was guided by the general mandate of Section 13(m)(1) and the Commission's preliminary belief that even in illiquid markets, transaction prices form the foundation of price discovery.[469] Therefore, the Commission proposed that prices for block trades be disseminated in the same fashion as prices for non-block transactions.

The Commission noted that, in the second case, counterparties may intend to take further action after an initial transaction for hedging purposes. The Commission believed that, for a transaction that was sufficiently large, disseminating the size of such a transaction could signal to the market that there is the potential for another large transaction in a particular security-based swap or related security.[470] Therefore, in order to give the market time to absorb any subsequent transactions, the Commission stated that it preliminarily believed that the size of a sufficiently large transaction should be suppressed for a certain period of time to provide time for subsequent transactions.[471]

In the Regulation SBSR Proposing Release, the Commission noted a variety of metrics that could be used to determine whether a security-based swap transaction should be considered a block trade.[472] They included: (1) The absolute size of the transaction; (2) the size of the transaction relative to other similar transactions; (3) the size of the transaction relative to some measure of overall volume for that security-based swap instrument; and (4) the size of the transaction relative to some measure of overall volumes for the security or securities underlying the security-based swap.[473] The Commission stated that the metric should be chosen in a way that minimizes inadvertent signaling to the market of potential large follow-on transactions.[474]

Although the Commission did not propose block thresholds, the Commission did propose two ''waves'' of public dissemination of block trades for when it had adopted block thresholds. Rule 902(b), as proposed and re-proposed, would have required a registered SDR to publicly disseminate a transaction report of a security-based swap that constitutes a block trade immediately upon receipt of information about the block trade from the reporting party. The transaction report would have been required to consist of all the information reported pursuant to Rule 901(c)—except for the notional amount—plus the transaction ID and an indicator that the report represents a block trade. The second wave would have required the registered SDR to publicly disseminate a complete transaction report for the block trade (including the transaction ID and the full notional amount) between 8 and 26 hours after the execution of the block trade. Thus, under Rule 902(b), as proposed and re-proposed, market participants would have learned the price and all other primary trade

[465] *See* ''Inventory risk management by dealers in the single-name credit default swap market'' (October 17, 2014) at 5, available at *http://www.sec.gov/comments/s7-34-10/s73410-184.pdf* (''Hedging Analysis'').

[466] *See* Regulation SBSR Proposing Release, 75 FR 75228.

[467] *Id.* at 75228–29.

[468] *Id.* at 75229.

[469] *See id.*

[470] *See id.*

[471] *See id.*

[472] The Commission considered several tests including a percentage test (the top N-percent of trade would be considered block) and set forth data from the Depository Trust Clearing Corporation (''DTCC'') regarding single-name corporate CDS and single name sovereign CDS. The Commission noted that the observed trade sizes would suggest certain cut-off points when considering single-name corporate CDS or sovereigns as a whole. The Commission also noted, however, that there may still be differences in liquidity between individual corporates and sovereigns, as well as linkages between the underlying cash markets and the CDS markets that a simple percentage or threshold test would not capture. In addition, the Commission's Division of Risk, Strategy, and Financial Innovation (which has been renamed the Division of Economic and Risk Analysis) prepared an analysis of several different block trade criteria in January 2011, based on the same DTCC data. The analysis examined fixed minimum notional amount thresholds; dynamic volume-based thresholds based on the aggregate notional amount of all executions in a CDS instrument over the past 30 calendar days; and a combination of dynamic volume-based thresholds and fixed minimum thresholds of $10 and $25 million, respectively. *See id.* at 75230–31.

[473] *See id.*

[474] *See id.*

information (except notional amount) about a block trade in real time, and the full notional amount of the transaction on a delayed basis.[475] Registered SDRs would have been responsible for calculating the specific block thresholds based on the formula established by the Commission and publicizing those thresholds, but the Commission emphasized that a registered SDR would be performing ''mechanical, non-subjective calculations'' when determining block trade thresholds.[476]

The Commission proposed and re-proposed a variety of other provisions related to block trades. Proposed Rule 900 defined ''block trade'' to mean a large notional security-based swap transaction that satisfied the criteria in Rule 907(b). Proposed Rule 907(b) would have required a registered SDR to establish and maintain written policies and procedures for calculating and publicizing block trade thresholds for security-based swaps in accordance with the criteria and formula for determining block size specified by the Commission. Proposed Rule 907(b)(2) also would have provided that a registered SDR should not designate as a block trade: (1) Any security-based swap that is an equity total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the security-based swap is based; or (2) any security-based swap contemplated by Section 13(m)(1)(C)(iv) of the Exchange Act.[477]

B. Potential Impact on Liquidity

The Commission received several comments addressing the issue of timing for public dissemination and the potential impact of public dissemination on liquidity. The commenters vary significantly in their views on this issue. One commenter stated that the proposed timeframes for publicly disseminating security-based swap transaction reports would not materially reduce market liquidity.[478] Another commenter, however, expressed the view that ''[t]here is insufficient liquidity in the single-name credit default swap market to support real-time public dissemination of non-block transaction data for all but a handful of instruments without creating price moving events.'' [479] A third commenter expressed concern that real-time security-based swap reporting, ''if implemented without adequate safeguards, could unnecessarily increase the price of entering into a derivatives contract to hedge risk'' [480] and cautioned that requiring real-time reporting of thinly traded products in illiquid markets in an effort to compel derivatives to trade similarly to exchange-listed products represented ''a fundamentally flawed approach that demonstrates a lack of understanding of the existing market structure.'' [481] A fourth commenter expressed concern about the impact of real-time post-trade transparency for illiquid security-based swaps on pre-trade transparency that currently exists in the form of indicative prices provided by dealers to their clients (known as ''runs'').[482] This commenter requested that the Commission provide illiquid security-based swaps with an exception from real-time reporting and instead allow for delays roughly commensurate with the trading frequency of the security-based swap.[483]

In addition, several commenters raised concerns about the effect of an improperly designed block trade regime.[484] One commenter stated that an appropriate block exemption is critical to the successful implementation of Title VII.[485] Several commenters expressed the view that improper block thresholds or definitions would adversely impact liquidity.[486] One commenter noted that the SEC and CFTC's proposed block trade rules would adversely impact liquidity.[487] By contrast, one commenter recommended that the Commission consider that increased transparency of trades that are large relative to the liquidity of the product may attract new entrants to the market and may result in increased liquidity.[488]

The Commission has considered these comments as well as the statutory requirement that the Commission rule for public dissemination of security-based swap transactions contain provisions that ''take into account whether the public disclosure [of transaction and pricing data for security-based swaps] will materially reduce market liquidity.'' [489] The Commission is adopting these final rules for regulatory reporting and public dissemination of security-based swaps with a view toward implementing additional rules in one or more subsequent phases to define block thresholds and to revisit the timeframes for reporting and public dissemination of block and non-block trades. This approach is designed to increase post-trade transparency in the security-based swap market—even in its initial phase—while generating new data that could be studied in determining appropriate block thresholds after the initial phase. The Commission also considered several comments related to the timing of public dissemination and believes that at present the commenters' concerns are appropriately addressed by the Commission's adoption of T+24 hour reporting during the interim phase.

During this phase, the reporting side will have up to 24 hours after the time of execution of a security-based swap transaction to report it to a registered

[475] Rule 902(b)(3), as proposed and re-proposed, would have provided that, if a registered SDR was closed when it otherwise would be required to disseminate information concerning a block trade, the registered SDR would be required to disseminate the information immediately upon re-opening.

[476] *See* Regulation SBSR Proposing Release, 75 FR 75228.

[477] 15 U.S.C. 78m(m)(1)(C)(iv) (''With respect to security-based swaps that are determined to be required to be cleared under section 78c–3(b) of this title but are not cleared, the Commission shall require real-time public reporting for such transactions'').

[478] *See* Barnard I at 2.

[479] UBS Letter at 1.

[480] Bachus/Lucas Letter at 2.

[481] *Id.*

[482] *See* ISDA IV at 14 (expressing concern that the combination of name-attributed runs and a rapidly disseminated set of post-trade information would make it relatively easy for many participants to reconstruct the identity of parties to a particular transaction, which might reduce dealers' willingness to disseminate pre-trade price information in the form of runs, thereby reducing pre-trade transparency).

[483] *See id.,* note 21 (stating, for example, that a 24-hour delay would be appropriate for a security-based swap that trades, on average, once per day, and security-based swap that trades 10 times per day could be reported in real time).

[484] *See* Barclays Letter at 8; BlackRock Letter at 8, note 10; Cleary I at 10–11; Cleary II at 2; Institutional Investors Letter at 4; ISDA/SIFMA I at 2; ISDA/SIFMA Block Trade Study at 6; ISDA/SIFMA II at 8; J.P. Morgan Letter at 5; WMBAA I at 3.

[485] *See* ISDA/SIFMA I at 2.

[486] *See* Barclays Letter at 8 (stating that overly broad block trade thresholds could adversely impact the liquidity and pricing of security-based swaps); J.P. Morgan Letter at 5 (stating that liquidity may be significantly reduced if too few trades receive block treatment); BlackRock Letter at 8, note 10 (expressing concern that it could become infeasible for market participants to enter into block trades for some products if the Commissions fail to balance liquidity and price transparency correctly); Institutional Investors Letter at 4 (noting, with specific reference to the CFTC's proposed rules, that the benefits of large trades could be negated, and institutional investors' costs increased, if block trade sizes were set too high); ISDA/SIFMA II at 8 (stating that an overly restrictive definition of block trade has great potential to adversely affect the ability to execute and hedge large transactions); WMBAA I at 3 (expressing the view that block trade thresholds ''be set at such a level that trading may continue without impacting market participants' ability to exit or hedge their trades'').

[487] *See* Cleary II at 2.

[488] *See* GETCO Letter at 1–2.

[489] 15 U.S.C. 78m(m)(1)(E). However, this mandate applies only with respect to cleared security-based swaps. No provision of Title VII requires the Commission to specify block thresholds or dissemination delays, or to take into account how public disclosure will materially reduce market liquidity, for uncleared security-based swaps.

SDR, regardless of its notional amount.[490] The registered SDR will be required, for all dissemination-eligible transactions,[491] to publicly disseminate a report of the transaction immediately upon receipt of the information. Even with the T+24 reporting of transactions, the Commission anticipates being able to collect significant new information about how market participants behave in an environment with post-trade transparency, which will inform the Commission's analysis and effort to determine what block thresholds and time delays may be appropriate.

In developing a regulatory regime for post-trade transparency in the security-based swap market, the Commission is cognizant of rules adopted by the CFTC to provide for post-trade transparency in the swap market. Commission staff analyzed the effect of the adoption of post-trade transparency in the swap market, which is regulated by the CFTC.[492] That analysis shows no discernible empirical evidence of economically meaningful effects of the introduction of post-trade transparency in the swap market at this time. In particular, the study did not find negative effects such as reduced trading activity. Based on this analysis, the Commission believes that post-trade transparency does not seem to have a negative effect on liquidity and market activity in the swap market.[493]

1. T+24 Hour Reporting for All Transactions

The Commission initially proposed to require reporting to a registered SDR of the primary trade information of all security-based swaps ''as soon as technologically practicable, but in no event later than 15 minutes after the time of execution of the security-based swap transaction.'' [494] For all dissemination-eligible transactions other than block trades, the registered SDR would have been required to publicly disseminate a report of the transaction immediately and automatically upon receipt of the transaction. As proposed, block trades would have been subject to two-part dissemination: (1) An initial report with suppressed notional amount disseminated in real-time; and (2) a full report including notional amount disseminated between 8 to 26 hours after execution.[495]

Commenters expressed mixed views regarding the proposed reporting timeframes. Two commenters generally supported them.[496] However, several commenters stated that, at least in the near term, it would be difficult to comply with the reporting timeframes as proposed.[497] One of these commenters argued, for example, that the benefits of providing security-based swap information within minutes of execution did not outweigh the infrastructure costs of building a mechanism to report in real time, particularly given the likelihood of errors.[498] Another commenter expressed concern that ''the 15 minute limit is not technologically practicable under existing communications and data infrastructure.'' [499]

Commenters also advocated that the Commission phase-in reporting deadlines over time, similar to the implementation model for TRACE, to allow regulators to assess the impact of post-trade transparency on the security-based swap market.[500] One commenter noted that phased-in implementation would allow regulators to assess the impact of transparency on the security-based swap market and make adjustments, if necessary, to the timing of dissemination and the data that is disseminated.[501] Other commenters echoed the belief that a phased approach would allow the Commission to assess the impact of public reporting on liquidity in the security-based swap market, monitor changes in the market, and adjust the reporting rules, if necessary.[502]

Three commenters recommended a 24-hour delay for reporting block trades,[503] and one recommended a delay of at least five days with an indefinite delay of full notional size.[504] Of those commenters, two also suggested that the delay could be reduced or refined after the Commission gathers additional information about the security-based swap market.[505] In contrast, two commenters recommended block delays as short as 15 minutes.[506] In addition,

[490] For a security-based swap that is subject to regulatory reporting and public dissemination solely by operation of Rule 908(a)(1)(ii), however, a reporting side is required to report the information required under Rules 901(c) and 901(d) within 24 hours of acceptance for clearing. *See* Rule 901(j); Section XV(C)(4), *infra.*

[491] *See* Rule 902(c) (setting forth certain types of security-based swaps that are not to be publicly disseminated).

[492] *See* ''Analysis of post-trade transparency under the CFTC regime'' (October 17, 2014), available at *http://www.sec.gov/comments/s7-34-10/s73410-183.pdf* (''Analysis of Post-Trade Transparency''). *See also infra* Sections XXII(C)(2)(b), XXII(C)(2)(c), XXII(C)(3)(a), and XXII(D)(4)(b). The one comment that the Commission received on the Analysis of Post-Trade Transparency did not directly address the staff's analysis. This comment is discussed in notes 688 and 1011, *infra.*

[493] *See* Analysis of Post-Trade Transparency at 1 (''While we acknowledge that there are significant differences between the index [credit default swap] market and the security-based swap market, the data analysis presented here may enhance the Commission's understanding of the potential economic effects of mandated post-trade transparency in the security-based swap market'').

[494] *See* Rules 901(c) and 900 (definition of ''real time''), as originally proposed.

[495] Rule 902(b)(1), as proposed and re-proposed, would have provided: ''If the security-based swap was executed on or after 05:00 UTC and before 23:00 UTC of the same day, the transaction report [for the block trade] (including the transaction ID and the full notional amount) shall be disseminated at 07:00 UTC of the following day.'' Proposed Rule 902(b)(2) would have provided: ''If the security-based swap was executed on or after 23:00 UTC and up to 05:00 UTC of the following day, the transaction report (including the transaction ID and the full notional size) shall be disseminated at 13:00 UTC of that following day.'' Those block trades executed at the end of each window would receive an 8 hour dissemination delay and those blocks executed at 5:00 UTC would receive a 26 hour dissemination delay. The delay for all other block trades would vary between 8 and 26 hours, depending on the time of execution.

[496] *See* FINRA Letter at 2 (supporting the Commission's proposal to require reporting as soon as technologically practicable, but in no event later than 15 minutes after the time of execution); Barnard I at 3 (recommending full post-trade transparency as soon as technologically and practicably feasible, with an exemption permitting delayed reporting for block trades).

[497] *See* DTCC II at 9–10; ICI I at 4–5; ISDA III at 1 (''Not all market participants have the ability to report within 15 or 30 minutes of execution''); MarkitSERV I at 9 (''complying with a strict 15-minute deadline even for non-electronically executed or confirmed trades will require significant additional implementation efforts by the industry at a time when resources are already stretched in order to meet other requirements under the [Dodd-Frank Act]''); MFA I at 5.

[498] *See* MFA I at 5.

[499] ICI I at 4.

[500] *See* Barnard I at 4; CCMR I at 2; Cleary II at 18–21; DTCC II at 9–10, 24–25; DTCC III at 10; DTCC IV at 8–9; Roundtable Letter at 4–9; FINRA Letter at 4–5; Institutional Investors Letter at 3; ISDA/SIFMA I at 9–10; ISDA/SIFMA Block Trade Study at 2, 7; MarkitSERV I at 9–10; MFA Recommended Timeline at 1; UBS Letter at 2–3; WMBAA III at 4–6. Based on its experience with industry-wide processes, one commenter suggested that there could be a ''shake-out'' period during which problems with reported data could surface. The commenter urged the Commission to consider this possibility and provide a means to assure that information is of high quality before dissemination is permitted. *See* DTCC II at 9–10.

[501] *See* FINRA Letter at 5. *See also* ISDA/SIFMA Block Trade Study at 2 (stating that phased implementation would provide regulators with time to test and refine preliminary standards).

[502] *See* CCMR I at 2; Cleary II at 19; ISDA/SIFMA Block Trade Study at 2; UBS Letter at 2.

[503] *See* ICI I at 3; SIFMA I at 5 (''a 24-hour delay would better ensure that block liquidity providers are able to offset their risk regardless of the time during the trading day at which the block is executed''); Vanguard Letter at 4; Viola Letter at 2 (''At a minimum, the data in question should be delayed from the public reporting requirements at least one (1) day after the trade date''). *Cf.* Phoenix Letter at 4 (recommending end-of-day dissemination of block trades).

[504] *See* ISDA IV at 16.

[505] *See* ICI I at 3–4; Vanguard Letter at 4, note 3.

[506] *See* Better Markets I at 5–6 and at 4–5 (stating that no compelling economic justification exists for delaying the immediate public dissemination of any data regarding block trades, and that the minimum duration of any delay in reporting block trades

Continued

several commenters opposed two-part transaction reporting for block trades. These commenters believed that *all* information about a block trade, including the notional amount of the transaction, should be subject to a dissemination delay to provide liquidity providers with adequate time to hedge their positions.[507] Two commenters recommended initially setting block sizes low and over time collecting data to determine an appropriate block trade size.[508]

In addition, Commission staff has undertaken an analysis of the inventory management of dealers in the market for single-name CDS based on transaction data from DTCC–TIW.[509] The analysis, in line with prior studies of hedging in this market,[510] shows that, after most large transactions between a dealer and customer are executed, dealers do not appear to hedge resulting exposures by executing offsetting transactions (either with other dealers or other customers) in the same single-name CDS. In instances where dealers appear to hedge resulting exposures following a large trade in single-name CDS written on the same reference entity, they generally do so within a maximum of 24 hours after executing the original trade.

One commenter responded to this analysis, asserting that dealers, rather than hedging security-based swap exposures using offsetting transactions in the same instruments, might choose instead to hedge their security-based swap exposures in related assets, and that these types of hedging behaviors were not measured in the Commission staff analysis. The commenter further suggested that the use of cross-market hedges could be particularly important for transactions in single-name CDS that are especially illiquid.[511] The Commission acknowledges that the staff's analysis was limited to same-instrument hedging.[512] However, the Commission notes that, to the extent that security-based swap positions can be hedged using other assets—as the commenter suggests—these additional opportunities would suggest that dealers would likely need less time to hedge than if hedging opportunities existed only within the security-based swap market.

In view of these comments and the staff analysis, the Commission is modifying Regulation SBSR's timeframes for reporting security-based swap transaction information as follows. First, Rules 901(c) and 901(d), as adopted, require reporting sides to report the information enumerated in those rules ''within the timeframe specified in paragraph (j) of this section''—*i.e.,* by Rule 901(j). Rule 901(j), as adopted, provides that the reporting timeframe for Rules 901(c) and 901(d) shall be ''within 24 hours after the time of execution (or acceptance for clearing in the case of a security-based swap that is subject to regulatory reporting and public dissemination solely by operation of § 242.908(a)(1)(ii)), or, if 24 hours after the time of execution or acceptance for clearing, as applicable, would fall on a day that is not a business day, by the same time on the next day that is a business day.'' Under Rule 902(a), as adopted, the registered SDR that receives the transaction report from the reporting side is required, as proposed and re-proposed, to publicly disseminate a report of that transaction immediately upon receipt. The Commission believes that this approach will improve post-trade transparency and respond to commenters' concerns. In particular, the Commission believes that this approach addresses concerns relating to potential market impact, the ability to report in real time, and the length of delay for dissemination of block trade information.[513] Thus, the T+24 hour approach is designed to improve post-trade transparency in the security-based swap market in the near term, while generating additional data that the Commission can evaluate in considering appropriate treatment of block trades.

At this time, the Commission is not adopting the provisions of proposed and re-proposed Rule 902 that would have provided for real-time public dissemination of non-block trades. However, the Commission is adopting, substantially as proposed and re-proposed, what was originally designed to be the second wave of block dissemination—*i.e.,* disseminating the full trade details, including the true notional amount, at one of two points in the day (either 07:00 or 13:00 UTC) after an initial report of the transaction (without the notional amount) had been disseminated in real time.[514] The Commission is now simplifying that approach by eliminating the idea of ''batch dissemination'' at two points during the day, and instead allowing for T+24 hour reporting for all transactions, regardless of the time of execution. Furthermore, in the absence of a standard to differentiate block from non-block transactions, the Commission believes that it is appropriate to require the same T+24 hour reporting for all transactions.[515]

This interim phase is designed to allow the accumulation of empirical

should be ''far shorter'' than the delays included in Regulation SBSR); Better Markets III at 4–5; SDMA Letter at 2.

[507] *See* Cleary II at 12 (even without disclosure of the notional amount, observers may be able to infer information about a trade and predict subsequent hedging activity); Goldman Sachs Letter at 6 (disclosure of the fact that a block trade occurred could still impact liquidity); ICI I at 2 (recommending a delay of all block trade information); ISDA/SIFMA I at 3 (delaying disclosure of notional amount is only a ''partial solution''); SIFMA I at 3–4 (all block trade information should be delayed, otherwise immediate trade signaling could harm end users); Vanguard Letter at 2, 4 (all block trades should be delayed 24 hours, and establishment of a block regime should be delayed until the Commission has had time to assess how reporting affects the market).

[508] *See* Institutional Investors Letter at 4; MFA Recommended Timeline at 4.

[509] *See* Hedging Analysis.

[510] *See* Kathryn Chen, *et al.,* Federal Reserve Bank of New York Staff Report, *An Analysis of CDS Transactions: Implications for Public Reporting* (September 2011), available at *http://www.newyorkfed.org/research/staff_reports/sr517.html,* last visited September 22, 2014. *See also http://www.dtcc.com/repository-otc-data.aspx*, last visited September 22, 2014. This study uses an earlier sample of DTCC–TIW transaction data to identify hedging of transactions in single-name CDS. They find little evidence of hedging via offsetting trades in the same instrument and conclude by saying that ''requiring same day reporting of CDS trading activity may not significantly disrupt same day hedging activity, since little such activity occurs in the same instrument.''

[511] *See* ISDA IV at 15 (stating that ''participants may enter into risk mitigating transactions using other products that are more readily available at the time of the initial trade (for example CD index product [*sic*], CDS in related reference entities, bonds or loans issued by the reference entity or a related entity, equities or equity options)''). In addition, the commenter stated that it ''interprets the data in the study to imply that such temporary hedges in other asset classes (rather than offsetting transactions in the precise reference entity originally traded) are the norm for an illiquid market.'' *See id.*

[512] *See* Chen *et al., supra* note 510, at 6. Like the Chen *et al.* report, which was cited by the commenter, the Commission staff analysis did not incorporate data that would allow it to identify hedging in corporate bonds or equities, because appropriate data were not available. The commenter did not provide any analysis, rationale, or data demonstrating how public dissemination of a single-name CDS transaction within 24 hours would negatively impact a dealer from being able to hedge this exposure in another market, such as a broad-based CDS index.

[513] Although two commenters advocated shorter block trade delays, the Commission believes that it would be prudent to allow for the accumulation of additional data about the effect of post-trade transparency on the security-based swap market before considering shorter reporting and dissemination timeframes for block trades. The Commission may consider shorter timeframes in the future but believes that it is neither necessary nor appropriate to adopt these commenters' recommendations at this time.

[514] *See* Rule 902(b), as proposed and re-proposed.

[515] As discussed in more detail in Section VII(B)(3), *infra,* if 24 hours after the time of execution would fall on a non-business day (*i.e.,* a Saturday, Sunday, or U.S. federal holiday), reporting would instead be required by the same time on the next business day.

data and is consistent with various comments that emphasized the need for further study and analysis of empirical data prior to establishing block trading rules.[516] Several commenters noted that implementing the rules requiring reporting to registered SDRs prior to the block trading rules would provide security-based swap transaction data (in addition to historical data) that could be used in the formation of block trade thresholds.[517] One of these commenters stated, for example, that it would be premature to adopt block trade thresholds prior to the commencement of reporting to registered SDRs because SDR reporting would increase the amount of information available across various markets and asset classes.[518] Commenters also recommended several methods for obtaining and analyzing empirical data,[519] including independent academic research[520] and a review of a statistically significant data set for each security-based swap category.[521]

Although more data and analyses about executed transactions are now available than when the Commission originally issued the Regulation SBSR Proposing Release,[522] these data provide limited insights into how post-trade transparency might affect market behavior if executed transactions were to become publicly known on a real-time or near-real-time basis.[523] The Commission has information from DTCC–TIW about most CDS trades over the past few years [524] and can analyze the frequency of execution and the notional trade sizes. However, the Commission believes that these data permit only speculative inferences about the potential market impact of those trades being made public. Currently, there is little post-trade transparency in the security-based swap market, so the current trading generally is informed only imperfectly, if at all, about earlier trading.

Several aspects of the Commission's adopted rules are designed to help facilitate the collection of data relating to how post-trade transparency affects market behavior. The Commission is adopting, as re-proposed, the requirement that the trade report include the time of execution and the requirement that the registered SDR mark the time that it receives the trade report. These requirements are designed to help inform the Commission as to the length of time between the execution of a transaction and when the transaction is reported to a registered SDR, which should provide useful data to the Commission in analyzing trends in reporting timeframes. These timeframes would provide some insight into the beliefs of market participants regarding the length of the reporting delay that they deem necessary to minimize the market impact of a transaction. Observing trades being reported to a registered SDR with varying delays after execution could provide the Commission with greater insight as to what market participants consider to be market-impacting trades. Further, the Commission believes that this approach would address, during the interim phase, the concerns of the commenters who believed that a public dissemination regime with inappropriately low block trade thresholds could harm market liquidity, and those who argued that market participants would need an extended period of time to comply with the requirements to report within shorter timeframes.

Although any participant could take the full 24 hours to report a given trade, there may be incentives to submit trade reports in substantially less than 24 hours. The Commission understands that, in some cases, entities that are likely to become SB SEFs (''pre-SEFs'') may want to broadcast trades executed electronically across their platforms to all subscribers in order to catalyze trading by other counterparties at the same price.[525] This ''work-up'' process, according to a commenter, is designed to foster liquidity in the security-based swap market and to facilitate the execution of larger-sized transactions.[526] If pre-SEFs and their participants want to continue their current practices and broadcast a subset of their executed trades across the platform in real time to facilitate work-ups, they will be subject to Rule 902(d), which embargos transaction information until the information is transmitted to a registered SDR.[527] Therefore, any pre-SEF or user of a pre-SEF that wants to continue to have real-time information about a completed trade broadcast as part of a work-up must ensure that the initial transaction is reported to a registered SDR no later than the time at which it is broadcast to users of the pre-SEF.

In response to commenters who advocated shorter reporting time frames or block trade delays, the Commission notes that it anticipates further refining the reporting timeframes when it proposes and implements final block

[516] *See* ABC Letter at 7–8; CCMR I at 4 (''The Commission should set the thresholds low at first in order to collect data that will enable them to make informed decisions about the final delay and threshold determinations''); Institutional Investors Letter at 4–5 (stating, in reference to the CFTC's proposed rules, that the marketplace currently lacks sufficient collection and analysis of swap trading data to establish block trade thresholds); ICI II at 8 (''We agree with the SEC that it should defer its proposed rulemaking regarding block thresholds until after SDRs register with the SEC and the SEC begins to receive and analyze data required to be reported under the final rules or until after SB swap transaction information begins to be publicly reported''); MFA I at 4 (recommending that the Commission study and obtain empirical evidence to determine block trade definitions for each asset class to assure that the final rules do not disrupt the markets or reduce liquidity); ISDA/SIFMA I at 4–5 (recommending significant detailed research, including independent academic research, before determining block size thresholds and reporting delays for particular security-based swap transactions); ISDA/SIFMA II at 8 (stating that market-based research and analysis should be employed to provide the basis for the determination of well-calibrated block trading exemption rules); SIFMA II at 8 (''Until a liquid SBS trading market develops on SB–SEFs and exchanges, the Commission will not be able to make informed decisions on the definition of a block or an appropriate public reporting time frame. For the same reason, real-time reporting should be implemented gradually. Block trade thresholds should be set at a low level at first, such that many trades are treated as blocks, and raised slowly by the Commission when doing so is supported by market data''). *But see* SDMA Letter at 3 (stating that swap transaction data are available today and block trade thresholds could be established without delay).

[517] *See* Institutional Investors Letter at 4 (recommending that the CFTC collect market data for one year before adopting rules relating to block trades); MFA II, Recommended Timeline at 4; WMBAA III at 6; FIA/FSF/ISDA/SIFMA Letter at 6.

[518] *See* FIA/FSF/ISDA/SIFMA Letter at 6, note 6.

[519] *See* ISDA/SIFMA I at 4; Goldman Sachs Letter at 5.

[520] *See* ISDA/SIFMA I at 4.

[521] *See* Goldman Sachs Letter at 5 (stating that the Commission could obtain the necessary data by asking large dealers to provide information on a confidential basis and supplementing that information with data obtained from a survey of other market participants).

[522] *See, e.g.,* Chen *et al., supra* note 510.

[523] *See* ICI II at 8 (''Any data on which the SEC could rely currently to develop a methodology for determining minimum block trade sizes will not adequately represent or reflect the swaps market once the Dodd-Frank requirements (including public reporting of swap data) are fully implemented''). Two commenters pointed to evidence suggesting negative effects of post-trade transparency in other securities markets. *See* ISDA/SIFMA Block Trade Study at 4–5 (stating that some studies had concluded that transparency had negatively impacted markets, including the Canadian stock markets and the London Stock Exchange); J.P. Morgan Letter at 2–4 (stating that anecdotal evidence reported in one study supported the view that institutional customers experienced less deep markets as a result of TRACE reporting, and that adverse impacts could be more substantial for CDS).

[524] *See http://www.dtcc.com/repository-otc-data.aspx* (last visited September 22, 2014) for a description of aggregated data disseminated by DTCC. *See also infra* Section XXII(B)(1) for a description of transaction data obtained by the Commission.

[525] *See supra* Section VI(F) (discussing Embargo Rule).

[526] *See* GFI Letter at 3.

[527] *See supra* Section VI(F).

trade rules, at which point reporting sides will have had more time to test and implement their reporting systems and processes. This approach was recommended by several commenters.[528]

2. Reporting Timeframe for Trades Executed Prior to Weekends or U.S. Federal Holidays

While most transactions will have 24 hours within which to be reported, Rule 901(j) also provides that, ''if 24 hours after the time of execution would fall on a day that is not a business day, [the transaction must be reported] by the same time on the next day that is a business day.'' The Commission's intent is to afford security-based swap counterparties—during the interim phase—the equivalent of at least an entire business day to hedge their positions, if they so desire, before the transaction must be reported and publicly disseminated. Without clarifying that, during the interim phase, reporting requirements fall only on business days, for a transaction executed on the day before a weekend or holiday, the counterparties would have less than the number of business hours of a regular business day to hedge a transaction if reporting were required within 24 hours of execution.

The Commission is also adopting a definition of ''business day'' to clarify the ''not a business day'' provision. ''Business day'' is defined in Rule 900(f) as ''a day, based on U.S. Eastern Time, other than a Saturday, Sunday, or a U.S. federal holiday.'' Counterparties to the trade may be in different time zones and/or jurisdictions; in the absence of Rule 900(f) there could be confusion about whether the ''not a business day'' provision referred to the jurisdiction and time zone of one side or the jurisdiction and time zone of the other. Because Regulation SBSR is designed to implement Title VII's regulatory reporting and public dissemination requirements for the U.S. security-based swap market, the Commission is designating U.S. Eastern Time (which may be either Eastern Standard Time or Eastern Daylight Time) as the time zone on which the reporting side should base its reporting for purposes of Rules 900(f) and 901(j). The Commission also is excluding U.S. federal holidays from the definition of ''business day.'' The following examples are designed to help explain the application of this provision:

- *Example 1.* A trader executes a trade at 04:59 UTC on Friday (11:59 p.m. EST on Thursday). This particular Friday is not a U.S. federal holiday. The reporting side must report by 04:59 UTC on Saturday (11:59 p.m. EST on Friday).
- *Example 2.* A trader executes a trade at 05:01 UTC on Friday (12:01 a.m. EST on Friday). The reporting side must report by 05:01 UTC on Monday (12:01 a.m. EST on Monday), provided that this particular Monday is not a U.S. federal holiday.
- *Example 3.* A trader executes a trade at 14:42 UTC on Friday (9:42 a.m. EST on Friday). The reporting side must report by 14:42 UTC on Monday (9:42 a.m. EST on Monday), provided that this particular Monday is not a U.S. federal holiday.
- *Example 4.* A trader executes a trade at 13:42 UTC on Friday (9:42 a.m. EDT on Friday). The following Monday is Labor Day, a U.S. federal holiday. The reporting party must report by 13:42 UTC on Tuesday (9:42 a.m. EDT on Tuesday).
- *Example 5.* A trader executes a trade at 16:45 UTC on Wednesday, November 26, 2014 (11:45 a.m. EST on Wednesday, November 26, 2014). Thursday, November 27, 2014 is Thanksgiving, a U.S. federal holiday. The reporting party must report by 16:45 UTC on Friday, November 28, 2014 (11:45 a.m. EST on Friday, November 28, 2014).
- *Example 6.* A trader executes a trade at 16:45 UTC on a Wednesday (11:45 a.m. EST on Wednesday). Thursday is not a U.S. federal holiday, but a large blizzard causes emergency closures in New York City and several other U.S. cities. The reporting party must report by 16:45 UTC on Thursday (11:45 a.m. EST on Thursday).

3. Other Revisions To Accommodate the Interim Phase

In addition to the changes noted above, the Commission is adopting the following technical changes to Regulation SBSR to implement the interim phase of reporting and public dissemination. First, the Commission is not adopting certain sections of rule text that referred to block trades and marking those sections as ''Reserved.'' Rule 900(c), as re-proposed, would have defined a ''block trade'' as a large notional security-based swap transaction that meets the criteria set forth in proposed Rule 907(b). Rule 907(b), as proposed and re-proposed, would have required a registered SDR to establish and maintain policies and procedures ''for calculating and publicizing block trade thresholds for all security-based swap instruments reported to the registered security-based swap data repository in accordance with the criteria and formula for determining block size as specified by the Commission.'' Rule 907(b), as proposed and re-proposed, also would have excluded equity TRS instruments and any security-based swap contemplated by Section 13(m)(1)(C)(iv) of the Exchange Act[529] from the definition of ''block trade.'' Because the Commission anticipates soliciting public comment on block thresholds and other rules related to block trades—including what role (if any) registered SDRs should play in calculating those thresholds—the Commission is not at this time defining the term ''block trade'' in Rule 900(c) or adopting Rule 907(b). Similarly, because the Commission is not at this time adopting the requirement to report in real time, the Commission is not adopting a definition of ''real time'' in Rule 900.

Second, the Commission has determined not to utilize the term ''security-based swap instrument''[530] in Regulation SBSR. The Commission devised the original definition of ''security-based swap instrument'' in connection with its overall analysis of the block trade issue. In the Regulation SBSR Proposing Release, the Commission stated its preliminary belief that it would not be appropriate to establish different block trade thresholds for similar instruments with different maturities. Thus, the proposed definition of ''security-based swap instrument'' did not include any distinction based on tenor or date until expiration.[531]

One commenter discussed the concept of security-based swap instruments in the context of its overall discussion of block trade issues.[532] The commenter argued that a different block size threshold would have to be

[528] *See* Institutional Investors Letter at 4 (recommending that the CFTC collect market data for one year before adopting rules relating to block trades); MFA II, Recommended Timeline at 4; WMBAA III at 6; FIA/FSF/ISDA/SIFMA Letter at 6 (appropriate block trade thresholds, and therefore real-time reporting requirements, can be established only after the commencement of SDR reporting to regulators and careful analysis of security-based swap market transaction data). This approach is also broadly consistent with the implementation of the TRACE system, which shortened reporting requirements over time. Several commenters recommended a phased reporting approach analogous to TRACE. *See* CCMR I at 2; Cleary II at 20; DTCC II at 9–10; FINRA Letter at 4–5; ISDA/SIFMA I at 10; ISDA/SIFMA Block Trade Study at 2; UBS Letter at 2–3; WMBAA II at 5.

[529] 15 U.S.C. 78m(m)(1)(C)(iv).

[530] Proposed Rule 900 would have defined ''security-based swap instrument'' to mean ''each security-based swap in the same asset class, with the same underlying reference asset, reference issuer, or reference index.'' This definition was included, without change, in re-proposed Rule 900(dd).

[531] *See* 75 FR 75231.

[532] *See* CCMR I at 3.

calculated for each category of security-based swap instrument, so the boundaries of those categories would greatly impact market participants' ability to engage in block trading. The commenter recommended, therefore, that instruments be classified in as few categories as possible.[533] Another commenter argued that the definition of ''security-based swap instrument'' ''should provide for more granular distinctions between different types of transaction within a single asset class to avoid grouping together transactions with quite different characteristics.'' [534]

The Commission anticipates soliciting public comment on block trade thresholds at a later date. Because the initial intent of the term ''security-based swap instrument'' was to delineate separate categories of security-based swaps that could have separate block trade thresholds, the Commission is not adopting the term ''security-based swap instrument'' at this time. The Commission anticipates soliciting public comment on whether and how to establish different categories of security-based swaps—and what, if any, block thresholds and dissemination delays will apply to those different categories—when it solicits comment on block thresholds.

Further, proposed Rule 902(b) would have specified the delay for dissemination of certain information about block trades to the public as well as what information a registered SDR should disseminate immediately. Because the Commission anticipates that it will re-propose all aspects of Regulation SBSR as they pertain to block trades, the Commission is not adopting Rule 902(b) at this time.

Rules 901(j), as adopted, require the reporting of both primary and secondary trade information, respectively, for a security-based swap no later than 24 hours after the time of execution (or acceptance for clearing in the case of a security-based swap that is subject to regulatory reporting and public dissemination solely by operation of Rule 908(a)(1)(ii)), or, if 24 hours after the time of execution or acceptance for clearing, as applicable, would fall on a day that is not a business day, by the same time on the next day that is a business day. Re-proposed Rule 901(d)(2) would have required the reporting side to report what final Rule 901(d) now terms the ''secondary trade information'' promptly, but in any event, no later than: (1) 15 minutes after the time of execution for a security-based swap that is executed and confirmed electronically; (2) 30 minutes after the time of execution for a security-based swap that is confirmed electronically but not executed electronically; or (3) 24 hours after the time of execution for a security-based swap that is not executed or confirmed electronically. In proposing these reporting timeframes, the Commission recognized that the amount of time required for counterparties to report the information required under proposed Rule 901(d)(1) depended upon, among other things, the extent to which the security-based swap was customized and whether the security-based swap was executed or confirmed electronically or manually.[535]

Generally, commenters' views regarding the regulatory reporting timeframes in proposed Rule 901(d)(2) were mixed. While some commenters expressed concerns that the proposed timeframes were too lenient or incentivized slower technologies,[536] other commenters expressed the view that the reporting timeframes in proposed Rule 901(d)(2) were not practicable.[537] One of these commenters noted the likelihood of errors if reporting timeframes were too short.[538] Another commenter urged the Commission to strike an appropriate balance between speed and accuracy in establishing timeframes for regulatory reporting.[539] One commenter suggested that, initially, the Rule 901(d) regulatory reporting timeframes should be set closer to current market capability, with electronically confirmable trades reported within 24 hours.[540] This commenter recommended a phase-in period to allow reporting parties to develop the necessary reporting capabilities, after which time shorter timeframes could be implemented.[541]

The Commission is not adopting the reporting timeframes proposed in Rule 901(d)(2), and is therefore renumbering Rule 901(d)(1) as Rule 901(d).[542] Because Rule 901(j), as adopted, allows reporting sides up to 24 hours to report the primary trade information pursuant to Rule 901(c) (or until the same time on the next business day if the trade occurs less than 24 hours before a weekend or federal holiday), the Commission believes that it is appropriate also to modify the timeframe for reporting the secondary trade information set forth in Rule 901(d) to harmonize with the Rule 901(c) requirement. Although both the primary and secondary trade information must be reported within 24 hours of the time of execution or acceptance for clearing, as applicable (or until the same time on the next business day if the trade occurs less than 24 hours before a weekend or federal holiday), Rule 901 does not require that all of the information enumerated in Rules 901(c) and 901(d) be provided in a single trade report. Thus, a reporting side could, if permitted by the policies and procedures of the relevant registered SDR, make an initial report of the primary trade information followed by a subsequent report containing secondary trade information, so long as both reports were provided within the timeframe prescribed by Rule 901(j).[543]

The Commission acknowledges the issues raised by the commenters regarding the proposed reporting timeframes, and, in particular, the concerns that unreasonably short reporting timeframes would result in the submission of inaccurate transaction information. The Commission believes that the 24-hour reporting timeframe being adopted in Rule 901(j) strikes an appropriate balance, for the interim phase, between the need for prompt reporting of security-based swap transaction information and allowing

[533] *See id.*

[534] ISDA/SIFMA I at 10.

[535] *See* Regulation SBSR Proposing Release, 75 FR 75219. The Commission believed that the information required under Rule 901(d)(1) would be available relatively quickly for a security-based swap that was executed and confirmed electronically because most of the required information would already be in an electronic format. On the other hand, the Commission recognized that, for security-based swaps that are not executed or confirmed electronically, additional time might be needed to systematize the information required under Rule 901(d)(1) and put it into the appropriate format. *See id.*

[536] *See* Better Markets I at 9 (noting that technology that would permit reporting within much shorter timeframes is widely available, and that market participants routinely adhere to much shorter timeframes for their own business and internal reporting); Tradeweb Letter at 5 (different reporting timeframes based on the method of execution potentially could create incentives for market participants not to take advantage of available technology); SDMA I at 3 (stating, with reference to the CFTC's proposed rules, that different reporting timeframes based on method of execution could create a 'race to the slowest' among swap execution facilities, with market participants favoring slower-reporting swap execution facilities over more efficient and transparent facilities).

[537] *See* MFA Letter at 5; DTCC II at 12.

[538] *See* MFA Letter at 5.

[539] *See* ISDA/SIFMA I at 9.

[540] *See* DTCC II at 12.

[541] *See id.*

[542] *See supra* Section II(C)(2).

[543] However, the registered SDR's policies and procedures adopted under Rule 907(a)(1) generally should explain to reporting sides how to report if all the security-based swap transaction data required by Rules 901(c) and 901(d) is being reported simultaneously, and how to report if responsive data are being provided at separate times. In the latter case, the registered SDR should provide the reporting side with the transaction ID after the reporting side reports the information required by Rule 901(c). The reporting side would then include the transaction ID with its submission of data required by Rule 901(d), thereby allowing the registered SDR to match the Rule 901(c) report with the subsequent Rule 901(d) report.

reporting entities sufficient time to develop fast and robust reporting capability. The Commission notes that some commenters supported a 24-hour reporting timeframe as consistent with existing industry reporting capability,[544] and believes that this timeframe addresses commenters' concerns that some elements of the required information might not be available within the initially proposed reporting timeframes.[545]

Finally, Rule 901(d)(2), as proposed and re-proposed, would have established reporting timeframes based on whether a security-based swap is executed and/or confirmed electronically. The term ''confirm'' appeared only in Rule 901(d)(2), as proposed and re-proposed.[546] Because this term does not appear in Rule 901(d)(2), as adopted, the Commission has determined not to adopt a definition for the term ''confirm'' in final Rule 900.[547]

4. Dissemination of Notional Amount

The Commission is mindful of comments expressing concern about dissemination of the full notional amount for block trades.[548] For example, two commenters expressed the view that disseminating the notional amount of a block trade could jeopardize the anonymity of the counterparties.[549] One commenter, who noted that TRACE never requires the dissemination of the exact notional amount of block transactions, suggested that the Commission had not fully explained its rationale for not adopting this approach for security-based swaps.[550] Numerous commenters supported dissemination of the notional amount of block trades through a ''masking'' or ''size plus'' convention comparable to that used by TRACE, in which transactions larger than a specified size would be reported as ''size plus.'' [551]

Under Rule 902(a), as adopted, a registered SDR is required to publicly disseminate (for all dissemination-eligible transactions [552]), immediately upon receipt of the transaction report, all of the elements required by Rule 901(c), including the true notional amount of the transaction (as opposed to a ''capped'' or ''bucketed'' notional amount). The Commission believes the T+24 hour approach during the interim phase should address commenters' concerns about disseminating the true notional amount of a transaction, including concerns about preserving the anonymity of counterparties.[553] One commenter expressed concern about reporting blocks and non-blocks in the same timeframe, which, the commenter stated, would prevent market participants from being able to hedge the trade.[554] The Commission believes that a 24-hour timeframe for reporting of transaction information should address any concerns about disseminating the true notional amount of any transaction and allow market participants who choose to hedge adequate time to accomplish a majority of their hedging activity before transaction data is publicly disseminated.[555] During the interim phase when no transaction must be reported in less than 24 hours after execution, the Commission will be able to collect and analyze transaction information to develop an understanding of how market participants are reacting to the introduction of mandated post-trade transparency. The Commission expects to study, among other things, the frequency with which security-based swap market participants transact in non-standard notional amounts, and will attempt to observe whether the market reacts differently to last-sale prints of any non-standard sizes versus more conventional sizes. Based on such data and analysis, the Commission anticipates considering whether it may be appropriate to establish notional caps or rounding conventions in disseminated reports.

5. Analysis Period

As discussed in Section XXII(C)(3)(a), *infra,* during the interim phase, the Commission will have access to more useful data about how different security-based swap trades of different sizes and with different reporting delays might be affecting subsequent behavior in the market, as well as any additional data and analysis that might be submitted by third parties.[556] Furthermore, once implemented, reporting sides will be required under Regulation SBSR to submit their security-based swap execution times to a registered SDR. As noted above, security-based swap transaction data currently stored in DTCC–TIW includes the time of reporting but not the time of the execution.[557] Having the execution time instead of only the reporting time will allow a more robust and granular analysis of any hedging that may or may not occur within the first 24-hour period after execution.

The Commission is directing its staff to use data collected during the interim phase to publish a report for each asset class of security-based swaps assessing the impact of post-trade transparency on that asset class. The Appendix to Rule 901 of Regulation SBSR sets forth the guidelines for these reports, which must be completed no later than two years following the initiation of public dissemination of SBS transaction data by the first registered SDR in each asset class.[558]

The completion of the staff's report for an asset class will mark the beginning of an analysis period, during which the Commission anticipates

[544] *See* DTCC II at 12; MFA at 5.

[545] *See* Cleary II at 15–16.

[546] Rule 900(e), as re-proposed, defined ''confirm'' as ''the production of a confirmation that is agreed to by the parties to be definitive and complete and that has been manually, electronically, or, by some other legally equivalent means, signed.''

[547] One commenter suggested that the Commission use the term ''issued,'' rather than ''confirm'' to better reflect existing market practice with respect to confirming the terms of a security-based swap. *See* ISDA IV at 10. The deletion of the term ''confirm'' from Regulation SBSR, as adopted, addresses this concern.

[548] *See* Cleary II at 13 (''we would recommend that the SEC gather further data on the costs and benefits of disclosing notional size before requiring such disclosure for all transactions''); ISDA/SIFMA I at 5 (size of a block trade transaction should not be disclosed at any time); ISDA/SIFMA II at 8 (same); ISDA/SIFMA Block Trade Study at 26–27 (noting that reporting of notional amounts of block trades will hamper the execution of large-sized trades and recommending dissemination of capped volume information); Phoenix Letter at 3; SIFMA I at 5; UBS Letter at 2 (arguing actual notional amount of an illiquid security-based swap would provide information to the market about potential hedging activity); WMBAA II at 7 (arguing that dissemination of the full notional amount could jeopardize the anonymity of counterparties to the trade).

[549] *See* WMBAA II at 7 (also noting that the result may be that counterparties are less willing to engage in large transactions); Phoenix Letter at 3 (stating that reporting block trades at the same time as non-block trades could jeopardize the anonymity of the block trade).

[550] *See* Cleary II at 13.

[551] *See* WMBAA II at 7; ISDA/SIFMA I at 5; ISDA/SIFMA Block Trade Study at 2, 26–27; Vanguard Letter at 5; Goldman Sachs Letter at 6; SIFMA I at 5; J.P. Morgan Letter at 12–13; MFA I at 4; MFA III at 8; UBS Letter at 2; FIA/FSF/ISDA/SIFMA Letter at 6; Phoenix Letter at 3; ISDA IV at 16.

[552] *See* Rule 902(c) (requiring that certain types of security-based swaps not be publicly disseminated).

[553] One commenter appears to agree generally with this approach. *See* J.P. Morgan Letter at 14 ('''un-masked' trade-by-trade notional amounts should eventually be disseminated . . . in order to facilitate analysis of market trends by market participants and the academic community'').

[554] *See* Phoenix Letter at 3.

[555] The Commission further notes that equity total return swaps are synthetic substitutes for positions in the underlying equity security or securities; therefore, the Commission believes that it would not be appropriate to allow masking for a synthetic substitute when there is no masking exceptions to public dissemination in the cash equities markets.

[556] *See* ICI II at 7 (''We also support the SEC re-opening for comment certain issues related to block trades—such as the required time delays—in connection with the future SEC proposal regarding how to define block trades'').

[557] *See* Hedging Analysis at 5.

[558] *See infra* Section XXII(C)(3)(a) (describing the importance of conducting additional data analysis during the interim phase).

considering the report, any public comments received on the report, and any other relevant data and information, including the Commission's original proposal to define ''real time'' in the context of Section 13(m) of the Exchange Act to mean ''as soon as technologically practicable, but in no event later than 15 minutes after the time of execution of a security-based swap transaction.'' [559] Based on this analysis, the Commission anticipates that it will prepare a proposal that would address, among other things: (1) The criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts; and (2) the appropriate time delay for disseminating large notional security-based swap transactions (block trades) to the public.[560] The Commission believes that the approach of studying security-based swap market activity once post-trade transparency is implemented, but before adopting block trade rules, accords with the recommendations of several commenters.[561]

VIII. Reporting and Public Dissemination of Security-Based Swaps Involving Allocation

This section explains the application of Regulation SBSR to certain security-based swaps executed by an asset manager on behalf of multiple clients—transactions involving what are sometimes referred to as ''bunched orders.'' [562] To execute a bunched order, an asset manager negotiates and executes a security-based swap with a counterparty, typically a security-based swap dealer, on behalf of multiple clients. The bunched order could be executed on- or off-platform. The asset manager would allocate a fractional amount of the aggregate notional amount of the transaction to each client, either at the time of execution or some time after execution. Allocation results in the termination of the executed bunched order and the creation of new security-based swaps between the security-based swap dealer and the accounts managed by the asset manager.[563] By executing a bunched order, the asset manager avoids having to negotiate the account-level transactions individually, and obtains exposure for each account on the same terms (except, perhaps, for size).

A. Discussion of Comments Received and Application of Regulation SBSR

In response to the Regulation SBSR Proposing Release, one commenter stated that asset managers commonly use bunched orders and allocations in the OTC derivatives market, and recommended that publicly disseminating the execution of a bunched order—without the allocation information—would satisfy the transparency objective of Title VII and be consistent with TRACE reporting.[564] The commenter also expressed the view that the reporting party for a bunched order execution should be obligated to report allocation information, which would be necessary to indicate the final placement of risk derived from the initial trade.[565] The discussion below explains how Regulation SBSR's regulatory reporting and public dissemination requirements apply to executed bunched orders that are subject to the reporting hierarchy in Rule 901(a)(2)(ii) and the security-based swaps that result from the allocation of these transactions, to the extent that the resulting security-based swaps are not cleared. The Regulation SBSR Proposed Amendments Release is proposing guidance for reporting platform-executed bunched orders that will be submitted to clearing and security-based swaps that result from the allocation of a bunched order if the resulting security-based swaps are cleared.

Regulation SBSR requires bunched order executions to be reported like other security-based swaps. The reporting side for a bunched order execution subject to the reporting hierarchy in Rule 901(a)(2)(ii) [566] must report the information required by Rules 901(c) and 901(d) for the bunched order execution, including the notional amount of the bunched order execution, to a registered SDR.[567] The information described in final Rule 901(c) will be publicly disseminated under final Rule 902(a), like any other security-based swap transaction that does not fall within the enumerated exceptions to public dissemination in Rule 902(c).[568] The Commission believes that it is appropriate to enhance price discovery, and thus consistent with the statutory provisions governing public dissemination of security-based swaps, to require public dissemination of a single transaction report showing the aggregate notional amount of the bunched order execution (*i.e.,* the size

[559] *See* Regulation SBSR Proposing Release, 75 FR 75284.

[560] *See* 15 U.S.C. 78m(m)(1)(E)(ii)–(iii). The Commission anticipates that these proposed rules also would address certain issues raised by commenters during the comment period for Regulation SBSR. For example, several commenters proposed calculation methodologies for block trade thresholds. *See, e.g.,* Goldman Sachs Letter at 4–6; ISDA/SIFMA I at 4; Better Markets I at 6; WMBAA II at 3; ISDA/SIFMA Block Trade Study at 26; Cleary II at 14 (supporting various tests or methodologies for establishing block trade thresholds). Commenters suggested various approaches for how often block thresholds should be updated. *See* ISDA/SIFMA I at 5 (stating that block trade thresholds should be updated at least every three months because liquidity in the OTC markets may change quickly); ISDA/SIFMA II at 8 (stating that the block trading exemption rules should be updated quarterly); ISDA/SIFMA Block Trade Study at 2 (stating that the reporting rules should be re-evaluated regularly to ensure that they reflect the changing characteristics of the market); ICI I at 3 (stating that block trade thresholds would need to be reviewed more than once a year to remain meaningful); WMBAA II at 5 (recommending that block trade thresholds be updated at appropriate intervals); MFA III at 8 (stating that an SB SEF's swap review committee should periodically determine what constitutes a ''block'' for each security-based swap or security-based swap class that the SF SEF trades). *See also* Barclays Letter at 5 (generally supporting a 30-calendar-day look-back for determining block size thresholds).

[561] *See* Institutional Investors Letter at 4 (recommending that the CFTC collect market data for one year before adopting rules relating to block trades); MFA II, Recommended Timeline at 4; WMBAA III at 6; FIA/FSF/ISDA/SIFMA Letter at 6 (appropriate block trade thresholds, and therefore real-time reporting requirements, can be established only after the commencement of SDR reporting to regulators and careful analysis of security-based swap market transaction data). This approach is also broadly consistent with the implementation of the TRACE system, which shortened reporting requirements over time. Several commenters recommended a phased reporting approach analogous to TRACE. *See* CCMR I at 2; Cleary II at 20; DTCC II at 9–10; FINRA Letter at 4–5; ISDA/SIFMA I at 10; ISDA/SIFMA Block Trade Study at 2; UBS Letter at 2–3; WMBAA II at 5.

[562] The Commission recognizes that market participants may use a variety of other terms to refer to such transactions, including ''blocks,'' ''parent/child'' transactions, and ''splits.'' The Commission has determined to use a single term, ''bunched orders,'' for purposes of this release, as this appears to be a widely accepted term. *See, e.g.,* ''Bunched orders challenge SEFs,'' MarketsMedia (March 25, 2014), available at *http://marketsmedia.com/bunched-orders-challenge-sefs/* (last visited September 22, 2014); ''Cleared bunched trades could become mandatory rule,'' *Futures and Options World* (October 31, 2013) (available at *http://www.fow.com/3273356/Cleared-bunched-trades-could-become-mandatory-rule.html* (last visited September 22, 2014).

[563] In aggregate, the notional amount of the security-based swaps that result from the allocation is the same as the notional amount of the executed bunched order.

[564] *See* ISDA/SIFMA I at 7–8. *See also* ISDA IV at 10, 13 (asserting that the bunched order execution could be disseminated publicly, but that post-allocation activities should be excluded from public dissemination).

[565] *See id.* at 8.

[566] *See supra* Section V. A bunched order execution will be subject to this reporting hierarchy unless it is executed on a platform and submitted to clearing.

[567] Rule 901(d)(1) requires the reporting side for a security-based swap to report ''the counterparty ID or the execution agent ID of each counterparty, as applicable.'' The Commission notes that an asset manager acts as an execution agent for the clients that receive allocations of an executed bunched order.

[568] *See supra* Section VI.

prior to allocation).[569] The public thereby will know the full size of the bunched order execution and that this size was negotiated at a single price. The reporting side for a bunched order execution also must report life cycle events for the bunched order execution—including the termination of the executed bunched order that result from its allocation—to the registered SDR that receives the initial report of the transaction.

When a bunched order execution is allocated, new security-based swaps are created that must be reported to a registered SDR pursuant to Rule 901(a). To clarify that point, the introductory language to final Rule 901(a) states that a ''security-based swap, including a security-based swap that results from the allocation, termination, novation, or assignment of another security-based swap, shall be reported'' as provided in the rest of the rule.[570] Reporting of the security-based swaps resulting from the allocation of a bunched order execution should assure that the Commission and other relevant authorities know the final placement of risk that results from the bunched order execution.[571] As with any other security-based swap, the reporting side for a security-based swap resulting from an allocation is determined by Rule 901(a). Also, as with any other security-based swap, the reporting side must make the required report within 24 hours of the time that the new security-based swap is created—not within 24 hours of the time of execution of the original bunched order.[572] Under Rule 901(d)(10), the reporting side for a security-based swap resulting from an allocation must report the transaction ID of the executed bunched order as part of the report of the new security-based swap.[573] This requirement will allow the Commission and other relevant authorities to link a report of a bunched order execution to the smaller security-based swaps that result from the allocation of the bunched order execution. Because these related transactions can be linked across registered SDRs using the transaction ID of the bunched order execution, the Commission believes that it is not necessary or appropriate to require that the security-based swaps resulting from the allocation be reported to the same registered SDR that received the transaction report of the original transaction.

The Commission agrees with the commenters who recommended that publicly disseminating the execution of a bunched order—without the allocation information—would satisfy the transparency objective of Title VII.[574] Therefore, Regulation SBSR does not require a registered SDR to publicly disseminate reports of the new security-based swaps that result from an allocation. In fact, as described above, Rule 902(c)(7), as adopted, prohibits a registered SDR from disseminating ''[a]ny information regarding the allocation of a security-based swap.'' [575] This approach also accords with the recommendation of the commenter who urged that the aggregate notional amount prior to allocation be disseminated, rather than the individual transaction sizes, in order to preserve anonymity of the asset manager and its clients.[576]

The Commission notes that Rule 907(a)(1), as adopted, requires a registered SDR to establish and maintain policies and procedures that, among other things, enumerate the specific data elements of a security-based swap that must be reported. Registered SDRs should consider describing, as part of these policies and procedures, the means by which persons with a duty to report bunched order executions—and the new security-based swaps that result from the allocation—must report the information required by Rules 901(c) and 901(d).

B. Example: Reporting and Public Dissemination for an Uncleared Bunched Order Execution

The following example demonstrates how Regulation SBSR applies to a bunched order execution that will not be cleared and the security-based swaps that result from the allocation of that bunched order execution. Assume that an asset manager, acting on behalf of several investment fund clients, executes a bunched order with a registered security-based swap dealer. Assume that the transaction is not submitted to clearing and there are no indirect counterparties on either side. The execution of the bunched order could occur either on a platform or not.

1. Reporting the Executed Bunched Order

Under Rule 901(a)(2)(ii), as adopted, the registered security-based swap dealer is the reporting side for the bunched order execution because only one side of the transaction includes a registered security-based swap dealer. Under final Rules 901(c) and 901(d), the registered security-based swap dealer has up to 24 hours after the time of execution of the bunched order to report all applicable primary and secondary trade information to a registered SDR. The registered security-based swap dealer must report the entire notional amount of the executed bunched order as part of the Rule 901(c) primary trade information.[577] Rule 902(a) requires the registered SDR to publicly disseminate a single last-sale print showing the aggregate notional amount of the bunched order execution immediately upon receiving the report from the registered security-based swap dealer.

2. Reporting the Allocations

Regulation SBSR also requires reporting to a registered SDR of the security-based swaps that result from allocation of the bunched order execution.[578] As the reporting side for the executed bunched order, the registered security-based swap dealer must make a life cycle event report, in accordance with Rule 901(e), to notify the registered SDR that received the report of the executed bunched order

[569] *See* 15 U.S.C. 13(m)(1)(B) (authorizing the Commission to make security-based swap transaction and pricing data available to the public ''in such form and at such times as the Commission determines appropriate to enhance price discovery'').

[570] *See supra* Section V(C)(5).

[571] As stated above, allocation also results in the termination of the bunched order execution, which is a life cycle event of the original transaction. This life cycle event must be reported, in accordance with Rule 901(e), to the registered SDR that receives the report of the original bunched order execution.

[572] If 24 hours after the time of allocation would fall on a day that is not a business day, the report of the security-based swaps resulting from the allocation would be due by the same time on the next day that is a business day. *See* Rule 901(j). One commenter requested that Regulation SBSR reflect that the timeframe for reporting security-based swaps resulting from a bunched order execution commence upon receipt of the identity of the counterparties to the bunched order execution by the reporting party during its own business hours. *See* ISDA IV at 10. The Commission believes that the requirement that the reporting side make the required report within 24 hours of the time that the new security-based swap is created is responsive to this comment.

[573] Rule 901(d)(10), as adopted, provides that, if a ''security-based swap arises from the allocation, termination, novation, or assignment of one or more existing security-based swaps,'' the reporting side must report ''the transaction ID of the allocated, terminated, assigned, or novated security-based swap(s),'' subject to one exception that would not apply to an allocation that is not submitted for clearing.

[574] *See* ISDA/SIFMA I at 7–8; ISDA IV at 10, 13.

[575] *See supra* Section VI(D).

[576] *See* MFA I at 2–3 (''Counterparties are often aware of an investment manager's standard fund allocation methodology and therefore, reporting transactions at the allocated level . . . will make evident an allocation scheme that other participants can easily associate with a particular investment manager'').

[577] *See* Rule 901(c)(4) (requiring reporting of the notional amount of a security-based swap and the currency in which the notional amount is denominated).

[578] *See* Rule 901(a) (requiring that a security-based swap, ''including a security-based swap that results from the allocation, termination, novation, or assignment of another security-based swap shall be reported'' as provided in the rest of the rule).

that the trade has been allocated, which terminates the security-based swap. Pursuant to Rule 901(a)(2)(ii), the registered security-based swap dealer also is the reporting side for each security-based swap resulting from allocation of the bunched order execution because only one side of the transaction includes a registered security-based swap dealer.[579] If the asset manager provides the allocation information to the registered security-based swap dealer prior to or contemporaneous with the bunched order execution, the registered security-based swap dealer could report the bunched order execution and the security-based swaps that result from its allocation to a registered SDR at the same time.[580] If the asset manager does not provide the allocation information to the registered security-based swap dealer until some time after execution of the bunched order, the registered security-based swap dealer must report each security-based swap resulting from the allocation within 24 hours of the allocation. In either case, the reports of the security-based swaps resulting from the allocation of the bunched order execution must include the counterparty IDs of each investment fund and the notional amount of each security-based swap resulting from the allocation. In either case, Rule 901(d)(10) requires each report of a security-based swap resulting from the allocation to include the transaction ID of the bunched order execution so that the Commission and other relevant authorities will have the ability to link each resulting transaction with the initial bunched order execution.

IX. Inter-Affiliate Security-Based Swaps

A. Background and Summary of Final Rule

Regulation SBSR, as initially proposed, did not contemplate any exception from reporting for inter-affiliate security-based swaps. In the Regulation SBSR Proposing Release, the Commission expressed the preliminary view that a report of an inter-affiliate security-based swap should be publicly disseminated with an indicator identifying the transaction as an inter-affiliate security-based swap.[581] The Commission noted that, for such transactions, ''there might not be an arm's length negotiation over the terms of the [security-based swap] transaction, and disseminating a report of the transaction without noting that fact would be inimical to price discovery.'' [582] Rule 907(a)(4), as proposed, would have required a registered SDR to establish and maintain written policies and procedures describing, among other things, how reporting parties would report—and consistent with the enhancement of price discovery, how the registered SDR would publicly disseminate—security-based swap transactions that do not involve an opportunity to negotiate any material terms, other than the counterparty.[583]

The Commission received several comments regarding inter-affiliate security-based swaps in response to the Regulation SBSR Proposing Release and discussed those comments in the Cross-Border Proposing Release.[584] Although the Cross-Border Proposing Release did not propose to revise any portion of Regulation SBSR with regard to the treatment of inter-affiliate security-based swaps, the Commission provided some preliminary thoughts on how Regulation SBSR could be applied to them, particularly as regards to public dissemination, in a manner that could address commenters' concerns without taking the step of suppressing all inter-affiliate transactions from public dissemination.[585] In response to the Cross-Border Proposing Release, the Commission received additional comments, described below, regarding the application of Regulation SBSR to inter-affiliate security-based swaps.

Regulation SBSR, as adopted, applies to all security-based swaps, including inter-affiliate security-based swaps. The Commission has considered, but is not adopting, any exemption from Regulation SBSR's regulatory reporting or public dissemination requirements for inter-affiliate security-based swaps. Therefore, Rules 901(c) and 901(d) require reporting of inter-affiliate security-based swaps; Rule 901(i) requires reporting of historical inter-affiliate security-based swaps; and Rule 902 requires public dissemination of inter-affiliate security-based swaps. Furthermore, Rule 907(a)(4) requires a registered SDR to establish and maintain policies and procedures that, among other things, identify characteristics of or circumstances associated with the execution or reporting of a security-based swap that could, in the fair and reasonable estimation of the registered SDR, cause a person without knowledge of such characteristics or circumstances to receive a distorted view of the market. As discussed in Section VI(G), *supra,* the Commission generally believes that a registered SDR should establish a flag for inter-affiliate security-based swaps to help market observers better understand the information that is publicly disseminated.

B. Discussion of Comments

1. Regulatory Reporting of Inter-Affiliate Security-Based Swaps

Most of the comments relating to inter-affiliate security-based swaps, in response to both the initial proposal and the Cross-Border Proposing Release (which re-proposed Regulation SBSR in its entirety), pertained to public dissemination. However, one commenter stated that, because inter-affiliate transactions should not be publicly disseminated, it also should be unnecessary to ''collect'' information about them.[586] Another commenter on the Regulation SBSR Proposing Release argued that, for a foreign entity registered as a bank holding company and subject to the consolidated supervision of the Federal Reserve System, the reporting of inter-affiliate transactions would be superfluous because the Federal Reserve has ''ample authority to monitor transactions among affiliates,'' [587] suggesting that even regulatory reporting of inter-affiliate security-based swaps should not be necessary.[588] In the Cross-Border Proposing Release, the Commission specifically asked whether commenters believed that cross-border inter-affiliate security-based swaps should be excluded from the regulatory reporting requirements of Regulation SBSR and, if so, under what circumstances such security-based swaps should be excluded.[589] No commenters on the Cross-Border Proposing Release responded to this particular question pertaining to regulatory reporting.

[579] The Commission assumes that the investment funds would not be registered security-based swap dealers for purposes of these examples.

[580] Even though the reports could be made at the same time, Rule 901(a) requires a report of a bunched order execution and an associated allocation to be maintained as separate records by a registered SDR because the execution of the bunched order and the allocations are separate reportable security-based swap transactions.

[581] *See* 75 FR 75214–15.

[582] *Id.* at 75215.

[583] *See id.* at 75237.

[584] *See* 78 FR 31069–72.

[585] *See id.* at 31071–72.

[586] Cravath Letter at 9.

[587] Japanese Banks Letter at 5.

[588] *See also* Multiple Associations IV at 6 (stating that ''many of the transaction-based requirements in Title VII, such as . . . trade reporting rules, generally do not further legislative or regulatory purposes when applied to inter-affiliate swaps,'' but without specifying whether the comment was with respect to regulatory reporting, public dissemination, or both).

[589] *See* 78 FR 31072.

The Commission continues to believe that the Commission and other relevant authorities should have ready access to information about the specific counterparties that hold positions in all security-based swaps subject to Regulation SBSR. While it is true that the Federal Reserve or perhaps another relevant authority might exercise consolidated supervision over a group, such supervision might not provide the Commission and other relevant authorities with current and specific information about security-based swap positions held by the group's subsidiaries. As a result, it would likely be more difficult for relevant authorities to conduct general market analysis or surveillance of market behavior, and could present difficulties during a crisis, when ready access to accurate and timely information about specific risk exposures might be crucial. Furthermore, the statutory provisions that require regulatory reporting of security-based swap transactions state that ''each'' security-based swap shall be reported; these statutory provisions do not by their terms limit the reporting requirement to transactions having particular characteristics (such as being negotiated at arm's length).[590] Even absent these constraints, for the reasons described above, the Commission does not believe that an exemption from regulatory reporting for these transactions would be appropriate. Therefore, Regulation SBSR subjects inter-affiliate security-based swaps to regulatory reporting.[591]

2. Public Dissemination of Inter-Affiliate Security-Based Swaps

As discussed below, some commenters raised concerns regarding the public dissemination of inter-affiliate security-based swaps. After carefully considering the issues raised by these commenters, the Commission has determined to adopt Regulation SBSR with no exemption from the public dissemination requirements for inter-affiliate security-based swaps.

As a preliminary matter, the Commission notes that, once a security-based swap transaction has been reported to a registered SDR, the counterparties assume no additional burdens associated with public dissemination of the transaction. That function will be carried out solely by the registered SDR. Thus, requiring registered SDRs to publicly disseminate security-based swaps, including inter-affiliate security-based swaps, will not increase the compliance burden on security-based swap counterparties.

One commenter argued that inter-affiliate security-based swaps should not be subject to public dissemination because ''public reporting could confuse market participants with irrelevant information'' and suggested that ''the Commissions collect data on these transactions but not require dissemination to the public at large.'' [592] Another commenter stated that an inter-affiliate transaction ''does not contain any additional price information beyond that contained in the transaction with the customer.'' [593] One group of commenters argued that publicly disseminating inter-affiliate transactions ''will distort the establishment of position limits, analysis of open interest, determinations of block trade thresholds and performance of other important regulatory analysis, functions and enforcement activities that require an accurate assessment of the [security-based] swaps market.'' [594] These commenters stated, further, that inter-affiliate security-based swaps ''could be required to be publicly reported in multiple jurisdictions, even though they are not suitable for reporting in any jurisdiction.'' [595]

An accurate assessment of the security-based swap market will be necessary for a wide range of functions, potentially including—as noted by this group of commenters—analysis of open interest and the establishment of block trade thresholds.[596] The Commission believes that users of security-based swap market data—whether regulators, SDRs, market participants, or the public at large—should have an accurate and undistorted view of the market. However, it does not follow that public dissemination of inter-affiliate security-based swaps will necessarily prevent an accurate assessment of the security-based swap market.

The need to distinguish reports of initial transactions from subsequent inter-affiliate transactions exists whether or not the latter are publicly disseminated. As noted above, the Commission is requiring each registered SDR to adopt, among others, policies and procedures for flagging transaction reports that have special circumstances.[597] This flagging mechanism is designed to provide regulators with a more accurate view of the security-based swap market, and the same mechanism can be applied to publicly disseminated last-sale reports to give market observers the same view. The Commission continues to believe that the commenters' concerns about the potentially limited price discovery value of inter-affiliate security-based swaps can be addressed through the public dissemination of relevant data that flags such limitations, rather than suppressing these transactions from public dissemination entirely. Additionally, even if the report of an initial security-based swap transaction has been publicly disseminated in another jurisdiction, the Commission believes that it would be preferable to disseminate a report of the subsequent inter-affiliate transaction with an appropriate condition flag rather than suppressing a report of the inter-affiliate

[590] Section 13A(a)(1) of the Exchange Act, 15 U.S.C. 78m–1(a)(1), provides that each security-based swap that is not accepted for clearing shall be subject to regulatory reporting. Section 13(m)(1)(G) of the Exchange Act, 15 U.S.C. 78m(m)(1)(G), provides that each security-based swap (whether cleared or uncleared) shall be reported to a registered SDR.

[591] In addition, one group of commenters acknowledged that ''a number of rules that apply to the core operations of a registered entity will perforce apply to such entity's inter-affiliate swap transactions and could further Dodd-Frank policy purposes.'' Multiple Associations Letter at 9. These commenters stated that inter-affiliate transactions would need to be taken into account in calculating an entity's capital requirements, and that internal recordkeeping requirements are essential to the oversight of the security-based swap business. *See id.* The Commission notes that regulatory reporting of all security-based swaps, including inter-affiliate security-based swaps, will assist the Commission and other relevant authorities in overseeing compliance with these capital and recordkeeping requirements, as the regulatory report of an entity's security-based swap activity could provide an external check of the internal records of such entities' positions and activities.

[592] Cleary II at 17. *See also* SIFMA/FIA/Roundtable Letter at A–44 (stating that ''real-time reporting of inter-affiliate [security-based swaps] . . . would distort market information and thus have a detrimental market and commercial impact'').

[593] ISDA/SIFMA I at 13. *See also* ISDA IV at 13 (recommending that inter-affiliate trades should not be subject to public dissemination).

[594] Multiple Associations Letter at 11–12. *See also* ISDA I at 5 (stating, in the context of pre-enactment security-based swaps, that inter-affiliate security-based swaps should not be subject to reporting).

[595] Multiple Associations Letter at 16.

[596] *See id.* at 11–12.

[597] These policies and procedures could address not only reporting of whether a security-based swap is an inter-affiliate transaction, but also whether the initial security-based swap was executed in a jurisdiction with public dissemination requirements. This could be either the United States or another jurisdiction that imposes last-sale transparency requirements similar to those in Regulation SBSR. Further, these policies and procedures also could address whether to indicate the approximate time when the initial security-based swap was executed. For example, there could be condition flags for the initial security-based swap having been executed within the past 24 hours, between one and seven days before, or longer than seven days before. An indication that the initial trade was executed less than 24 hours before could provide significant price discovery value, while an indication that the initial trade was executed over a week before could, all things being equal, have less. However, even information about a trade executed over a week ago (or more) could have price discovery value for security-based swaps that trade infrequently.

transaction from public dissemination through a registered SDR. Public dissemination of such a transaction by a registered SDR would help to assure that information concerning the transaction was readily available to participants in the U.S. market and other market observers.

One group of commenters argued that ''use of inter-affiliate [security-based swaps] not only allows risks to reside where they are more efficiently managed, but it also has a net positive effect on an institution's assets and liquidity, as well as on its efficiency in deploying capital. For these reasons, we believe that there should be an inter-affiliate exemption from the public dissemination requirements.'' [598] Another commenter raised similar concerns, arguing that ''public reporting of inter-affiliate transactions could seriously interfere with the internal risk management practices of a corporate group'' and that ''[p]ublic disclosure of a transaction between affiliates could prompt other market participants to act in a way that would prevent the corporate group from following through with its risk management strategy by, for instance, causing adverse price movements in the market that the risk-carrying affiliate would use to hedge.'' [599] The Commission agrees generally that corporate groups should engage in appropriate risk management practices. However, the Commission does not agree that Regulation SBSR, as adopted, is inimical to effective risk management. The Commission notes that, during the first phase of Regulation SBSR, all security-based swaps—regardless of size—must be reported within 24 hours from the time of execution and—except with regard to transactions falling within Rule 902(c)—immediately publicly disseminated. As discussed in Section VII, *supra,* this reporting timeframe is designed, in part, to minimize any potential for market disruption resulting from public dissemination of any security-based swap transaction during the interim phase of Regulation SBSR. The Commission anticipates that, during the interim period, it will collect and analyze data concerning the sizes of transactions that potentially affect liquidity in the market. If the Commission ultimately determines that some form of block trade exception to real-time public dissemination is appropriate, an inter-affiliate security-based swap of block size would be able to avail itself of that exception. The Commission sees no basis for concluding, at this time, that inter-affiliate security-based swaps are more difficult to hedge than other types of security-based swaps, or that the hedging of these transactions presents unique concerns that would not also arise in connection with the hedging of a security-based swap that was not an inter-affiliate transaction. Therefore, the Commission does not agree with the commenters' concern that public dissemination of inter-affiliate security-based swaps will impede the ability of corporate groups to hedge.

Another group of commenters argued that ''affiliates often enter into these swaps on terms linked to an external trade being hedged. If markets have moved before the inter-affiliate trade is entered into on the SEF or reported as an off-exchange trade, market participants could also misconstrue the market's true direction and depth.'' [600] This comment suggests that last-sale reports of transactions that appear out of the order in which the transactions in fact occurred could mislead market observers. The Commission shares this concern but does not conclude that the appropriate response is to suppress all inter-affiliate transactions from public dissemination. The Commission believes instead that this issue can be addressed by requiring the dissemination of the date and time of execution on the last-sale report.[601] This requirement is designed to allow market observers to construct a time-sequenced record of all transactions in the security-based swap market and thereby counteract the possibility that certain transactions could be reported and publicly disseminated out of the order in which they were in fact executed.

Some commenters stated that inter-affiliate security-based swaps ''are *typically* risk transfers with no market impact.'' [602] This statement does not exclude the possibility that some inter-affiliate security-based swaps might have a market impact. The Commission sees no basis to conclude at this time that inter-affiliate security-based swaps do not provide price discovery value or other useful information to market observers. Market observers might be able to discern useful information from the last-sale reports of some inter-affiliate security-based swaps, and the Commission believes that market observers should be given the opportunity to do so—particularly given the Title VII mandate that all security-based swaps shall be publicly disseminated. The value of this information to market observers is unknown at this time, because market observers have never before had the opportunity to view comprehensive last-sale information from the security-based swap market. Suppressing all inter-affiliate security-based swaps from public dissemination would eliminate any potential that market observers could develop ways to utilize this information. Thus, under the final rules, market observers who wish to evaluate the entire record of transactions, including inter-affiliate transactions, will have the opportunity to do so. As discussed above, the Commission disagrees with the commenters who argued that ''[r]equiring real-time reporting of inter-affiliate [security-based swaps] . . . would distort market information and thus have a detrimental market and commercial impact.'' [603] Because such transactions will be flagged, market observers can simply—if they wish—remove from their analysis any transactions having an inter-affiliate flag.

The Commission sees one circumstance where public dissemination of an inter-affiliate transaction could have significant price discovery value: When the initial transaction is effected in a foreign jurisdiction without a public dissemination requirement and is not otherwise subject to public dissemination under Regulation SBSR, and the subsequent inter-affiliate transaction—between one of the original counterparties and one of its affiliate—would be publicly disseminated if it fell within Rule 908(a)(1). Commenters' views that public dissemination of an inter-affiliate transaction would be duplicative and distorting are premised on the view that the initial transaction is, in fact, publicly disseminated, which may not always be the case.[604] Therefore, public dissemination of the subsequent inter-affiliate transaction might be the only way for the market to obtain any pricing information about the related pair of transactions.[605] In the Cross-Border Proposing Release, the Commission specifically noted this

[598] SIFMA/FIA/Roundtable Letter at A–44.

[599] Cleary II at 17.

[600] *See* Multiple Associations Letter at 12.

[601] *See* Rule 901(c)(2).

[602] SIFMA/FIA/Roundtable Letter at A–44; Multiple Associations Letter at 11 (emphasis added).

[603] SIFMA/FIA/Roundtable Letter at A–44.

[604] *See* Multiple Associations Letter at 12 (''The market-facing swaps already will have been reported and therefore, to require that inter-affiliate swaps also be reported will duplicate information'').

[605] In addition, even if the initial transaction is publicly disseminated, the Commission does not believe that publicly disseminating the second, inter-affiliate transaction would cause observers to obtain a distorted view of the market, as long as the second transaction is flagged as an inter-affiliate transaction. *See supra* Section VI(G).

circumstance and requested comment on it.[606] No commenters responded.

Finally, one commenter on the Cross-Border Proposing Release argued that the Commission should propose a comprehensive rule regarding inter-affiliate security-based swaps ''before finalizing the substantive underlying rules governing the SBS markets.'' [607] The commenter reasoned that ''a separate proposed rule, like the Cross-Border Proposal, is necessary to ensure that market participants are accorded sufficient opportunity to comment on the interplay between the Commission's proposed rules and inter-affiliate trades.'' [608]

The Commission notes that Regulation SBSR, as initially proposed, did not contemplate any exception for inter-affiliate security-based swaps, and the Regulation SBSR Proposing Release discussed at various points how proposed Regulation SBSR would apply to inter-affiliate transactions.[609] The Commission received comments regarding the reporting of inter-affiliate transactions in response to both the Regulation SBSR Proposing Release and the Cross-Border Proposing Release. Commenters on the Cross-Border Proposing Release's discussion of the application of Regulation SBSR to inter-affiliate security-based swaps did not raise any new issues that had not already been raised in response to the Regulation SBSR Proposing Release. In addition, as noted above, the Commission discussed in the Cross-Border Proposing Release the comments regarding inter-affiliate transactions submitted in response to the Regulation SBSR Proposing Release.[610] After carefully considering all of these comments, the Commission believes that commenters had sufficient opportunity to present their views on inter-affiliate transactions in Regulation SBSR and therefore it is appropriate at this time to adopt final rules relating to regulatory reporting and public dissemination of security-based swaps, including inter-affiliate security-based swaps.

X. Rule 903—Use of Codes

Regulation SBSR, as adopted, permits or, in some instances, requires security-based swap counterparties to report coded information to registered SDRs. These codes, known as unique identification codes (''UICs''), will be used to identify products, transactions, and legal entities, as well as certain business units and employees of legal entities.[611] Rule 903 of Regulation SBSR establishes standards for assigning and using coded information in security-based swap reporting and dissemination to help ensure that codes are assigned in an orderly manner and that regulators, market participants, and the public are able to interpret coded information stored and disseminated by registered SDRs.

A. Proposed Treatment of Coded Information

As initially proposed, Regulation SBSR would have established a process for assigning UICs in Rule 900 and addressed the standards for using coded information in Rule 903. Proposed Rule 900 would have provided that a ''unique identification code'' or ''UIC'' would be the unique code assigned to a person, unit of a person, or product by or on behalf of an internationally recognized standards-setting body (''IRSB'') that imposes fees and usage restrictions that are fair and reasonable and not unreasonably discriminatory. The proposed definition of ''UIC'' further would have provided that, if there existed no IRSB meeting these criteria, a registered SDR would have been required to assign all necessary UICs using its own methodology. Similarly, if an IRSB meeting the criteria existed but had not assigned a relevant UIC, the registered SDR would have been required to assign that UIC using its own methodology. When the Commission re-proposed Regulation SBSR as part of the Cross-Border Proposing Release, it designated the definition of ''UIC'' as re-proposed Rule 900(nn) but made no changes to the substance of the definition.[612]

Rule 903, as originally proposed, would have permitted the use of codes in place of certain data elements for purposes of reporting and publicly disseminating the information required under proposed Rules 901 and 902 of Regulation SBSR, provided that the information to interpret such codes is ''widely available on a non-fee basis.'' When the Commission re-proposed Rule 903, it replaced the term ''reporting party'' with ''reporting side'' but otherwise made no substantive revisions to the rule.[613]

B. Comments Received and Final Rule 903

1. Relocation of UIC Provisions Into Rule 903

Final Rule 903 is divided into paragraphs (a) and (b). Rule 903(a) sets out the requirements that registered SDRs must follow when assigning UICs. Similar requirements were initially proposed as part of the definition of ''UIC'' in Rule 900, and re-proposed without revision in Rule 900(nn). The Commission now believes that it would be more consistent with the overall structure of Regulation SBSR to move any substantive requirements from the definitions rule (Rule 900) and into an operative rule. Therefore, the Commission's substantive requirements for a registered SDR's use of UICs are now located in final Rule 903.[614] As described below, the Commission is adopting these requirements substantially as proposed, but with certain changes as described below. In particular, Rule 903(a), as adopted, includes new language regarding Commission recognition of international systems for assigning UICs. In addition, final Rule 903(a) provides that, if the Commission has recognized such a system that assigns UICs to persons, each participant of a registered SDR shall obtain a UIC from or through that system for identifying itself, and each participant that acts as a guarantor of a direct counterparty's performance of any obligation under a security-based swap that is subject to Rule 908(a) shall, if the direct counterparty has not already done so, obtain a UIC for identifying the direct counterparty from or through that system, if that system permits third-party registration without a requirement to obtain prior permission of the direct counterparty.

Final Rule 903(b) imposes certain restrictions on how coded information may be reported and publicly disseminated. Rule 903(b) substantially incorporates the earlier versions of Rule 903, with certain conforming and technical changes described below.

2. Comments Regarding UICs and Final Rule 903(a)

The Commission received several comments on the proposed rules relating to UICs and the development of internationally recognized LEIs generally. One commenter expressed concern that, absent a methodology

[606] *See* 78 FR 31072.

[607] SIFMA/FIA/Roundtable Letter at A–28.

[608] *Id.* at A–30.

[609] *See* 75 FR 75215, 75234, 75237.

[610] *See* 78 FR 31069–72.

[611] *See supra* Section II (describing UICs that must be reported to registered SDRs pursuant to Regulation SBSR).

[612] *See* 78 FR 31211–12.

[613] *See id.* at 31213.

[614] Accordingly, the Commission is now adopting a simplified definition of ''UIC.'' *See* Rule 900(qq) (defining ''UIC'' as ''a unique identification code assigned to a person, unit of a person, product, or transaction''). *See also infra* Section X(B)(2) (discussing final Rule 903(a)).

outlined by a standard-setting body, multiple UICs could be assigned by different regulators to the same financial entity, thereby creating compliance burdens, operational difficulties, and opportunities for confusion.[615] Another commenter believed that, absent internationally recognized LEIs, requiring SDR-specific UICs would create inconsistencies among different SDRs.[616] This commenter recommended that the Commission postpone this requirement until an international taxonomy exists that can be applied consistently.[617] A third commenter stated that it is imperative that a single source of reference data and unambiguous identifiers be established.[618] A fourth commenter argued that ''[s]ignificant progress in establishing the GLEIS has been made to date, and the time for further expanding the use of the LEI through rulemaking is favorable.'' [619] A fifth commenter noted that the CFTC's swap reporting rules require the use of LEIs and urged the Commission, for the sake of clarity and consistency, to replace its reference to ''unique counterparty identifiers'' with ''Legal Entity Identifiers,'' unless the Commission's rule was intended to include identifiers beyond LEIs.[620] A sixth commenter suggested that the rules reflect primary use of the LEI as a party identifier and the need to use an LEI ''when available,'' recognizing that a reporting party may request but cannot compel its counterparties to obtain an LEI.[621]

The Commission is adopting in Rule 903(a) the provisions relating to the process for assigning UICs largely as proposed and re-proposed, but—reflecting the comments described above—is including two new requirements: (1) That the Commission recognize an IRSS before the use of UICs from that IRSS becomes mandatory under Regulation SBSR; and (2) that, if the Commission has recognized an IRSS that assigns UICs to persons, each participant of a registered SDR shall obtain a UIC from or through that IRSS. As noted below, the Commission is recognizing the GLEIS as an IRSS for assigning LEIs. Final Rule 903(a) states: ''If an internationally recognized standards-setting system that imposes fees and usage restrictions on persons that obtain UICs for their own usage that are fair and reasonable and not unreasonably discriminatory and that meets the requirements of paragraph (b) of this section is recognized by the Commission and has assigned a UIC to a person, unit of a person, or product (or has endorsed a methodology for assigning transaction IDs), the registered security-based swap data repository shall employ that UIC (or methodology for assigning transaction IDs). If no such 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 (or has not endorsed a methodology for assigning transaction IDs), the registered security-based swap data repository shall assign a UIC to that person, unit of person, or product using its own methodology (or endorse a methodology for assigning transaction IDs). If the Commission has recognized such a system that assigns UICs to persons, each participant of a registered security-based swap data repository shall obtain a UIC from or through that system for identifying itself, and each participant that acts as a guarantor of a direct counterparty's performance of any obligation under a security-based swap that is subject to § 242.908(a) shall, if the direct counterparty has not already done so, obtain a UIC for identifying the direct counterparty from or through that system, if that system permits third-party registration without a requirement to obtain prior permission of the direct counterparty.'' [622]

The Commission shares commenters' desire to have identifiers that are widely recognized, which would increase efficiency at both the SDR and market participant level. To avoid confusion about when an IRSS meets the standards of Rule 903, the Commission has modified the rule to provide that UICs issued by a particular IRSS would not become mandatory under Regulation SBSR unless the Commission has recognized the IRSS. As detailed below, the Commission is recognizing the GLEIS, applying the standards provided in Rule 903. The Commission will apply the standards provided in Rule 903 to any future assessment of whether an IRSS should be recognized as a provider of UICs for purposes of Regulation SBSR. Specifically, the Commission will consider whether the IRSS imposes fees and usage restrictions on persons that obtain UICs for their own usage that are fair and reasonable and not unreasonably discriminatory, and whether the information necessary to interpret the codes assigned by or through the IRSS is widely available to users of the information on a non-fee basis and without usage restrictions.[623]

Since Regulation SBSR was initially proposed in 2010, significant strides have been made in the development of a globally recognized LEI. The Commission hereby recognizes the GLEIS, which operates under a regulatory oversight committee (''ROC''), as an internationally recognized standards-setting system (''IRSS'') [624] that meets the requirements of Rule 903 of Regulation SBSR. The Commission notes that the LEI Regulatory Oversight Committee (''LEI ROC'') currently includes members that are official bodies from over 40 jurisdictions.[625] LEIs are being issued by over 30 pre-local operating units (''pre-LOUs'') around the globe, including the Global Markets Entity Identifier (''GMEI'') Utility in the United States.[626] Furthermore, the Commission believes that the GLEIS imposes fees and usage restrictions on persons that obtain UICs

[615] *See* ICI I at 6.

[616] *See* DTCC V at 14 (also noting that, while global standards for identification codes are likely to exist for some data fields, certain global identifiers will not exist).

[617] *See id. See also* Bloomberg Letter at 1 (''an identifier system should be comprehensive and global'').

[618] *See* Benchmark Letter at 1.

[619] *See* letter from Kenneth E. Bentsen, Jr., President and CEO, SIFMA, to the Honorable Jacob J. Lew, Chairman, Financial Stability Oversight Council, dated April 11, 2014, available at *http://www.sifma.org/newsroom/2014/sifma_pushes_for_broad_use_of_leis_to_promote_financial_stability/* (last visited January 13, 2015). In a prior comment letter, this commenter recommended that ''industry utilities'' be considered for assigning unique IDs for legal entities/market participants, as well as for transactions and products. *See* ISDA/SIFMA I at 8. *See also* SWIFT Letter at 2 (expressing support for a global standard for identifying security-based swap market participants); DTCC X (stating that there has been significant adoption globally on transaction ID, product ID, and LEI standards).

[620] *See* Levin Letter at 4.

[621] *See* ISDA IV at 12. Regulation SBSR, as adopted, does not compel a counterparty on a reporting side to a security-based swap to obtain an LEI for a counterparty on the other side of the transaction.

[622] *See infra* Section X(B)(3) (explaining the Commission's rationale for adopting final Rule 903(a)).

[623] *See infra* Section X(B)(3) (discussing final Rule 903(b)).

[624] Regulation SBSR, as proposed and re-proposed, would have employed the term ''internationally recognized standards-setting *body*'' rather than ''internationally recognized standards-setting *system*,'' which is used in Regulation SBSR, as adopted. The Commission made this revision to better reflect the process of LEI issuance. LEIs are being assigned by a number of different bodies in different jurisdictions being coordinated through a global system, rather than by a single body.

[625] The Commission is a member of the Executive Committee of the LEI ROC. The LEI ROC is a stand-alone committee established pursuant to recommendations by the Financial Stability Board (''FSB'') that was subsequently endorsed by the Group of 20 nations. *See* Financial Stability Board (''FSB''), *A Global Legal Entity Identifier for Financial Markets* (June 8, 2012), available at *http://www.leiroc.org/publications/gls/roc_20120608.pdf* (last visited September 22, 2014); *http://www.treasury.gov/resource-center/international/g7-g20/Documents/G20%20Ministerial%20Communique%20November%204-5-2012-Mexico%20City.pdf* (last visited September 22, 2014).

[626] *See https://www.gmeiutility.org/index.jsp.*

for their own usage that are fair and reasonable and not unreasonably discriminatory under Rule 903(a).[627] The Commission also understands that the GLEIS does not impose any fees for usage of or access to its LEIs, and that all of the associated reference data needed to understand, process, and utilize the LEIs are widely and freely available and not subject to any usage restrictions.[628] Therefore, the Commission believes that the LEIs issued by or through the GLEIS meet the standards of Rule 903(b), which are discussed in the section immediately below. The Commission also notes that it would expect to revisit its recognition of the GLEIS if the GLEIS were to modify its operations in a manner that causes it no longer to meet the standards of Rule 903. The Commission believes that the provisions of Rule 903—coupled with the Commission's recognition of the GLEIS—will facilitate the reporting and analysis of security-based swap transaction data, because (1) each participant of a registered SDR must be identified using the same LEI for all transactions reported pursuant to Regulation SBSR, and regardless of which registered SDR holds records of its transactions, and (2) a participant, when it acts as guarantor of a direct counterparty to a security-based swap that is subject to Rule 908(b), is required to obtain an LEI from or through the GLEIS if the direct counterparty does not already have an LEI and if the system permits third-party registration without a requirement to obtain prior permission of the direct counterparty.[629]

As noted above, one commenter recommended that, for clarity and consistency with the CFTC's swap reporting rules, the Commission refer to LEIs, rather than UICs, unless the Commission intended to include identifiers beyond LEIs.[630] Although the Commission agrees that the use of the term ''LEI'' would provide greater consistency with the CFTC's rules, Regulation SBSR continues to refer to UICs, rather than LEIs, for two reasons. First, as the commenter suggested, the term ''UIC'' in Regulation SBSR includes identifiers in addition to LEIs, such as identifiers for products, transactions, business units of legal entities (*i.e.,* branches and trading desks), and individual traders.[631] Second, the GLEIS does not extend to natural persons or sub-legal entity business units, such as a branches and trading desks. Because at present the Commission has not recognized an IRSS for these types of UICs, a registered SDR is required to assign UICs to these entities using its own methodology. Thus, because Regulation SBSR refers to identifiers in addition to LEIs, Regulation SBSR continues to refer to UICs rather than LEIs.

The Commission acknowledges that, under final Rule 903(a), different registered SDRs could, in theory, assign different UICs to the same person, unit of a person, or product. Inconsistent UICs could require the Commission and other relevant authorities to map the UICs assigned by one registered SDR to the corresponding UICs assigned by other registered SDRs to obtain a complete picture of the market activity pertaining to a particular person or business unit.[632] Although mapping may present certain challenges, the Commission believes that this approach is better than the likely alternative of having market participants assign UICs to identify persons, units of persons, or products according to their own methodologies.[633] In other words, the Commission believes that UICs, even if they are SDR-specific, will provide a streamlined way of reporting, disseminating, and interpreting security-based swap information.[634] The Commission believes that requiring registered SDRs to develop their own UICs—but only for UICs that are not assigned by or through an IRSS that has been recognized by the Commission—will result in less confusion than the currently available alternatives, such as allowing each reporting side to utilize its own nomenclature conventions, which would subsequently have to be normalized by registered SDRs themselves or by the Commission.

The Commission further understands that, at this time, neither the GLEIS nor any other IRSS has assigned product IDs or established a methodology for assigning transaction IDs. Therefore, a registered SDR also is required under Rule 903(a) to assign, or endorse a methodology for assigning, product IDs and transaction IDs. One commenter recommended that ''industry utilities'' be considered for assigning unique IDs, including transaction IDs and product IDs.[635] With respect to product IDs, Rule 903(a) provides a registered SDR with flexibility to assign a product ID created by an industry utility, in the absence of an IRSS recognized by the Commission that issues product IDs. Thus, if an industry utility developed product IDs,[636] a registered SDR could endorse that industry utility as the means for assigning such product IDs, and require use of those product IDs for reporting and publicly dissemination transaction information in its policies and procedures required by Rule 907(a).

With respect to transaction IDs, a registered SDR—in the absence of an IRSS recognized by the Commission that has endorsed a methodology for assigning transaction IDs—is required to

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[627] *See* FSB, *A Global Legal Entity Identifier for Financial Markets,* at 20 (''Fees, where and when imposed, should be modest and set on a non-profit cost-recovery basis'') and at 20, note 20 (''It is possible that some jurisdictions could be willing to fund the LEI issuance from public sources and provide LEIs to its local entities free of charge''). As of December 26, 2014, the cost of obtaining an LEI from the GMEI Utility was $200, plus a $20 surcharge for the LEI Central Operating Unit. The annual cost of maintaining an LEI from the GMEI Utility was $100, plus a $20 surcharge for the LEI Central Operating Unit. *See https://www.gmeiutility.org/frequentlyAskedQuestions.jsp*.

[628] *See, e.g., http://www.financialstability board.org/wp-content/uploads/r_120608.pdf?page_moved=1,* at 9 (''Access to the LEI and associated reference data will be free and open to all users, and there should be no 'bundling' of other services alongside the LEI by providers which forces users to pay directly or indirectly for the LEI''). In addition, LEI information can be downloaded at no cost from pre-LOU Web sites. *See, e.g., https://www.gmeiutility.org/* (providing a link for downloading an FTP file containing LEI information).

[629] The Commission understands that the GLEIS permits one firm to register a second firm when the first firm has a controlling interest over the second. *See https://www.gmeiutility.org/frequentlyAskedQuestions.jsp* (''Who can register an entity for the LEI?'').

[630] *See* Levin Letter at 4.

[631] Rule 900(qq), as adopted, defines UIC to mean ''a unique identification code assigned to a person, unit of a person, product, or transaction.''

[632] To avoid this possibility with respect to the identification of legal persons that are participants of at least one registered SDR, the Commission has recognized the GLEIS—by or through which LEIs are issued—as an IRSS that meets the criteria of Rule 903. The Commission is requiring that, if the Commission has recognized such a system that assigns UICs to persons, each participant of a registered SDR shall obtain a UIC from or through that system. The Commission notes that a single person may act in various capacities in the security-based swap market. For example, a person could be a direct counterparty with respect to some transactions while acting as a broker with respect to other transactions. If that person is a participant of a registered SDR, that person must obtain an LEI from or through the GLEIS to identify itself in all applicable security-based swap transaction reports, regardless of the capacity in which the person acted with respect to a particular transaction.

[633] The Commission notes, however, that Regulation SBSR does not prohibit one registered SDR from utilizing the UICs that were originally assigned by another SDR.

[634] *See infra* Section XIX (discussing regulatory implications of having multiple registered SDRs).

[635] *See* ISDA/SIFMA I at 8. *See also* ISDA IV at 12 (requesting that the Commission acknowledge the ISDA OTC Taxonomy as an acceptable product ID for reporting under Regulation SBSR and recognize that reporting parties, as opposed to SDRs, are generally best positioned to assign these values). In the context of the development of product IDs, the Commission is not at this time making any determination as to whether the ISDA OTC Taxonomy system constitutes an IRSS under Regulation SBSR, or whether the product IDs issued under the ISDA OTC Taxonomy system meet the criteria of Rule 903.

[636] *See id.*

assign transaction IDs or endorse a methodology for assigning transaction IDs.[637] A number of commenters recommended that Regulation SBSR permit transaction IDs generated by persons other than a registered SDR.[638] The Commission generally agrees with these comments, and has revised the UIC provisions relating to transaction IDs as follows. Although Rule 900, as proposed and re-proposed, would have defined ''transaction ID'' as ''the unique identification code assigned by registered security-based swap data repository to a specific security-based swap,'' the definition of ''UIC'' in proposed Rule 900(nn) did not mention transaction IDs. The final definition of ''UIC'' includes transaction IDs in addition to identification codes for persons, units of persons, and products. The final definition of ''transaction ID'' is ''the UIC assigned to a specific security-based swap transaction,'' without the limitation that it be assigned by a registered SDR. The Commission agrees with these commenters that requiring a registered SDR to use transaction IDs assigned only by a registered SDR would not be practical. The Commission believes that it would be more efficient and consistent with current practice in the security-based swap market to allow transaction IDs to be assigned at or shortly after execution, by a counterparty, platform, or post-trade processor. Final Rule 903(a) includes language that contemplates that an IRSS or registered SDR may ''endorse a methodology for assigning transaction IDs.'' This formulation makes clear that transaction IDs need not be assigned by an IRSS or registered SDR itself, but can be assigned by security-based swap counterparties, platforms, or post-trade processors using the IRSS's or registered SDR's methodology. Any entity that assigns the transaction ID must do so in accordance with the methodology endorsed by a recognized IRSS or, in the absence of a recognized IRSS that has endorsed a methodology for assigning transaction IDs, by the registered SDR that will receive the report of the transaction.[639]

Two commenters addressed the types of entities that can act as IRSSs. One of these commenters recommended that for-profit entities be permitted to act as reference data registration authorities,[640] while the other commenter argued that LEIs should be issued by a not-for-profit entity that operates on the principle of cost recovery, and that the industry should determine the appropriate model for cost recovery.[641] The Commission does not believe that it is necessary or appropriate to specify the type of entity—for-profit or non-profit—that can establish or operate an IRSS. Whichever the case, final Rule 903(a) specifies that the UICs issued by an IRSS may be used under Regulation SBSR only if the IRSS that imposes fees and usage restrictions that are fair and reasonable and not unreasonably discriminatory and that meets the criteria of Rule 903(b) has been recognized by the Commission. In other words, the overall character of the IRSS's operation does not matter for purposes of compliance with Regulation SBSR (*i.e.,* whether it is a for-profit or non-profit entity) so long as any fees and usage restrictions imposed with respect to UICs meets the requirements of Rule 903(a). In addition, any codes used as, or as part of, UICs under Regulation SBSR must meet the standards of Rule 903(b), which are described below.

3. Comments on Proposed Rule 903 and Final Rule 903(b)

Commenters expressed differing views regarding whether the providers of UICs—and product IDs in particular—should be able to charge fees for the codes or for the information necessary to interpret the codes. One commenter supported the proposed requirement that information necessary to interpret reported or publicly disseminated codes be available free of charge.[642] However, a second commenter—a provider of product identification codes for security-based swaps—stated that Regulation SBSR should not require product identifiers to be freely available.[643] This commenter noted that maintaining a reliable identification system for security-based swaps requires a substantial level of investment, and recommended that the providers of product identification codes be permitted to charge commercially reasonable fees for developing and maintaining the codes.[644] A third commenter recommended that existing licensing codes be used for product IDs to the extent possible, because using existing codes would be easier for registered SDRs; the use of new codes would require ongoing maintenance and the development of specific processes for reporting, which could result in poorer quality data submissions.[645]

After careful consideration of these comments, the Commission continues to believe that the information necessary to interpret any codes used by registered SDRs must be ''widely available on a non-fee basis.'' Thus, the Commission is adopting this key feature of Rule 903(b) as proposed and re-proposed. A primary goal of Title VII is to use reporting and public dissemination of security-based swap data as a means of monitoring risks and increasing transparency, both to regulators and the public, of the security-based swap markets. If the transaction data that are reported and publicly disseminated contain codes and the information necessary to interpret such codes is not widely available on a non-fee basis, these Title VII goals could be frustrated. In the absence of Rule 903(b), a registered SDR could require—or acquiesce in the use of—proprietary, fee-based identification codes, thereby requiring all users of the security-based swap market data to pay the code creator, directly or indirectly, for the information necessary to interpret the codes. Users of the data also might be subject to usage restrictions imposed by the code creator.

Currently, the security-based swap market data typically include fee-based codes, and all market participants and market observers must pay license fees and agree to various usage restrictions to

[637] *See* Rule 903(a). *See also supra* Section III(B)(2) (discussing transaction IDs).

[638] *See* DTCC V at 14 (recommending that the Commission allow flexibility for a registered SDR to accept transaction IDs already generated by the reporting side or to assign transaction IDs where such request is made); ISDA III at 2; ISDA IV at 11; Tradeweb Letter at 5 (arguing that SB SEFs and exchanges should be permitted to assign transaction IDs).

[639] *See* Rule 903(a). Thus, for example, a counterparty or platform must not generate 40-character transaction IDs if the registered SDR requires and can accept only 32-character transaction IDs.

[640] *See* GS1 Proposal at 53.

[641] *See* ISDA/SIFMA I at 8.

[642] *See* Barnard I at 3 (noting that making this information available for free could eliminate confusion).

[643] *See* Markit I at 6 (stating that identifier systems provided on an automated basis and/or for free ''generally are not adequate for the intended goals'').

[644] *See id.*

[645] *See* DTCC II at 16. The commenter supported the continued use of existing license codes, including the Markit Reference Entity Database (''RED'')™ codes currently used in trade confirmations for credit derivatives and the Reuters Instrument Codes (''RIC'') used in electronic messages for equity derivatives. The commenter further noted that without RED codes, the description of a reference entity in submitted data could vary, even in minor ways (*e.g.,* the punctuation used in an abbreviation), creating difficulties for the SDR that would be required to correctly identify the reference entity. This commenter also suggested that the Commission adopt a rule that would provide existing licensing codes at a reduced cost for small volume market participants. As described below, final Rule 903(b) permits the use of codes in security-based swap reports under Regulation SBSR only if the information necessary to interpret the codes is widely available on a non-fee basis.

obtain the information necessary to interpret the codes. The Commission believes that allowing continuation of the status quo would not satisfy the Title VII mandate to increase security-based swap market transparency through public dissemination. If information to understand embedded codes is not widely available on a non-fee basis, information asymmetries would likely continue to exist between large market participants who pay for the codes and others market participants. One commenter suggested that alternatives could be developed to the status quo of using fee-based codes in security-based swap market data.[646] The Commission welcomes the development of such alternatives, and believes that Rule 903(b), as adopted, will likely encourage such development.

Furthermore, the Commission believes that the public dissemination requirements in Title VII should allow observers of the market to incorporate the information contained in public reports of security-based swaps into any decisions they might take regarding whether and how to participate in the market (or even to avoid participation), and for intermediaries in the market to incorporate this information to provide better advice to their clients about the market. The Commission does not believe that these objectives would be advanced if the ability of market participants to understand public reports of security-based swap transactions were conditioned on agreeing to pay fees to a code creator. The Commission similarly believes that subjecting the public's use of this information to restrictions imposed by a code creator also could frustrate the objectives of public dissemination. In addition, allowing continuation of the status quo would retard the ability of the Commission and other relevant authorities to obtain and analyze comprehensive security-based swap information.

The Commission recognizes the usefulness of codes. They make reporting more efficient because providing just one code—a product ID, for example—can eliminate the need to report multiple data elements individually. Codes also facilitate the standardized representation of security-based swap data and thereby make reporting (and understanding reported data) more reliable and efficient.[647] With respect to product IDs specifically, the Commission believes that unless an IRSS has been recognized by the Commission and can assign product IDs, registered SDRs should be free to choose between using an existing mechanism for assigning product IDs—assuming it is consistent with Rule 903(b)—and developing a new product classification system. If all existing product identification codes require users of the transaction information to pay a fee, then a registered SDR may not require or permit use of those codes for reporting and public dissemination. The registered SDR would be required to issue UICs using its own methodology and make the information necessary to interpret those codes available on a non-fee basis.

In light of the requirement in Rule 903(b) that the information necessary to interpret coded information be widely available on a non-fee basis, it would be inconsistent with the rule for a registered SDR to permit information to be reported pursuant to Rule 901, or to publicly disseminate information pursuant to Rule 902, using codes in place of certain data elements if the registered SDR imposes, or permits the imposition of, any usage restrictions on the disseminated information. The purpose of Rule 903(b) is to help ensure that the public is able to utilize the last-sale information provided by Regulation SBSR without limitation or expense.

The commenter that provides product identification codes for security-based swaps also noted that proposed Regulation SBSR would allow an IRSB that develops counterparty identifiers to charge fees, and believed that providers of product IDs should receive comparable treatment.[648] In response to this comment, the Commission believes that it is appropriate to make minor revisions to the rule language to clarify its original intent and thereby eliminate any apparent contradiction between the two paragraphs of Rule 903. When the Commission originally proposed that an IRSB could impose fees and usage restrictions as long as they were fair and reasonable and not unreasonably discriminatory, the Commission intended that language to apply to persons that obtain UICs for their own usage (such as a legal entity that seeks to identify itself as a counterparty when engaging in security-based swap transactions), not ultimate users of the information (such as third parties who might wish to enter into a security-based swap with that entity as the reference entity). The Commission believes that this distinction is consistent with international efforts to develop a global LEI.[649]

In Rule 903(a), as adopted, the Commission is inserting after the words ''fees and usage standards'' the new words ''on persons that obtain UICs for their own usage.'' [650] This language clarifies that it is consistent with Rule 903(a) for a registered SDR to accept codes for which the code creator assesses fair and reasonable fees on market participants that need to identify themselves, their agents, or parts of their organizations when engaging in financial activities. For example, Rule 903(a) would permit a registered SDR to charge participants that need to acquire UICs that are assigned by registered SDRs, such as counterparty IDs, ultimate parent IDs, branch IDs, trading desk IDs, and trader IDs.

In Rule 903(b), as adopted, the Commission is inserting the words ''to users of the information'' immediately

[646] *See* Bloomberg Letter at 2. This commenter stated that it would be possible to develop a public domain symbology for security-based swap reference entities that relied on products in the public domain to ''provide an unchanging, unique, global and inexpensive identifier.'' According to this commenter, its proprietary symbology product for securities could provide a starting point for a security-based swap symbology product.

[647] For example, in the absence of an LEI, different persons might refer to a particular legal entity as ''XYZ,'' ''XYZ Corp.'', or ''XYZ Corporation.'' Confusion about whether all of these terms refer to same entity would be minimized, if not wholly eliminated, if all parties referred to the entity using the same code (*e.g.,* ''ABCD12345'').

[648] *See* Markit Letter at 6.

[649] *See* Charter of the Regulator Oversight Committee for the Global Legal Entity Identifier (LEI) System (November 5, 2012), *http://www.leiroc.org/publications/gls/roc_20121105.pdf* (last visited September 22, 2014) (''ROC Charter''). The ROC Charter provides that the mission of the ROC is ''to uphold the governance principles of and to oversee the Global LEI System, in the broad public interest.'' *Id.* at 1. The ROC Charter further provides that, in protecting the broad public interest, the objectives of the ROC include ''open and free access to publicly available data from the Global LEI System,'' and specifically includes the following principle: ''all public data should be readily available on a continuous basis, easily and widely accessible using modern technology, and *free of charge.'' Id.* at 2 (emphasis added). At the same time, the ROC Charter states that ''any entities required, or eligible, to obtain an LEI [must be] able to acquire one under open and non-discriminatory terms.'' *Id.* One such term is that ''fees, where and when imposed by the [Central Operating Unit], are set on a non-profit cost-recovery basis.'' *Id.*

[650] Final Rule 903(a) thus provides: ''If an internationally recognized standards-setting system that imposes fees and usage restrictions *on persons that obtain UICs for their own usage* that are fair and reasonable and not unreasonably discriminatory is recognized by the Commission and has assigned a UIC to a person, unit of a person, or product (or has endorsed a methodology for assigning transaction IDs), the registered security-based swap data repository shall employ that UIC (or methodology for assigning transaction IDs). If no such 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 (or has not endorsed a methodology for assigning transaction IDs), the registered security-based swap data repository shall assign a UIC to that person, unit of person, or product using its own methodology (or endorse a methodology for assigning transaction IDs)'' (emphasis added).

after the phrase ''widely available.'' [651] The users of information referred to in final Rule 903(b) could include the Commission, other relevant authorities, or any person who wishes to view or utilize the publicly disseminated security-based swap transaction data for any purpose. As noted above, the Commission does not believe that access to this information should be impeded by having to pay fees or agree to usage restrictions in order to understand any coded information that might be contained in the transaction data.

The Commission notes that Rule 903(b) prevents registered SDRs and code creators from impeding a person's ability to obtain the information necessary to interpret coded information used in reporting or public dissemination under Regulation SBSR. Rule 903(b) is not intended to prevent a registered SDR from charging for its SDR services. To the contrary, registered SDRs are expressly permitted to charge fees for their SDR services that are fair and reasonable and not unreasonably discriminatory.[652]

The Commission notes that it is making an additional revision to the language in re-proposed in Rule 903 to conform final Rule 903(b) to the Commission's original intent and to avoid any potential conflict with final Rule 901(h). Rule 901(h), as adopted, provides that the reporting side shall electronically transmit the information required under Rule 901 to a registered SDR ''in a format required by the registered [SDR].'' Under re-proposed Rule 903, the reporting side could ''provide information to a registered [SDR] . . . using codes in place of certain data elements.'' [653] This language in re-proposed 903 could have been read to give the reporting side discretion to select what codes it could use for reporting transaction information to a registered SDR., The Commission has revised final Rule 903(b) to more clearly reflect its original intent: That reporting sides shall report information in a format required by the registered SDR.[654] Thus, Rule 903(b), as adopted, provides that a registered SDR ''may permit information to be reported . . . using codes in place of certain data elements.'' The Commission believes that final Rule 903(b), read together with final Rule 901(h), makes clear that a reporting side may provide coded information to a registered SDR only to the extent permitted by the registered SDR and only in a format required by the SDR. Therefore, the reporting side may not exercise its own discretion when selecting codes to use in its reports to the registered SDR, regardless of whether the codes otherwise comport with Rule 903.

Finally, one commenter expressed concern that, although Regulation SBSR, as initially proposed, would have required that the information necessary to interpret codes be made available for free, the proposal would not have prevented a code creator from charging for other uses.[655] In this commenter's view, ''[a] widely used identifier can become a *de facto* standard for anyone doing business in the relevant marketplace. This creates the potential for abuse, defeating the entire purpose of promoting the broad availability of identifiers.'' [656] This commenter believed instead that, ''[a]s long as all market participants have the unfettered freedom to introduce alternative identifiers and to map those identifiers to the standard, however, multiple, competing identifiers can provide an inexpensive solution.'' [657] The Commission shares the commenter's concern that identification codes not become a tool for monopolistic abuse. This is why the Commission is requiring in Rule 903(b) that, if such codes will be used for reporting or publicly disseminating security-based swap transaction data, ''the information necessary to interpret such codes [must be] widely available to users of the information on a non-fee basis.'' Thus, the Commission does not believe it will be necessary for market participants to introduce alternative identifiers, although Regulation SBSR would not prohibit them from doing so.

C. Policies and Procedures of Registered SDRs Relating to UICs

As proposed and re-proposed, Rule 907(a)(5) would have required a registered SDR to establish and maintain written policies and procedures for assigning: (1) A transaction ID to each security-based swap that is reported to it; and (2) UICs established by or on behalf of an IRSB that imposes fees and usage restrictions that are fair and reasonable and not unreasonably discriminatory (or, if no standards-setting body meets these criteria or a standards-setting body meets these criteria but has not assigned a UIC to a particular person, unit of a person, or product, assigning a UIC using its own methodology).

The Commission received several comments, noted above, that discussed utilization of UICs generally and considered them in connection with Rule 907(a)(5).[658] The Commission also received a comment that generally encouraged the Commission to adopt a convention for assigning unique IDs and incorporating a pilot or early adopter program for certain products and participants that would allow for end-to-end testing and proof of concept.[659]

As discussed above, the Commission believes that UICs—even if utilized on an SDR-specific basis in the absence of UICs issued by a recognized IRSS—will create a more consistent and transparent system for reporting and analyzing security-based swap transactions. Therefore, the Commission continues to believe that it is important for registered SDRs to have policies and procedures providing for the issuance of such UICs and is adopting a modified version of Rule 907(a)(5) that requires registered SDRs to establish written policies and procedures ''[f]or assigning UICs in a manner consistent with [Rule 903].'' This is a conforming change to be consistent with the Commission's decision to locate the substantive requirements for the assignment of UICs in Rule 903.[660] With respect to the comment received, the Commission believes that market participants can work with entities that are likely to register with the Commission as SDRs on pilot programs for certain products and conventions for assigning UICs. However, the Commission does not believe it would be appropriate for the Commission itself to adopt such

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[651] Final Rule 903(b) thus provides: ''A registered security-based swap data repository may permit information to be reported pursuant to § 242.901, and may publicly disseminate that information pursuant to § 242.902, using codes in place of certain data elements, provided that the information necessary to interpret such codes is widely available *to users of the information* on a non-fee basis'' (emphasis added).

[652] *See* Rule 13n–4(c)(1)(i) under the Exchange Act, which is part of the SDR Adopting Release. *But see* Regulation SBSR Proposed Amendments Release, Section VI (proposing to prohibit SDRs from charging fees for publicly disseminating regulatorily mandated transaction data).

[653] Specifically, re-proposed Rule 903 provided that ''The reporting side may provide information to a registered security-based swap data repository pursuant to § 242.901 and a registered security-based swap data repository may publicly disseminate information pursuant to § 242.902 using codes in place of certain data elements, provided that the information necessary to interpret such codes is widely available on a non-fee basis.''

[654] *See supra* Section IV (discussing Rule 901(h)). *See also* Rule 907(a)(5) (requiring a registered SDR to establish and maintain policies and procedures for assigning UICs in a manner consistent with Rule 903); Rule 907(a)(2) (requiring a registered SDR to establish and maintain policies and procedures that specify, among other things, protocols for submitting information, including but not limited to UICs).

[655] *See* Bloomberg Letter at 2.

[656] *Id.*

[657] *Id.*

[658] *See supra* notes 615 to 618 and accompanying text.

[659] *See* ISDA/SIFMA I at 8.

[660] *See supra* Section X(B)(1).

conventions; the Commission believes instead that greater expertise in coding data will reside in the industry and, in particular, at registered SDRs. The Commission further believes that Rule 900(qq), which defines ''UIC,'' and Rule 903, which establishes standards for the use of UICs provide adequate parameters for the development of a UIC system. The Commission believes that allowing the industry to develop conventions for assigning UICs will likely result in a more efficient and flexible UIC regime than if the Commission were to adopt such conventions itself.

XI. Operating Hours of Registered SDRs—Rule 904

Title VII of the Dodd-Frank Act does not explicitly address or prescribe the hours of operation of the reporting and public dissemination regime that it requires. The security-based swap market is global in nature, and security-based swaps are executed throughout the world and at any time of the day. In light of the global nature of the security-based swap market, the Commission believes that the public interest is served by requiring near-continuous reporting and public dissemination of security-based swap transactions, no matter where or when they are executed (subject to the cross-border rules discussed in Section XV, *infra*). Furthermore, having a near-continuous reporting and public dissemination regime would reduce the incentive for market participants to defer execution of security-based swap transactions until after regular business hours to avoid post-trade transparency. Accordingly, the Commission proposed Rule 904, which would have required a registered SDR to design its systems to allow for near-continuous receipt and dissemination of security-based swap data. A registered SDR would have been permitted to establish ''normal closing hours'' and to declare, on an *ad hoc* basis, ''special closing hours,'' subject to certain requirements. Rule 904 was not revised as part of the Cross-Border Proposing Release, and was re-proposed in exactly the same form as initially proposed.

As discussed below, three commenters addressed proposed Rule 904. The Commission has carefully reviewed the comments received and has determined to adopt Rule 904, as proposed and re-proposed, subject to one conforming change, as discussed below.[661]

Rule 904, as adopted, requires a registered SDR to have systems in place to receive and disseminate information regarding security-based swap data on a near-continuous basis, with certain exceptions. First, under final Rule 904(a), a ''registered SDR may establish normal closing hours when, in its estimation, the U.S. market and major foreign markets are inactive.'' Second, under final Rule 904(b), a registered SDR ''may declare, on an *ad hoc* basis, special closing hours to perform system maintenance that cannot wait until normal closing hours.'' Rule 904(b) further provides that a registered SDR shall, ''to the extent reasonably possible under the circumstances, avoid scheduling special closing hours during [periods] when, in its estimation, the U.S. market and major foreign markets are most active.'' Rules 904(a) and 904(b) each require the registered SDR to provide participants and the public with reasonable advance notice of its normal closing hours and special closing hours, respectively.

Rule 904(c) specifies requirements for handling and disseminating reported data during a registered SDR's normal and special closing hours. During normal closing hours and, to the extent reasonably practicable during special closing hours, a registered SDR is required to ''have the capability to receive and hold in queue'' the transaction data that it receives. Pursuant to Rule 904(d), immediately upon system re-opening following normal closing hours or special closing hours (assuming it was able to hold incoming data in queue), the registered SDR is required to publicly disseminate any transaction data required to be reported under Rule 901(c) that it received and held in queue. Finally, pursuant to Rule 904(e), if the registered SDR could not, while it was closed, receive and hold in queue reported information, it would be required, immediately upon resuming normal operations, to send a notice to all participants that it had resumed normal operations but could not, while closed, receive and hold in queue such transaction information. Therefore, any participant that had an obligation to report information—but was unable to do so because of the registered SDR's inability to receive and hold data in queue—would be required upon notification by the registered SDR to promptly report the information to the registered SDR.

As proposed and re-proposed, Rule 904(e) would have provided that if a participant could not fulfil a reporting obligation due to a registered SDR's inability to receive and hold data in queue, the participant would be required to report the information ''immediately'' upon receiving a notification that the registered SDR has resumed normal operations. The Commission has decided to replace the word ''immediately'' with the word ''promptly'' in the final rule because ''promptly'' emphasizes the need for information to be submitted without unreasonable delay while affording participants a practical degree of flexibility. In general, the Commission believes that submitting a required report ''promptly'' implies ''as soon as practicable.''

The three commenters that addressed Rule 904 were generally supportive of the goal of promoting transparency and price discovery though a regime of continuous reporting and public dissemination,[662] although one of these commenters pointed out the need for registered SDRs to close periodically to perform necessary system maintenance.[663] Two of these commenters also suggested alternative operating hours and procedures for registered SDRs.[664] One commenter stated that the requirements that a registered SDR have normal closing hours only when neither U.S. nor international markets are active, and should continue to receive the relevant transaction data and hold them in queue even when the registered SDR is closed for normal or *ad hoc* special closing hours, exceeded the capabilities of currently existing reporting infrastructures. The commenter argued that such requirements would increase the risk of infrastructure failure because SDRs would not have adequate time to maintain and update their systems.[665] This commenter suggested that, if systems are required to be available on a 24-hour basis, the Commission should define operating hours to be 24 hours from Monday to Friday, and consider allowing additional closing hours either ''when markets are less active'' or ''when only less active markets are open.'' [666]

The Commission believes there are compelling reasons to implement a system of reporting and public dissemination that, in general, operates near-continuously. As discussed above,

[661] In addition, the Commission is making a technical conforming change to revise the title of the rule to refer to ''registered'' SDRs.

[662] *See* Barnard I at 3; Markit I at 1; DTCC II at 1.

[663] *See* Markit I at 4.

[664] *See* Markit I at 4–5; DTCC II at 19–20; DTCC IV at 4 (recommending that SDRs operate on a 24/6.5 basis to reflect the global nature of the financial markets and process transactions in real time, while also maintaining multiple levels of operational redundancy and data security).

[665] *See* Markit I at 4.

[666] Markit I at 4–5.

the Commission believes that requiring near-continuous reporting and public dissemination of security-based swaps—except for when, in the estimation of a registered SDR, the U.S. market and major foreign markets are inactive—will serve the public interest and reduce incentives for market participants to trade outside of regular business hours. The Commission, however, recognizes the need for a registered SDR to have closing hours to maintain and update its systems, and Rules 904(a) and 904(b), as adopted, specifically allow registered SDRs to have normal and special closing hours. Further, while Rule 904(b) states that a registered SDR should avoid scheduling special closing hours during a time when, in its estimation, the U.S. and major foreign markets are most active, the Commission notes that a registered SDR is required to do so only ''to the extent reasonably possible under the circumstances.'' As such, the Commission believes that Rules 904(a) and 904(b) provide sufficient flexibility to registered SDRs in determining their closing times to perform the necessary maintenance procedures. The Commission does not believe it would be appropriate to require registered SDRs to operate 24 hours only from Monday to Friday, as the commenter suggests, as certain major foreign markets may be active during hours that fall within the weekend in the United States.

The Commission recognizes the commenter who asserted that the proposed requirement for a registered SDR to receive and hold in the queue the data required to be reported during its closing hours ''exceeds the capabilities of currently-existing reporting infrastructures.'' [667] The Commission notes that this comment was submitted in January 2011. Since that time, however, provisionally registered CFTC SDRs that are likely also to register as SDRs with the Commission appear to have developed the capability of receiving and holding data in queue during their closing hours.[668] Accordingly, the Commission believes that it is appropriate to require registered SDRs to hold data in queue during their closing hours should help to prevent market disruptions by enabling reporting sides for security-based swaps to report transactions at all times.

XII. Subsequent Revisions to Reported Security-Based Swap Information

A. Reporting Life Cycle Events—Rule 901(e)

1. Description of Proposal and Re-Proposal

Rule 901(e), as proposed and re-proposed, would have required the reporting of certain life cycle event information. ''Life cycle event'' was defined in the proposal and re-proposal to mean ''with respect to a security-based swap, any event that would result in a change in the information reported to a registered security-based swap data repository under § 242.901, including a counterparty change resulting from an assignment or novation; a partial or full termination of the security-based swap; a change in the cash flows originally reported; for a security-based swap that is not cleared, any change to the collateral agreement; or a corporate action affecting a security or securities on which the security-based swap is based (*e.g.,* merger, dividend, stock split, or bankruptcy). Notwithstanding the above, a life cycle event shall not include the scheduled expiration of the security-based swap, a previously described and anticipated interest rate adjustment (such as a quarterly rate adjustment), or other event that does not result in any change to the contractual terms of the security-based swap.''

Re-proposed Rule 901(e) would have provided that ''For any life cycle event, and any adjustment due to a life cycle event, that results in a change to information previously reported pursuant to Rule 901(c), 901(d), or 901(i), the reporting side shall promptly provide updated information reflecting such change to the entity to which it reported the original transaction, using the transaction ID,'' subject to two exceptions. Under Rule 901(e)(1), as re-proposed, if the reporting side ceased to be a counterparty to the security-based swap due to any assignment or novation and if the new side included a U.S. person, a security-based swap dealer, or a major security-based swap participant, the new side would be the reporting side following the assignment or novation. Under re-proposed Rule 901(e)(2), if the new side did not include a U.S. person, a security-based swap dealer, or a major security-based swap participant, the other side would be the reporting side following the assignment or novation.

In proposing Rule 901(e), the Commission preliminarily believed that the reporting of life cycle event information would provide regulators with access to information about significant changes that occur over the duration of a security-based swap.[669] The Commission also stated that the reporting of life cycle event information would help to assure that regulators have accurate and up-to-date information concerning outstanding security-based swaps and the current obligations and exposures of security-based swap counterparties.[670]

In determining the entity that would be required to report life cycle event information, the Commission's approach in proposing and re-proposing Rule 901(e) was that, generally, the person who originally reported the initial transaction would have the responsibility to report any subsequent life cycle event.[671] However, if the life cycle event were an assignment or novation that removed the original reporting party, either the new counterparty or the remaining original counterparty would have to be the reporting party.[672]

In re-proposing Regulation SBSR, the Commission included the new concept of a ''reporting side,'' which would have included the direct counterparty and any indirect counterparty. The Cross-Border Proposing Release also proposed to impose greater duties to report transactions on non-U.S. person security-based swap dealers or major security-based swap participants. Accordingly, the Commission re-proposed Rule 901(e) to provide that the duty to report would switch to the other side only if the new side did not include a U.S. person (as in the originally proposed rule) or a security-based swap dealer or major security-based swap participant. The Commission preliminarily believed that, if the new side included a security-based swap dealer or major security-based swap participant, the new side should retain the duty to report. This approach was designed to align reporting duties with the market participants that the Commission believed would be better

[667] Markit I at 4.

[668] *See, e.g.,* DDR Rulebook, Section 7.1 (DDR System Accessibility) (''Data submitted during DDR System down time is stored and processed once the service has resumed''), available at *http://www.dtcc.com/~/media/Files/Downloads/legal/rules/DDR_Rulebook.pdf* (last visited October 7, 2014).

[669] *See* Regulation SBSR Proposing Release, 75 FR 75220.

[670] *See id.* In a separate rulemaking, the Commission is adopting a rule that will require a registered SDR to establish, maintain, and enforce written policies and procedures reasonably designed to calculate positions for all persons with open security-based swaps for which the SDR maintains records. *See* SDR Adopting Release (adopting Rule 13n–5(b)(2) under the Exchange Act).

[671] *See* Cross-Border Proposing Release, 78 FR 31068.

[672] Rule 901(e), as initially proposed, would have provided that the new counterparty would be the reporting party if it is a U.S. person; the other original counterparty would become the reporting party if the new counterparty is not a U.S. person.

suited to carrying them out, because non-U.S. person security-based swap dealers and major security-based swap participants likely would have taken significant steps to establish and maintain the systems, processes and procedures, and staff resources necessary to report security-based swaps.[673]

2. Final Rules Relating to Life Cycle Events and Response to Comments

a. General Comment and Definition of ''Life Cycle Event''

One commenter expressed support for the requirement to report life cycle event information, stating that the reporting of life cycle event information was necessary for detailed market regulation and for prudential and central bank regulation.[674] The commenter noted that ''[m]any life cycle events are price-forming or significantly change the exposures under a trade. . . .'' [675] In subsequent comment letters, this commenter stated that the definition of ''life cycle event'' was overly broad, and that life cycle events should be limited to those that impact the counterparties to or the pricing of the security-based swap.[676] Specifically, the commenter suggested that the Commission define ''life cycle event'' to mean ''an event that would result in a change in the counterparty or price of a security-based swap reported to the registered [SDR].'' [677] However, another commenter believed that the proposed definition was ''clear, sufficient, and complete.'' [678]

After careful consideration, the Commission is adopting the definition of ''life cycle event'' in Rule 900(q) substantially as re-proposed, but with certain minor modifications to respond to comments and to clarify the original intent of the rule.[679] First, the Commission is making a technical change to the definition to indicate that a life cycle event refers to any event that would result in a change in the information reported ''under § 242.901(c), (d), or (i),'' rather than any event that would result in a change in the information reported ''under § 242.901'' (as re-proposed). This technical change will conform the definition of ''life cycle event'' to the requirements of Rule 901(e), as re-proposed and as adopted, which requires the reporting of a change to information previously reported pursuant to paragraph (c), (d), or (i) of Rule 901. By defining ''life cycle event'' in this manner, the Commission aims to ensure that information reported pursuant to Rules 901(c), (d), and (i) is updated as needed, so that the data maintained by registered SDRs remains current for the duration of a security-based swap. This requirement should help to ensure that the data accessible to the Commission through registered SDRs accurately reflects the current state of the market. Therefore, the Commission does not believe that it is appropriate to limit the definition of ''life cycle event'' to post-execution events that impact the counterparties to or the pricing of a security-based swap, as suggested by the commenter.[680] Although the final definition of ''life cycle event'' encompasses these types of events, it also encompasses other information reported pursuant to Rules 901(c), 901(d), or 901(i).

One commenter asked that the Commission remove the reference to ''dividends'' in the definition of ''life cycle event'' because dividends ''are contract intrinsic events that do not result in a change to the contractual terms of the SBS and therefore, should not be defined as reportable life cycle events.'' [681] The Commission does not believe that it is necessary to revise the definition of ''life cycle event'' as the commenter suggests. As indicated above, the definition of ''life cycle event'' provides, in relevant part, that a life cycle event includes ''any event that would result in a *change* in the information reported to a registered [SDR] . . . including . . . a corporate action affecting a security or securities on which the security-based swap is based (*e.g.,* a merger, dividend, stock split, or bankruptcy)'' (emphasis added). Thus, a regular payment of a dividend that does not require a restatement of the terms of the security-based swap would not constitute a life cycle event. However, other actions involving dividends could be life cycle events. For example, the distribution of a stock dividend that required an adjustment to the notional terms of an equity security-based swap—or any other corporate action related to dividends that resulted in a modification of one or more terms of the security-based swap—would be a life cycle event and therefore would have to be reported pursuant to Rule 901(e).

Second, the Commission is clarifying that a life cycle event includes ''an assignment or novation of the security-based swap,'' instead of ''a counterparty change resulting from an assignment or novation.'' The Commission notes that, while assignments and novations necessarily include a counterparty change, assignments and novations also may involve modifications to other terms of the security-based swap reported pursuant to paragraphs (c), (d), or (i) of Rule 901. These modifications are the type of changes that the Commission believes should be reported to a registered SDR; therefore, the Commission is modifying the definition of ''life cycle event'' to clarify this view.

Third, the Commission is making a technical change to the definition to indicate that a life cycle event includes, for a security-based swap that is not a clearing transaction, ''any change to the title or date of any master agreement, collateral agreement, margin agreement, or any other agreement incorporated by reference into the security-based swap contract.'' As re-proposed, the definition of ''life cycle event'' would have included, ''for a security-based swap that is not cleared, any change to the collateral agreement.'' One commenter questioned the need to include a reference to a change in the collateral agreement in the definition of ''life cycle event'' because ''collateral agreement terms are not among the data required to be reported upon execution.'' [682] The Commission agrees with the commenter that collateral agreement terms are not

[673] *See* Cross-Border Proposing Release, 78 FR 31068.

[674] *See* DTCC II at 13.

[675] *See id.*

[676] *See* DTCC V at 11; DTCC VI at 9.

[677] DTCC VI at 9.

[678] Barnard I at 3.

[679] Rule 900(q), as adopted, defines ''life cycle event'' to mean ''with respect to a security-based swap, any event that would result in a change in the information reported to a registered security-based swap data repository under § 242.901(c), (d) or (i), including: An assignment or novation of the security-based swap; a partial or full termination of the security-based swap; a change in the cash flows originally reported; for a security-based swap that is not a clearing transaction, any change to the title or date of any master agreement, collateral agreement, margin agreement, or any other agreement incorporated by reference into the security-based swap contract; or a corporate action affecting a security or securities on which the security-based swap is based (*e.g.,* a merger, dividend, stock split, or bankruptcy). Notwithstanding the above, a life cycle event shall not include the scheduled expiration of the security-based swap, a previously described and anticipated interest rate adjustment (such as a quarterly interest rate adjustment), or other event that does not result in any change to the contractual terms of the security-based swap.''

[680] *See* DTCC VI at 9. *See also* DTCC II at 13 (stating that ''[m]any life cycle events are price-forming or significantly change the exposures under a trade. . . . The current definition supports reporting of these events'').

[681] ISDA IV at 11.

[682] DTCC VI at 9. Another commenter stated that the parties to a collateral agreement rarely modify their agreement over its life, and that any change to a collateral agreement would require extensive negotiation between the counterparties. Accordingly, the commenter believed that the cost of establishing reporting processes to detect and report changes to a collateral agreement would outweigh the usefulness of reporting them. *See* ISDA/SIFMA I at 16.

required to be reported, and the definition of ''life cycle event'' in final Rule 900(q) no longer refers to changes in the collateral agreement. To assure that Rule 901(e) operates as intended, the Commission has modified the definition of ''life cycle event'' in final Rule 900(q) to reference, with respect to a security-based swap that is not a clearing transaction, the same terms that must be reported pursuant to Rule 901(d)(4).[683] Thus, if there were a change in the title or date of a master agreement, collateral agreement, margin agreement, or other agreement incorporated by reference into a security-based swap contract, such a change would be a ''life cycle event'' as defined in final Rule 900(q), and final Rule 901(e) would require reporting of that change.

Finally, two commenters argued that the ''Commission's classification of a swap being accepted for clearing as a life cycle event is inconsistent with the operations of a Clearing Agency'' because clearing may require the ''termination of the pre-existing alpha swap in order to create two new, unique swaps.'' [684] The Commission agrees that any security-based swap that results from clearing an alpha should not be considered a life cycle event of the alpha, although the termination of the alpha would be such a life cycle event.[685] The Commission believes that the new term ''clearing transaction'' makes clear that security-based swaps that result from clearing (*e.g.*, betas and gammas in the agency model) are independent security-based swaps, not life cycle events of the security-based swap that is submitted to clearing (*e.g.*, alpha security-based swaps).

b. Final Rule 901(e)(1)

As described above, re-proposed Rule 901(e) would have required the reporting side to promptly report any life cycle event, or any adjustment due to a life cycle event, that resulted in a change to information previously reported pursuant to Rule 901(c), (d), or (i) to the entity to which it reported the original transaction, using the transaction ID. Rule 901(e), as proposed and re-proposed, also included provisions for determining which counterparty would report the life cycle event. The Commission is adopting a modified version of Rule 901(e) to address comments received and to implement certain technical changes. The Commission also has changed the title of the rule from ''Duty to report any life cycle event of a security-based swap'' in the re-proposal to ''Reporting of life cycle events'' in the final rule. In addition, final Rule 901(e) provides that a life cycle event or adjustment due to a life cycle event must be reported within the timeframe specified in Rule 901(j).

Although the definition of ''life cycle event'' would encompass the disposition of a security-based swap that has been submitted to clearing (*e.g.*, whether, under the agency model of clearing, the alpha security-based swap has been accepted for clearing or rejected by the clearing agency), the Commission believes that it is appropriate to address the reporting of this specific type of life cycle event in the context of the Regulation SBSR Proposed Amendments Release, which address a number of topics regarding the reporting of security-based swaps that will be submitted to clearing or that have been cleared. Accordingly, final Rule 901(e)(1)(i) indicates that the reporting side shall not have a duty to report whether or not a security-based swap has been accepted for clearing or terminated by a clearing agency, and instead provides that ''A life cycle event, and any adjustment due to a life cycle event, that results in a change to information previously reported pursuant to paragraph (c), (d), or (i) of this section shall be reported by the reporting side, except that the reporting side shall not report whether or not a security-based swap has been accepted for clearing.''

c. Final Rule 901(e)(2)

Re-proposed Rule 901(e) would have required the reporting side to include the transaction ID in a life cycle event report, and to report life cycle event information to the entity to which it reported the original transaction. Final Rule 901(e)(2) retains both of these requirements.[686] The Commission believes that including the transaction ID in a life cycle event report will help to ensure that it is possible to link the report of a life cycle event to the report of the initial security-based swap of which it is a life cycle event. One commenter supported the requirement to report life cycle events to the same entity that received the original transaction report.[687] The commenter stated that requiring a single registered SDR to receive, store, and report, where appropriate, all relevant information related to a given security-based swap throughout its life cycle would help to prevent fragmentation and ensure that corrections to previously reported data could be easily identified by the public.[688] The Commission generally agrees with these views, and final Rule 901(e)(2) retains the requirement to report life cycle events to the same entity to which the original transaction was reported.

d. Reporting Timeframe for Life Cycle Events

Rule 901(e), as proposed and re-proposed, would have required life cycle events to be reported by the reporting side ''promptly.'' Two commenters believed that it was appropriate to require that life cycle events be reported ''promptly.'' [689] One of these commenters also stated that life cycle events could require different processing times based on the nature of the event, and asked the Commission to clarify the meaning of ''promptly'' with respect to life cycle event reporting.[690] In particular, the commenter stated that ''the term 'promptly,' . . . without further explanation, may be interpreted by reporting parties differently for similar events and processes, particularly in a market where certain processes have historically taken a

[683] Final Rule 901(d)(4) requires, for a security-based swap that is not a clearing transaction, reporting of the title and date of any master agreement, collateral agreement, margin agreement, or other agreement incorporated by reference in the security-based swap contract.

[684] CME/ICE Letter at 3. As discussed in Section V, *supra*, in the agency model of clearing, and sometimes in the principal model as well, acceptance of an alpha for clearing terminates the alpha.

[685] *See* Securities Exchange Act Release No. 66703 (March 30, 2012), 77 FR 20536–37 (April 5, 2012) (noting that ''when a security-based swap between two counterparties . . . is executed and submitted for clearing, the original contract is extinguished and replaced by two new contracts where the [clearing agency] is the buyer to the seller and the seller to the buyer''). This treatment also would be consistent with CFTC regulations. *See* 17 CFR 39.12(b)(6) (CFTC rule providing that derivatives clearing organizations that clear swaps must have rules providing that, among other things, ''upon acceptance of a swap by the derivatives clearing organization for clearing: (i) The original swap is extinguished; [and] (ii) The original swap is replaced by an equal and opposite swap between the derivatives clearing organization and each clearing member acting as principal for a house trade or acting as agent for a customer trade'').

[686] Final Rule 901(e)(2) provides that ''All reports of life cycle events and adjustments due to life cycle events shall be reported within 24 hours of the time of occurrence of the life cycle event to the entity to which the original security-based swap transaction was reported and shall include the transaction ID of the original transaction.''

[687] *See* MarkitSERV I at 8.

[688] *See id. See also* DTCC IX at 2.

[689] *See* Barnard I at 3; DTCC II at 13.

[690] *See* DTCC II at 13. The commenter stated that life cycle events that are price-forming events subject to confirmation could be reported within the same timeframes as initial reports of these events. However, the commenter indicated that life cycle events resulting from other processes, such as corporate actions or credit events, ''where many trades will be impacted simultaneously and processing may be manual or automated,'' would require different amounts of time to report. *See id.*

number of days to effect.'' [691] This commenter also suggested that the Commission revise Rule 901(e) to allow for the flexibility of reporting life cycle events either event-by-event or through one daily submission that would include multiple events.[692] Another commenter stated that the required time for reporting both life cycle events and corrections should be stronger and more specific than the proposed requirement that they be reported ''promptly.'' [693]

After careful consideration, the Commission does not believe that it would be appropriate to require life cycle events or adjustments due to life cycle events to be reported more quickly than the time within which information relating to the original transaction must be reported. As noted in Section VII(B)(3), *supra*, final Rule 901(j) provides that the transaction information required by Rules 901(c) and 901(d) generally must be reported within 24 hours of the time of execution. Similarly, Rule 901(j) provides that the reporting timeframe for Rule 901(e) shall be 24 hours after the occurrence of the life cycle event or the adjustment due to the life cycle event. The Commission believes that 24 hours should provide sufficient time to report life cycle events even if the processing of some of these events is not yet fully automated.[694] The Commission believes, further, that specifying a time within which life cycle event information must be reported will address the commenter's concern that reporting sides could adopt different interpretations of the reporting timeframe. The Commission notes that it anticipates soliciting comment on the timeframe for reporting life cycle events, adjustments, and clearing transactions in the future, when it considers block thresholds and time delays.

e. Re-Proposed Rule 901(e)(2)

The Commission has determined not to adopt re-proposed Rule 901(e)(2), which would have specified the reporting side following an assignment or novation of the security-based swap.[695] One commenter noted that, under the current market practice for reporting novations, the reporting party is re-determined based on the current status of the parties.[696] This commenter noted that the current practice allows the reporting party logic to be consistent for new as well as novated trades, and recommended that the Commission use a consistent methodology for reporting of new trades and novations. The Commission agrees that using a single methodology for assigning reporting obligations would be administratively easier than using one methodology when a security-based swap is first executed and a different methodology when the counterparties change as a result of an assignment or novation. As the Commission explained above,[697] it has determined that the reporting side following an assignment or novation will be determined using the procedures in Rule 901(a).

f. Additional Comments Regarding Life Cycle Event Reporting

One commenter believed that life cycle events should be reported using standard market forms, such as the trade confirmation for novations and early terminations, and the exercise notice for an exercise.[698] Contrary to the commenter's suggestion, the Commission believes that registered SDRs should be responsible for specifying the precise manner and format for reporting data. Moreover, the Commission understands that standard market forms may exist for some, but not all, of the life cycle events that must be reported under Regulation SBSR. Therefore, the Commission has determined not to prescribe a format for reporting sides to report life cycle event information. Instead, Rule 907(a)(3), as adopted, requires a registered SDR to establish and maintain written policies and procedures that specify how reporting sides are to report life cycle events and corrections to previously submitted information, for making corresponding updates or corrections to transaction records, and for applying an appropriate flag to these transaction reports.[699]

One commenter stated that it was critical for the SEC and the CFTC to adopt consistent regulatory approaches ''[i]n the life cycle event model across asset classes.'' [700] The Commission agrees that would be useful for the Commissions to adopt consistent approaches to the reporting of life cycle event information to the extent possible. The Commission believes that Regulation SBSR's approach to life cycle event reporting is broadly consistent with the approach taken by the CFTC. For example, because the agencies have adopted similar definitions, the life cycle event information required to be reported under the rules of both agencies is substantially similar.[701] In addition, both agencies' rules require that life cycle events be reported to the same entity that received the report of the original transaction, and both agencies' rules require the entity that reports the initial transaction to also report life cycle events for the transaction. The Commission notes that a registered SDR that accepts transaction reports for both swaps and security-based swaps could establish policies and procedures for reporting life cycle events of security-based swaps that are comparable to its policies and

[691] DTCC II at 13.

[692] *See* DTCC V at 11. *See also* ISDA III (requesting that ''reporting parties be allowed to report lifecycle events either intra-day or as an end-of day [*sic*] update to the terms of the [security-based swap]''). Further, one commenter noted that the CFTC rules allow a life cycle event to be reported either as event data on the same day as the event occurs or daily as ''state data,'' and that non-swap dealers or non-major swap participants may report these events either as life cycle event data or as state data no later than the end of the first business day following the event. *See* ISDA IV at 11. This commenter requested that the Commission confirm in its rules that the same approach and timelines may be applied to meet the requirements of Regulation SBSR. The Commission notes that Rules 901(e) and 901(j), as adopted, provide for reporting of a life cycle event or an adjustment due to a life cycle event within 24 hours after the occurrence of the life cycle event or the adjustment due to the life cycle event. The Commission notes, further, that Rule 901(e)(1) requires the reporting of a life cycle event, and any adjustment due to a life cycle event, that results in a *change* to information previously reported pursuant to Rule 901(c), 901(d), or 901(i). Thus, Rule 901(e)(1) contemplates the reporting of the specific changes to previously reported information. Reports of life cycle events, therefore, must clearly identify the nature of the life cycle event for each security-based swap. It is not sufficient merely to re-report all of the terms of the security-based swap each day without identifying which data elements have changed. However, Regulation SBSR would not prevent a registered SDR from developing for its members a mechanism or other service that automates or facilitates the production of life cycle events from state data.

[693] *See* Better Markets I at 9.

[694] *See* DTCC II at 13. The Commission also believes that the 24-hour timeframe for reporting life cycle events will allow reporting sides to determine whether to report life cycle events on an intra-day or end-of-day basis. *See* DTCC V at 11; ISDA III. Reports of life cycle events, however, must clearly identify the nature of the life cycle event for each security-based swap. It is not sufficient merely to re-report all of the terms of the security-based swap each day without identifying which data elements have changed. *See also* note 692 *supra*.

[695] Re-proposed Rule 901(e)(2) would have provided that the duty to report life cycle event information following an assignment or novation would switch to the other side only if the new side did not include a U.S. person (as in the originally proposed rule) or a security-based swap dealer or major security-based swap participant. As the Commission explained in the Cross-Border Proposing Release, if the new side included a security-based swap dealer or major security-based swap participant, the new side should retain the duty to report. *See* 78 FR 31068.

[696] *See* ISDA III.

[697] *See supra* Section V(C)(5).

[698] *See* DTCC II at 13.

[699] *See infra* Section XII(C).

[700] ISDA/SIFMA I at 6.

[701] *See* CFTC Rule 45.1, 17 CFR 45.1. The Commissions' ongoing reporting requirements differ, however, with respect to the reporting of valuation information. The CFTC's rules require reporting of valuation data as well as life cycle event data. As discussed in above in Section II(B)(3)(k), the Commission is not requiring reporting of valuation data for security-based swaps.

procedures for reporting life cycle events of swaps, provided that its policies and procedures for reporting life cycle events of security-based swaps comply with the requirements of Regulation SBSR.

Another commenter expressed the view that Regulation SBSR ''should clarify what shall be reported as the *time of execution* for a life cycle event for purposes of public dissemination.'' [702] The commenter stated that the CFTC requires market participants to report the execution time of the original trade as the execution time for a life cycle event for the trade. The commenter suggested that, under this approach, ''the data that is publicly disseminated for lifecycle events may not be that meaningful to the public as it does not include any indication of the point in time the reported price has been traded.'' [703] The commenter stated, further, that the time of execution for a life cycle event for purposes of public dissemination ''should be the date and time such price-forming event is agreed.'' [704]

As discussed in Section VII(B)(3), *supra*, final Rule 901(j) provides that the reporting timeframe for a life cycle event shall be 24 hours after the occurrence of the life cycle event or the adjustment due to the life cycle event. Final Rule 902(a) requires a registered SDR to publicly disseminate a transaction report of a life cycle event, or adjustment due to a life cycle event, immediately upon receipt of the information. Thus, under Regulation SBSR, a life cycle event, or an adjustment due to a life cycle event, must be reported and publicly disseminated within 24 hours after the occurrence of the life cycle event or adjustment due to the life cycle event. The Commission believes that together these requirements will provide market observers with certain information concerning the time when the life cycle event occurred. However, the Commission notes that Regulation SBSR, as proposed and re-proposed, did not require the reporting or public dissemination of the time of execution of a life cycle event, and Regulation SBSR, as adopted, likewise includes no such requirements.

B. Error Corrections—Rule 905

As the Commission noted in the Regulation SBSR Proposing Release, any system for transaction reporting must accommodate the possibility that certain data elements may be incorrectly reported.[705] Therefore, the Commission proposed Rule 905 to establish procedures for correcting errors in reported and disseminated security-based swap information.

In the Cross-Border Proposing Release, the Commission modified proposed Rule 905 slightly to correspond with certain new provisions in re-proposed Rule 908, which contemplated that certain types of cross-border security-based swaps would be required to be reported but not publicly disseminated. Rule 905 was re-proposed to clarify that, if a registered SDR receives corrected information relating to a previously submitted transaction report, it would be required to publicly disseminate a corrected transaction report only if the initial security-based swap were subject to the public dissemination requirement.[706] The Commission also made certain other technical and conforming changes,[707] but otherwise re-proposed Rule 905 was substantially similar to proposed Rule 905.

As discussed below, the Commission received several comments on proposed Rule 905. After consideration of the comments, the Commission has determined to adopt Rule 905 with certain minor editorial revisions.[708]

Rule 905(a) applies to any counterparty to a security-based swap that discovers an error in the information reported with respect to that security-based swap. If a non-reporting side discovers the error, the non-reporting side shall promptly notify the reporting side of the error. Once the reporting side receives notification of the error from the non-reporting side, or if the reporting side discovers the error on its own, the reporting side must promptly submit an amended report—containing corrected data—to the registered SDR that received the erroneous transaction report. The reporting side must submit the report required by Rule 905(a) in a manner consistent with the policies and procedures of the registered SDR that are contemplated by Rule 907(a)(3).[709]

Rule 905(b) details the responsibilities of a registered SDR to correct information and re-disseminate corrected information, where appropriate. If a registered SDR either discovers an error in the security-based swap information or receives notification of an error from a reporting side, the registered SDR is required to verify the accuracy of the terms of the security-based swap and, following such verification, promptly correct the information in its system. If the erroneous information contains any primary trade information enumerated in Rule 901(c) (and the transaction is dissemination-eligible [710]), the registered SDR must publicly disseminate a corrected transaction report of the security-based swap promptly following verification of the trade by the counterparties to the security-based swap, with an indication that the report relates to a previously disseminated transaction.[711]

Three commenters were generally supportive of the proposed error reporting procedures. One commenter believed that publicly disseminating error reports would ''increase confidence in the integrity of the markets.'' [712] Another commenter stated that it supported ''the objective of prompt correction of errors by the reporting party.'' [713] A third commenter expressed support for requiring a reporting party to correct previously reported erroneous data, and agreed that it was appropriate for a non-reporting counterparty to have the obligation to notify the reporting party of an error of which it is aware.[714]

[702] ISDA IV at 13 (emphasis in original).

[703] *Id.*

[704] *Id.* at 13–14.

[705] *See* 75 FR 75236.

[706] As discussed above in Section VI, Rule 902 requires a registered SDR to immediately publicly disseminate a transaction report of a security-based swap, or a life cycle event or adjustment due to a life cycle event. If a security-based swap falls into the category of regulatory reporting but not public dissemination, there would be no need to publicly disseminate the correction because the initial security-based swap was not publicly disseminated.

[707] The Commission modified the language from ''counterparty'' or ''party'' to ''side'' in the re-proposal of Rule 905. Additional minor changes were made for clarification such as inserting ''transaction'' in Rule 905(a)(1) and changing an ''a'' to ''the'' in Rule 905(b)(1). Re-proposed Rule 905 also substitutes the word ''counterparties''—which is a defined term in Regulation SBSR—for the word ''parties,'' which was used in the initial proposal but was not a defined term.

[708] For example, the title of final Rule 905(a) is ''Duty to correct,'' rather than ''Duty of counterparties to correct.'' In addition, the Commission is deleting a reference to ''security-based swap transaction'' from Rule 905(a)(2), as well as a reference to ''reporting side'' in Rule 905(b)(1).''

[709] *See infra* Section XII(C).

[710] *See* Rule 902(c) (listing certain transactions that a registered SDR may not publicly disseminate).

[711] *See* Rule 905(b)(2). When verifying information pursuant to Rule 905(b), a registered SDR must comply with the standards of Rule 13n–5. In particular, Rule 13n–5(b)(1)(iii) provides that an SDR ''shall establish, maintain, and enforce written policies and procedures reasonably designed to satisfy itself that the transaction data that has been submitted to the security-based swap data repository is complete and accurate, and clearly identifies the source for each trade side and the pairing method (if any) for each transaction in order to identify the level of quality of the transaction data.''

[712] Barnard I at 3.

[713] ISDA/SIFMA I at 9.

[714] *See* MFA I at 5.

The third commenter also sought guidance regarding the application of Rule 905 if a dispute arose between a reporting side and non-reporting side concerning whether a report was, in fact, erroneous.[715] The commenter urged the Commission to provide in its final rule that, if corrected information is not promptly reported to the registered SDR because of a dispute over whether an error exists, the non-reporting party side may itself report the disputed data to the registered SDR; the commenter believed that, in such cases, the Commission should oblige the registered SDR to review promptly the disputed data with the counterparties.[716]

The Commission notes that, in a separate release, it is adopting Rule 13n–5(b)(6) under the Exchange Act, which requires an SDR to establish procedures and provide facilities reasonably designed to effectively resolve disputes over the accuracy of the transaction data and positions that are recorded in the SDR.[717] As the Commission notes in adopting that rule, only the parties to a dispute can resolve it. Thus, the SDR itself is not required to resolve the dispute, although the Commission believes that SDRs must provide processes to facilitate resolution, which would improve the quality and accuracy of the security-based swap data that the SDR holds. The Commission is interpreting the term ''error'' in final Rule 905 as one which both sides to the transaction would reasonably regard as such. If the counterparties dispute whether an error exists, then the counterparties can use an SDR's procedures and facilities established under Rule 13n–5(b)(6) to attempt to resolve the dispute. If the dispute-resolution process under Rule 13n–5(b)(6) yielded agreement that an error exists, then Rule 905 would require the counterparties to correct the error.[718]

The third commenter also asked the Commission, in the context of Rule 905, to clarify that the reporting is for informational purposes and does not affect the terms of the trade; otherwise, ''[a]bsent some mechanism to make the report nonbinding pending a dispute, the correction mechanics in the Proposed Rule will result in the reporting party (typically the SBS dealer) prevailing in any dispute.'' [719] The Commission does not believe that reporting of an error in previously submitted security-based swap transaction information can change the terms of the trade. Reporting is designed to capture the terms of the trade, not to establish such terms. The Commission's expectation, however, is that the report of a security-based swap provided to and held by a registered SDR will reflect, fully and accurately, the terms of the trade agreed to by the counterparties. If a counterparty becomes aware that the record held by the registered SDR does not accurately reflect the terms of the trade, that counterparty incurs a duty under Rule 905 to take action to have that record corrected.

A fourth commenter argued that the specific root cause of such amendments (for example a booking error or a trade amendment between parties) could be omitted.[720] The Commission notes that Rule 905 does not require the reporting side to include the root cause of the error. This commenter also urged the Commission to clarify that reporting parties are not responsible for data that are inaccurately transcribed or corrupted after submission to the registered SDR. The Commission notes that the obligations under Rule 905 attach to a counterparty to a security-based swap only after that counterparty ''discovers'' the error or, if the counterparty is the reporting side, after it ''receives notification'' of the error from the non-reporting side.[721] Thus, a security-based swap counterparty incurs no duty under Rule 905 if its transaction data are inaccurately transcribed or corrupted after submission to the registered SDR *unless* the counterparty discovers the inaccurate transcription or corruption. Thus, under Rule 905, a counterparty would incur no duty to correct data errors of which it is unaware.[722]

Finally, a fifth commenter believed that Rule 905 should provide an error reporting timeframe that is stronger and more specific than the proposed requirement that such reports be submitted ''promptly.'' [723] The Commission continues to believe that ''promptly'' is an appropriate standard because it emphasizes the need for corrections to be submitted without unreasonable delay while affording reporting sides a practical degree of flexibility

C. Policies and Procedures for Reporting Life Cycle Events and Corrections

Rule 907(a)(3), as originally proposed, would have required a registered SDR to establish and maintain written policies and procedures for ''specifying how reporting parties are to report corrections to previously submitted information in its records that is subsequently discovered to be erroneous, and applying an appropriate indicator to any transaction report required to be disseminated by [Rule 905(b)(2)] that the report relates to a previously disseminated transaction.'' Rule 907(a)(3), as re-proposed, would have required a registered SDR to establish and maintain written policies and procedures for ''specifying how reporting sides are to report corrections to previously submitted information, making corrections to information in its records that is subsequently discovered to be erroneous, and applying an appropriate indicator to any report required to be disseminated by [Rule 905(b)(2)] that the report relates to a previously disseminated transaction.''

The Commission received no adverse comment on Rule 907(a)(3) and is adopting it as re-proposed with a slight modification. Rule 907(a)(3), as adopted, requires a registered SDR to establish and maintain policies and procedures for ''specifying procedures for reporting *life cycle events* and corrections to previously submitted information, making corresponding updates or corrections to transaction records, and applying an appropriate flag to the transaction report to indicate that the report is an error correction required to be disseminated by [Rule 905(b)(2)] or *is a life cycle event, or any adjustment due to a life cycle event, required to be disseminated by [Rule 902(a)]*'' (emphasis added). The Commission is adding to final Rule 907(a)(3) the explicit requirement that a registered SDR establish and maintain policies and procedures regarding the reporting and flagging of life cycle events. The Commission believes that these

[715] *See id.*

[716] *See id.*

[717] *See* SDR Adopting Release.

[718] In the context of trade reporting, one commenter stated: ''Confirmation processes are designed to identify when economic terms to trades have changed, distinguishing between expected events under an existing confirmation and amendments of economic terms due to the modification in terms . . . The trade confirmation is a bilateral process in which both parties agree to the confirmation, thereby ensuring any errors in the original data are corrected.'' DTCC II at 5. The Commission believes that this comment supports the approach taken above, that counterparties to a transaction do not incur duties under Rule 905 unless an error is detected that both sides would regard as such.

[719] *Id.* at 5–6.

[720] *See* ISDA/SIFMA I at 9.

[721] Rule 905(a).

[722] The registered SDR, however, must comply with Rule 13n–5(b)(1)(iii) under the Exchange Act, which provides, in relevant part: ''Every security-based swap data repository shall establish, maintain, and enforce written policies and procedures reasonably designed to satisfy itself that the transaction data that has been submitted to the security-based swap data repository is complete and accurate.''

[723] *See* Better Markets I at 9.

additions will improve the ability of the Commission and other relevant authorities to identify and analyze life cycle events of security-based swaps.

In the case of a life cycle event or error correction, the initial transaction has already been reported to the registered SDR, and the subsequent report involves some type of revision to the previously submitted report. The Commission seeks to have the ability to observe a security-based swap transaction throughout its life, which requires the ability to connect subsequently reported events to the original transaction. The Commission also seeks to avoid mistaking life cycle events or corrections of previously submitted reports for new transactions, which could result in overcounting the gross notional amount of the security-based swap market or subsets thereof. Therefore, the Commission believes that registered SDRs must have appropriate policies and procedures that stipulate how reporting sides must report such follow-on events, and how the registered SDR itself can distinguish them and record them properly.

Just as the Commission believes that a registered SDR should be given reasonable flexibility to enumerate specific data elements to be reported and the method for reporting them, the Commission also believes that a registered SDR should be given reasonable flexibility regarding the handling of corrections to previously submitted information. As discussed above, final Rule 905 does not require the reporting side to report the cause of an error.[724] Nor does Rule 905 set forth a specific procedure for how a registered SDR must accept a report of a life cycle event or error correction. Accordingly, a registered SDR's policies and procedures under Rule 907(a)(3) could require resubmission of the entire record with or without an indication of which elements in that record had been revised. Alternatively, a registered SDR's policies and procedures could require a submission of only the data element or elements that had been revised. The Commission notes, however, that Rule 905(b)(2) requires a registered SDR to publicly disseminate a corrected transaction report of a security-based swap, if erroneously reported information relates to a security-based swap that had been publicly disseminated and falls into any of the categories of information enumerated in Rule 901(c). Therefore, a registered SDR will need to have a means of identifying changes in reported data so that it can identify the changed element or elements in the publicly disseminated correction report.

The Commission notes that Rule 907(a)(3) requires a registered SDR's policies and procedures also to address how the registered SDR will apply an appropriate condition flag to any corrected transaction report that must be re-disseminated. Market observers should be able to understand that a transaction report triggered by Rule 905(b)(2) or Rule 902(a) does not represent a new transaction, but merely a revision to a previous transaction. Without an indication to that effect, market observers could misunderstand the true state of the market.[725] To provide observers with a clear view of the market, public reports of life cycle events should allow observers to identify the security-based swap subject to the life cycle event. The Commission notes, however, that registered SDRs may not use the transaction ID for this function because the transaction ID is not a piece of ''information reported pursuant to [Rule 901(c)]'' or a condition flag.[726] Moreover, the Commission believes that knowledge of the transaction ID should remain limited to counterparties, infrastructure providers, and their agents, and should not be widely known. Knowledge of the transaction ID by additional parties could raise data integrity issues, as such additional parties could accidentally or even intentionally submit ''false corrections'' to the registered SDR regarding transactions to which they were never a counterparty. This could damage the otherwise accurate record of the original transaction. Screening out improperly submitted ''corrections''—or repairing damage to the registered SDR's records that a false correction might cause—could become a significant and unwanted burden on registered SDRs. Therefore, registered SDRs, in their policies and procedures under Rule 907(a)(3), will need to use some means other than the transaction ID to indicate that a publicly disseminated report triggered by Rule 905(b)(2) or Rule 902(a) pertains to a previously disseminated transaction.[727]

XIII. Other Duties of Participants

A. Duties of Non-Reporting Sides To Report Certain Information—Rule 906(a)

The Commission believes that a registered SDR generally should maintain complete information for each security-based swap reported to the registered SDR, including UICs for both sides of a transaction. Although Regulation SBSR generally takes the approach of requiring only one side to report the majority of the transaction information,[728] the Commission recognizes that it might not be feasible or desirable for the reporting side to report to a registered SDR all of the UICs of the non-reporting side. To address this issue, the Commission proposed Rule 906(a), which would provide a means for a registered SDR to obtain UICs from the non-reporting side.

Rule 906(a), as initially proposed, would have established procedures designed to ensure that a registered SDR obtains UICs for both direct counterparties to a security-based swap. As initially proposed, Rule 906(a) would have required a registered SDR to identify any security-based swap reported to it for which the registered SDR does not have the participant ID and (if applicable) the broker ID, desk ID, and trader ID of each counterparty. The registered SDR would have been required to send a report once a day to each of its participants identifying, for each security-based swap to which that

[724] *See supra* note 721 and accompanying text.

[725] One such condition flag could be for voided trades. There may be scenarios in which a security-based swap is executed (or thought to be executed), subsequently reported to a registered SDR, and publicly disseminated by that SDR—but later voided or canceled for some reason. For example, a transaction might be submitted to clearing but rejected by the clearing agency, and the counterparties could deem their agreement to be void *ab initio*. In this situation, the Commission believes the registered SDR could satisfy its obligation to publicly disseminate under Regulation SBSR by including a condition flag that the previously disseminated transaction report had been voided or canceled.

[726] *See* Rule 902(a).

[727] For example, DTCC Data Repository, LLC (''DDR'') utilizes an Event Identifier (''EID'') to maintain the integrity of a transaction throughout its lifecycle and enable public identification of events, including corrections, which occur with respect to the transaction. *See* DDR Rulebook, Section 4.1 at *http://dtcc.com/~/media/Files/Downloads/legal/rules/DDR_Rulebook.ashx*, last visited September 22, 2014. The EID is separate from the Unique Swap Identifiers (''USI''), which is the CFTC-equivalent of the transaction ID. *See also* ISDA/SIFMA I at 10 (recommending that initial trades should carry a ''primary reference number'' when disseminated, ''and all amendments of that trade would then produce iterations of the original reference number'').

[728] Section 13A(a)(3) of the Exchange Act, 15 U.S.C. 78m–1(a)(1), stipulates which counterparty must report a security-based swap that is not accepted by any clearing agency or derivatives clearing organization. That provision does not contemplate reporting by the other direct counterparty. Title VII does not stipulate who should report cleared security-based swaps. However, Section 13(m)(1)(F) of the Exchange Act, 15 U.S.C. 78m(m)(1)(F), provides that ''[p]arties to a security-based swap (including agents of the parties to a security-based swap) shall be responsible for reporting security-based swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.''

participant is a counterparty, the security-based swap(s) for which the registered SDR lacks participant IDs and (if applicable) a broker ID, desk ID, or trader ID. The participant would have been required to provide the missing information within 24 hours of receiving this report from the registered SDR.

When the Commission re-proposed Regulation SBSR as part of the Cross-Border Proposing Release, it made conforming changes to Rule 906(a) to reflect the introduction of the ''reporting side'' concept and to clarify that the participant ID, broker ID, desk ID, and trader ID must be reported only for direct counterparties.[729]

The Commission has decided to adopt Rule 906(a) substantially as re-proposed, with conforming changes related to including branch ID and execution agent ID among the UICs that must be provided to the registered SDR[730] and other minor technical changes.[731]

The Commission received two comment letters from the same commenter addressing proposed Rule 906(a). The first letter, which responded to the initial proposal, stated that regulators must have the UICs of both counterparties to a security-based swap to accurately track exposures.[732] The commenter believed that, ideally, this process would be supported electronically and that the use of third-party services should meet this requirement.[733]

The Commission generally shares the commenter's view that registered SDRs should maintain UICs for both sides of a security-based swap.[734] The Commission notes that Rule 901(d) requires the reporting side to report the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID—as applicable—only for the direct counterparty on its side. Rule 901(d)(1) requires the reporting side to report only the counterparty ID or execution agent ID, as applicable, of a counterparty on the other side. The Commission could have required the reporting side to provide UIC information for *both* sides of the transaction, but this would obligate a non-reporting side to furnish its UIC information to the reporting side so that the additional UICs could be reported by the reporting side. There are circumstances where a non-reporting side might be unable or unwilling to provide its UIC information to the reporting side. Therefore, the Commission is instead requiring the registered SDR to obtain these UICs from the non-reporting side through the Rule 906(a) process.[735] Obtaining UICs for both sides will enhance the Commission's ability to carry out its responsibility to oversee the security-based swap market, because the Commission will be able to identify individual traders and business units that are involved in security-based swap transactions.[736]

In a subsequent comment letter, in response to the re-proposal of Regulation SBSR, the same commenter expressed concern that Rule 906(a) could require a registered SDR to send reports to and obtain information from persons who might not be participants of that registered SDR.[737] More generally, this commenter suggested that registered SDRs should not police security-based swap reports for deficiencies or unpopulated data fields in any manner that requires the registered SDR to take affirmative action to obtain information.[738]

The Commission disagrees with the commenter's suggestion that registered SDRs should have no duty to review the completeness of security-based swap reports or obtain missing information from participants. To the contrary, the Commission believes that registered SDRs are best situated to review reported data for completeness because they have a statutory and regulatory duty to accept and maintain security-based swap data, as prescribed by the Commission.[739] Imposing an affirmative duty on registered SDRs to verify the completeness of reported data and to

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[729] *See* 78 FR 31214.

[730] As discussed above, *see supra* Section II(C), the Commission has added ''branch ID'' and ''execution agent ID'' to the UICs required to be reported under Regulation SBSR. The Commission believes that reporting the branch ID and the execution agent ID for both counterparties to a security-based swap, if applicable, to a registered SDR will assist the Commission and other relevant authorities in overseeing the security-based swap market. Accordingly, the Commission has included branch ID and execution agent ID as UICs that registered SDRs must obtain pursuant to Rule 906(a).

[731] The Commission has determined to use the term ''counterparty ID'' rather than ''participant ID'' and to use the term ''trading desk ID'' rather than ''desk ID'' throughout Regulation SBSR. *See supra* Sections II(B)(3)(b) and II(C)(3)(c). In addition, the Commission has inserted the word ''direct'' immediately before each instance of the word ''counterparty.'' When the Commission re-proposed Rule 906(a), it made conforming changes to reflect the introduction of the ''reporting side'' concept and to clarify that relevant UICs for the non-reporting side must be reported only for direct counterparties. The word ''counterparty'' occurs in two places in final Rule 906(a), but the re-proposed rule inserted ''direct'' before ''counterparty'' only after the first occurrence. Final Rule 906(a) inserts ''direct'' before ''counterparty'' both times that the word ''counterparty'' is used. Final Rule 906(a) also includes modifications that clarify that the term ''participant,'' as used in Rule 906(a), means a participant in a registered SDR. The Commission has made similar modifications throughout final Rule 906. The Commission also is revising the final sentence of Rule 906(a) to clarify that the participant referred to in that sentence is a participant of a registered SDR, and to clarify that a participant that receives a Rule 906(a) report from a registered SDR is responsible for providing missing UIC information for its side of each security-based swap referenced in the report. The participant is not responsible for providing any missing UIC information pertaining to the other side of the transaction. Accordingly, the last sentence of Rule 906(a) states: ''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 security-based swap referenced in the report* to the registered security-based swap data repository within 24 hours.'' In addition, the Commission is revising the rule to refer to execution agents to conform to Rule 901(d)(1)(i). Finally, to more accurately reflect the requirements of the rule, the Commission is changing the title of the rule to ''Identifying missing UIC information.''

[732] *See* DTCC II at 16. This commenter also suggested that desk IDs and trader IDs should not be required to be reported due to the fact that desk structures are changed relatively frequently and traders often rotate to different desks or transfer to different firms. *See* DTCC II at 11. This suggestion is addressed above in Section II(C)(3)(c).

[733] *See* DTCC II at 16.

[734] However, if the non-reporting side for the security-based swap does not meet the definition of ''participant'' in Rule 900(u), Rule 906(a) would not require the registered SDR to request UIC information from the non-reporting side. This result is consistent with the Regulation SBSR Proposing Release. *See* 75 FR 75240 (''Thus, the Commission anticipates that there would be some SBSs reported to and captured by a registered SDR where only one counterparty of the SBS is a participant'').

[735] Rule 906(a) provides: ''A registered security-based swap data repository shall 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. 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 security-based swap referenced in the report to the registered security-based swap data repository within 24 hours.'' Rule 900(u) defines ''participant,'' with respect to a registered SDR, as ''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).''

[736] Nothing in Regulation SBSR prevents a non-reporting side from voluntarily providing all of its applicable UICs to the reporting side, so that the reporting side could, as agent, report all of the non-reporting side's UICs together with the rest of the data elements required by Rules 901(c) and 901(d). If this were to occur, the registered SDR would not need to send a Rule 906(a) report to the non-reporting side inquiring about the non-reporting side's missing UICs.

[737] *See* DTCC V at 13. As noted above, however, Rule 906(a), as adopted, requires the registered SDR to obtain UIC information only from non-reporting sides that are participants of that registered SDR.

[738] *See* DTCC V at 13.

[739] *See* 15 U.S.C. 78m(n)(5).

obtain missing data should increase the reliability of data maintained by registered SDRs while decreasing the possibility of registered SDRs providing incomplete reports to relevant authorities. This, in turn, will facilitate oversight of the security-based swap market, which is a primary objective Title VII.

Rule 906(a) requires registered SDRs to communicate with participants that are not reporting sides under Regulation SBSR. As discussed above, these communications are required to ensure that a registered SDR maintains complete UIC information for both sides of each security-based swap transaction that is reported to the registered SDR. The Commission recognizes that some non-reporting sides may not wish to connect directly to a registered SDR because they may not want to incur the costs of establishing a direct connection. Rule 906(a) does not prescribe the means registered SDRs must use to obtain information from non-reporting sides. As a result, registered SDRs have broad discretion to establish a methodology for notifying non-reporting sides of missing UIC information and obtaining UIC reports from the non-reporting side. For example, a registered SDR could send notifications and receive reports via email, in accordance with its policies and procedures.[740] Registered SDRs should consider allowing non-reporting sides to provide the information required by Rule 906(a) in a minimally-burdensome manner.

Historical security-based swaps must be reported to a registered SDR pursuant to Rule 901(i). The Commission acknowledges that broker IDs, branch IDs, execution agent IDs, trading desk IDs, and trader IDs do not yet exist and will not exist until assigned by registered SDRs. Therefore, these UICs are not data elements applicable to historical security-based swaps. Accordingly, registered SDRs are not required under Rule 906(a) to identify these UICs as missing or to communicate to non-reporting side participants that they are missing, and non-reporting side participants are not required by Rule 906(a) to provide these UICs to a registered SDR with respect to any historical security-based swaps.

B. Duty To Provide Ultimate Parent and Affiliate Information to Registered SDRs—Rule 906(b)

To assist the Commission and other relevant authorities in monitoring systemic risk, a registered SDR should be able to identify and calculate the security-based swap exposures of its participants on an enterprise-wide basis.[741] Therefore, the Commission proposed Rule 906(b), which would have required each participant of a registered SDR to provide to the registered SDR information sufficient to identify its ultimate parent(s) and any affiliate(s) of the participant that also are participants of the registered SDR. Proposed Rule 906(b) would have required a person to provide parent and affiliate information to a registered SDR immediately upon becoming a participant.[742] Proposed Rule 906(b) also would have required a participant to promptly notify the registered SDR of any changes to reported parent or affiliate information.

The Commission also proposed rules to define the relationships that could give rise to reporting obligations under Rule 906(b). Proposed Rule 900 would have defined an ''affiliate'' as ''any person that, directly or indirectly, controls, is controlled by, or is under common control with, a person'' and ''control'' as ''the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.'' [743] The Commission also proposed definitions of ''parent'' and ''ultimate parent'' to identify particular categories of affiliated entities based on a person's ability to control an affiliate. Specifically, proposed Rule 900 would have defined ''parent'' to mean ''a legal person that controls a participant'' and ''ultimate parent'' as ''a legal person that controls a participant and that itself has no parent.'' The Commission also proposed to define ''ultimate parent ID'' as ''the UIC assigned to an ultimate parent of a participant.''

The Commission re-proposed the definitions of ''affiliate,'' ''control,'' ''parent,'' ''ultimate parent,'' and ''ultimate parent ID,'' and Rule 906(b) without change in the Cross-Border Proposing Release.[744]

After considering the comments received, which are discussed below, the Commission is adopting Rule 906(b), as proposed and re-proposed, subject to two clarifying changes.[745] Obtaining ultimate parent and affiliate information will assist the Commission in monitoring enterprise-wide risks related to security-based swaps. If participants are not required to identify which of their affiliates also are participants of a particular registered SDR, the Commission or other relevant authorities might be unable to calculate the security-based swap exposures of that ownership group using data held in the registered SDR. As a result, systemic risk might build undetected within an ownership group, even if all security-based swaps for that enterprise were reported to the same registered SDR. The lack of transparency regarding OTC derivatives exposures within the same ownership group was one of the factors that hampered regulators' ability to respond to the financial crisis of 2007–08.[746]

The Commission believes that a reasonable means of monitoring security-based swap positions on a group-wide basis is by requiring each participant of a registered SDR to provide information sufficient to identify the participant's ultimate parent(s) and any affiliate(s) of the participant that also are participants of the registered SDR, using ultimate parent IDs and counterparty IDs.[747] Rule

[740] *See supra* Section IV (discussing Rule 907(a)(2)).

[741] The Commission notes that Rule 13n–5(b)(2) under the Exchange Act provides: ''Every security-based swap data repository shall establish, maintain, and enforce written policies and procedures reasonably designed to calculate positions for all persons with open security-based swaps for which the security-based swap data repository maintains records.''

[742] The policies and procedures of a registered SDR will establish on-boarding procedures for participants.

[743] Proposed Rule 900 further would have provided that a person would be presumed to control another person if the person: ''(1) [i]s a director, general partner or officer exercising executive responsibility (or having similar status or functions); (2) [d]irectly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities; or (3) [i]n the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25 percent or more of the capital.''

[744] *See* 78 FR 31210–11. The definition of ''affiliate'' was re-proposed as Rule 900(a). The definitions of ''control,'' ''parent,'' and ''ultimate parent'' were re-proposed as Rules 900(f), 900(r), and 900(*ll*), respectively. Re-proposed Rule 900(mm) contained the definition of ''ultimate parent ID.''

[745] Specifically, the Commission is modifying Rule 906(b) to clarify that the term ''participant,'' means a participant in a registered SDR. The Commission also is replacing the term ''participant ID'' with ''counterparty ID.''

[746] *See* Financial Crisis Inquiry Commission, ''The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States,'' January 2011, at xxi, available at: *http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf*, last visited September 22, 2014 (explaining that relevant authorities ''lacked a full understanding of the risks and interconnections in the financial markets'' prior to and during the financial crisis, including, among other things, the exposures created by Lehman Brothers' derivatives contracts).

[747] Among other things, Rule 906(b) should enable the Commission and other relevant authorities to identify quickly security-based swaps of a corporate group that have been reported to the registered SDR, including security-based swaps

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906(b), as adopted, imposes an affirmative obligation on participants of a registered SDR to provide this ownership and affiliation information to a registered SDR immediately upon becoming a participant of that SDR. The participant also must notify the registered SDR promptly of any changes to that information. To minimize burdens on participants and to align the burdens as closely as possible with the purpose behind the requirement, Rule 906(b) does not require a participant of a registered SDR to provide information to the registered SDR about *all* of its affiliates, but only those that are also participants of the same registered SDR.

The Commission received three comments addressing proposed Rule 906(b).[748] One commenter supported the proposed rule, stating that parent and affiliate information, along with other information required to be reported by Regulation SBSR, is critical to providing regulators with a comprehensive view of the swaps market and assuring that publicly reported data is accurate and meaningful.[749] This commenter further stated that registered SDRs should have the power to obtain parent and affiliate information from firms, because this information would help to illustrate the full group level exposures of firms and the impact of the failure of any participant.[750] The Commission generally agrees with the commenter's points and continues to believe that identifying security-based swap exposures within an ownership group is critical to monitoring market activity and detecting potential systemic risks. The existence of data vendors that provide parent and affiliate information may reduce any burdens on participants associated with reporting such information to a registered SDR,[751] but the Commission does not view this as an adequate substitute for having the information reported to and readily available from registered SDRs. Title VII's regulatory reporting requirement is designed to allow the Commission and other relevant authorities to have access to comprehensive information about security-based swap activity in registered SDRs. The Commission believes that it would be inimical to that end for relevant authorities to have all the transaction information in registered SDRs but be forced to rely on information from outside of registered SDRs to link positions held by affiliates within the same corporate group.

Two commenters suggested clarifications or modifications to the proposed rule.[752] One commenter expressed concerns about how Rule 906(b) would apply to agents, noting that investment advisers frequently execute a single security-based swap transaction on behalf of multiple accounts and allocate the notional amount of the transaction among these accounts at the end of the day.[753] The commenter stated that advisers often do not know all of the affiliates of their clients and, as a result, might be unable to comply with Rule 906(b).[754] The commenter recommended that ''the Commission clarify that an adviser that has implemented reasonable policies and procedures to obtain the required information about affiliates and documented its efforts to obtain the information from its clients be deemed to have satisfied [Rule 906(b) of] Regulation SBSR.'' [755]

The Commission believes that it is unnecessary to modify Rule 906(b) in response to this comment. The Commission notes that Rule 906(b) imposes no obligations on an execution agent, such as an investment adviser that executes a single security-based swap on behalf of multiple accounts and allocates the notional amount of the transaction among those accounts at the end of the day. Rather, it would be the counterparty itself that would have the responsibility under Rule 906(b).

Another commenter expressed the view that the information required to be reported by Rule 906(b) should be placed in prescribed XBRL templates or other such input mechanisms that would capture this information at its source for all downstream processes in the financial supply chain to use.[756] The Commission has determined not to specify the manner or format in which security-based swap counterparties must provide ultimate parent and affiliate information to a registered SDR. The Commission believes that it would be preferable to allow each registered SDR to determine a suitable way to receive and maintain ultimate parent and affiliate information about its participants. The Commission notes that Rule 907(a)(6), as adopted, requires a registered SDR to establish and maintain written policies and procedures for periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any other participant(s) with which the counterparty is affiliated, using ultimate parent IDs and counterparty IDs.[757]

The Commission received three comments on the definitions of ''control'' and ''affiliate.'' [758] No commenters specifically addressed the definitions of ''parent,'' ''ultimate parent,'' or ''ultimate parent ID.'' After carefully evaluating these comments, the Commission is adopting the definitions of ''affiliate,'' ''control,'' ''parent,'' ''ultimate parent,'' and ''ultimate parent ID'' as proposed and re-proposed.[759]

One commenter stated its view that the proposed definition of ''control'' was improper.[760] This commenter believed that the proposed 25% threshold for presuming control was too low, and that obtaining the information required by Rule 906(b) from entities with which a security-based swap market participant has less than a majority ownership relationship would be overly burdensome, and, in some cases, not practicable.[761] The commenter recommended that the Commission amend the definition to presume control based on no less than majority ownership.[762]

The Commission disagrees that, for purposes of Regulation SBSR, control should be presumed to exist only if there is majority ownership. Rule 906(b) is designed to assist the Commission and other relevant authorities in monitoring group-wide security-based swap exposures by enabling a registered SDR to provide them with the information necessary to calculate positions in security-based swaps held within the same ownership group that are reported to that registered SDR. If the Commission were to adopt definitions of ''control'' and ''affiliate'' that were based on majority ownership,

held by securitization vehicles that are controlled by financial institutions.

[748] *See* DTCC II at 13–14; ICI I at 6; GS1 Proposal at 43–44.

[749] *See* DTCC II at 13–14.

[750] *See id.* at 17. This commenter believed that a registered SDR likely would obtain parent and affiliate information from a data vendor and allow participants to review and approve the data.

[751] *See id.*

[752] *See* ICI I at 6; GS1 Proposal at 43–44.

[753] *See* ICI I at 6, note 9.

[754] *See id.*

[755] *Id.*

[756] *See* GS1 Proposal at 43.

[757] As originally proposed, Rule 907(a)(6) would have required a registered SDR to establish and maintain written policies and procedures ''[f]or periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any other participant(s) with which the *counterparty* is affiliated, using ultimate parent IDs and participant IDs'' (emphasis added). The Commission re-proposed Rule 907(a)(6) with the word ''participant'' in place of the word ''counterparty.''

[758] *See* DTCC II at 17; Multiple Associations Letter at 7–8; SIFMA I at 6.

[759] Final Rule 900(a) defines ''affiliate,'' while the definitions of ''control,'' ''parent,'' ''ultimate parent'' and ''ultimate parent ID'' are in Rules 900(h), 900(t), 900(oo), and 900(pp), respectively.

[760] *See* SIFMA I at 6.

[761] *See id.*

[762] *See id.*

participants would be required to identify fewer entities as affiliates, even if certain indicia of affiliation were present. The Commission believes that, to carry out its oversight function for the security-based swap market, it should err on the side of inclusion rather than exclusion when considering which positions are part of the same ownership group for general oversight purposes.

The Commission also notes that the definition of ''control'' as adopted in Rule 900(h) is consistent with the definition used in other Commission rules and forms,[763] so market participants should be accustomed to applying this definition in the conduct of their business activities. Furthermore, the CFTC's swap data reporting rules employ a materially similar definition of ''control'' for purposes of determining whether two market participants are affiliated with each other.[764] If the Commission were to adopt a different definition of ''control,'' market participants would need to determine their affiliates under both sets of rules, thereby imposing what the Commission believes would be unnecessary costs on market participants.

One commenter suggested that the Commission and the CFTC use a consistent definition of ''affiliate'' throughout the Title VII rulemakings[765] and recommended that the Commission and CFTC use the definition of ''affiliated group'' in the Commissions' proposed joint rulemaking to further define the terms swap dealer, security-based swap dealer, major swap participant, major security-based swap participant, and eligible contract participant (''Entity Definitions Proposing Release'').[766] The Commission does not believe it is appropriate to adopt, for purposes of Regulation SBSR, the definition of ''affiliated group'' that was proposed in the Entity Definitions Proposing Release. The final rules defining ''swap dealer,'' ''security-based swap dealer,'' ''major swap participant,'' ''major security-based swap participant,'' and ''eligible contract participant'' (''Final Entity Definition Rules'') did not adopt a definition of ''affiliated group.''[767] When the Commission and CFTC adopted the Final Entity Definition Rules they specifically rejected the notion that an ''affiliated group'' should include only those entities that report information or prepare financial statements on a consolidated basis as a prerequisite for being affiliated because they did not believe that whether or not two entities are affiliated should change according to changes in accounting standards.[768] The Commission continues to believe that changes in accounting standards should not determine whether two entities are affiliated and therefore declines to adopt the definition of ''affiliated group'' that it proposed in the Entity Definitions Proposing Release.

C. Policies and Procedures of Registered Security-Based Swap Dealers and Registered Major Security-Based Swap Participants To Support Reporting—Rule 906(c)

For the security-based swap reporting requirements established by the Dodd-Frank Act to achieve the objectives of enhancing price transparency and providing regulators with access to data to help carry out their oversight responsibilities, the information that participants provide to registered SDRs must be reliable. Ultimately, the majority of security-based swaps likely will be reported by registered security-based swap dealers and registered major security-based swap participants. The Commission believes that requiring these participants to adopt policies and procedures to address their security-based swap reporting obligations will increase the accuracy and reliability of the transaction reports that they submit to registered SDRs.

Proposed Rule 906(c) would have required a participant that is a security-based swap dealer or major security-based swap participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that the participant complies with any obligations to report information to a registered SDR in a manner consistent with Regulation SBSR and the policies and procedures of any registered SDR of which it is a participant. The policies and procedures contemplated by proposed Rule 906(c) were intended to promote complete and accurate reporting of security-based swap information by participants that are security-based swap dealers and major security-based swap participants, consistent with their obligations under the Dodd-Frank Act and Regulation SBSR. Proposed Rule 906(c) also would have required a security-based swap dealer or major security-based swap participant to review and update its policies and procedures at least annually. The Commission re-proposed Rule 906(c) without change as part of the Cross-Border Proposing Release.[769] The one commenter who addressed this aspect of Regulation SBSR stated that proposed Rule 906(c) is ''a necessary part of risk governance and compliance.''[770]

The Commission agrees and is adopting Rule 906(c), largely as proposed and re-proposed, subject to two modifications.[771] As proposed and re-proposed, Rule 906(c) would have required security-based swap dealers and major security-based swap participants to establish, maintain, and enforce written policies and procedures to support security-based swap transaction reporting. As discussed above, Rule 906(c), as adopted, imposes this duty only on *registered* security-based swap dealers and *registered* major security-based swap participants.[772] Second, Rule 906(c), as adopted, does not include the phrase ''and the policies and procedures of any registered security-based swap data repository of which it is a participant.'' The Commission believes that it is sufficient to require that the policies and procedures of registered security-based swap dealers and registered major security-based swap participants be reasonably designed to ensure compliance with the reporting

[763] *See, e.g.,* Rule 300(f) of Regulation ATS under the Exchange Act, 17 CFR 242.300(f); Rule 19g2–1(b)(2) under the Exchange Act, 17 CFR 240.19g2–1(b)(2); Form 1 (Application for, and Amendments to Application for, Registration as a National Securities Exchange or Exemption from Registration Pursuant to Section 5 of the Exchange Act); Form BD (Uniform Application for Broker-Dealer Registration). *See also* Rule 3a55–4(b)(2) under the Exchange Act, 17 CFR 240.3a55–4(b)(2) (defining control to mean ownership of 20% or more of an issuer's equity, or the ability to direct the voting of 20% or more of the issuer's voting equity).

[764] *See* 17 CFR 45.6(a) (defining ''control'' in the context of the CFTC's LEI system); 17 CFR 45.6(e)(2).

[765] *See* Multiple Associations Letter at 7–8.

[766] Securities Exchange Act Release No. 63452 (December 7, 2010), 75 FR 80174 (December 21, 2010). In the Entity Definitions Proposing Release, ''affiliated group'' would have been used to describe the range of counterparties that a security-based swap market participant would need to count for purposes of determining whether it qualified for a *de minimis* exception from the definition of ''security-based swap dealer.'' For purposes of the Entity Definitions Proposing Release, the Commissions stated that an affiliated group would be defined as ''any group of entities that is under common control and that reports information or prepares its financial statements on a consolidated basis.'' *See* 75 FR 80180, note 43.

[767] Securities Exchange Act Release No. 66868 (April 27, 2012), 77 FR 30596 (May 23, 2012).

[768] *See id.* at 30625.

[769] *See* 78 FR 31214.

[770] Barnard I at 3.

[771] The Commission also revised Rule 906(c), to clarify that the term ''participant'' means a participant of a registered SDR.

[772] *See supra* Section V(B)(1) (explaining that, during the period before the Commission has adopted rules for the registration of security-based swap dealers and major security-based swap participants, the Commission seeks to avoid imposing costs on market participants who otherwise would have to assess whether they are security-based swap dealers or major security-based swap participants).

obligations under Regulation SBSR.[773] Additionally, the Commission anticipates that SDRs will enter into contractual arrangements with reporting sides for the reporting of transactions required to be reported under Regulation SBSR, and that such arrangements likely will stipulate the various rights and obligations of the parties when reporting security-based swap transactions.

Rule 906(c) is designed to promote greater accuracy and completeness of reported security-based swap transaction data by requiring the participants that will bear substantial reporting obligations under Regulation SBSR to adopt policies and procedures that are reasonably designed to ensure that their reports are accurate and reliable. If these participants do not have written policies and procedures for carrying out their reporting duties, compliance with Regulation SBSR might depend too heavily on key individuals or *ad hoc* and unreliable processes. The Commission, therefore, believes that registered security-based swap dealers and registered major security-based swap participants should be required to establish written policies and procedures which, because they are written and can be shared throughout the organization, should be independent of any specific individuals. Requiring such participants to adopt and maintain written policies and procedures relevant to their reporting responsibilities, as required under Rule 906(c), should help to improve the degree and quality of overall compliance with the reporting requirements of Regulation SBSR. Periodic review of the policies and procedures, as required by Rule 906(c), should help ensure that these policies and procedures remain well functioning over time.

The value of requiring policies and procedures in promoting regulatory compliance is well-established. Internal control systems have long been used to strengthen the integrity of financial reporting. For example, Congress recognized the importance of internal control systems in the Foreign Corrupt Practices Act, which requires public companies to maintain a system of internal accounting controls.[774] Broker-dealers also must maintain policies and procedures for various purposes.[775] The Commission believes that requiring each registered security-based swap dealer and registered major security-based swap participant to adopt and maintain written policies and procedures designed to promote compliance with Regulation SBSR is consistent with Congress's goals in adopting the Dodd-Frank Act.

The policies and procedures required by Rule 906(c) could address, among other things: (1) The reporting process and designation of responsibility for reporting security-based swap transactions; (2) the process for systematizing orally negotiated security-based swap transactions; (3) order management system outages or malfunctions, and when and how back-up systems are to be used in connection with required reporting; (4) verification and validation of all information relating to security-based swap transactions reported to a registered SDR; (5) a training program for employees responsible for security-based swap transaction reporting; (6) control procedures relating to security-based swap transaction reporting and designation of personnel responsible for testing and verifying such policies and procedures; and (7) reviewing and assessing the performance and operational capability of any third party that carries out any duty required by Regulation SBSR on behalf of the registered security-based swap dealer or registered major security-based swap participant.[776]

XIV. Other Aspects of Policies and Procedures of Registered SDRs

A. Public Availability of Policies and Procedures

Rule 907(c), as proposed and re-proposed, would have required a registered SDR to make its policies and procedures publicly available on its Web site. The Commission did not receive any comments on Rule 907(c) and is adopting it as proposed and re-proposed. This public availability requirement will allow all interested parties to understand how the registered SDR is utilizing the flexibility it has in operating the transaction reporting and dissemination system. Being able to review the current policies and procedures will provide an opportunity for participants to make suggestions to the registered SDR for altering and improving those policies and procedures, in light of new products or circumstances, consistent with the principles set out in Regulation SBSR.

B. Updating of Policies and Procedures

Proposed Rule 907(d) would have required a registered SDR to ''review, and update as necessary, the policies and procedures required by [Regulation SBSR] at least annually.'' Proposed Rule 907(d) also would have required the registered SDR to indicate the date on which its policies and procedures were last reviewed. The Cross-Border Proposing Release re-proposed Rule 907(d) without revision.

The Commission did not receive any comments on Rule 907(d) and is adopting it as proposed and re-proposed. The Commission continues to believe that a registered SDR should periodically review its policies and procedures to ensure that they remain well-functioning over time. The Commission also continues to believe that requiring registered SDRs to indicate the date on which their policies and procedures were last reviewed will allow regulators and SDR participants to understand which version of the policies and procedures are current. A registered SDR could satisfy this obligation by, for example, noting when individual sections were last updated or by reissuing the entirety of the policies and procedures with an ''as of'' date. The Commission notes that, regardless of the method chosen and although only the most current version of a registered SDR's policies and procedures must be publicly available pursuant to Rule 907, the registered SDR must retain prior versions of those policies and procedures for regulatory purposes pursuant to Rule 13n–7(b) under the Exchange Act,[777] as adopted by the Commission.[778] These records would help the Commission, if conducting a review of a registered SDR's past actions, to understand what policies and procedures were in force at the time.

C. Provision of Certain Reports to the Commission

Under Title VII, the Commission is responsible for regulating and overseeing the security-based swap market, including the trade reporting obligations imposed by Regulation

[773] The Commission notes that a reporting side is also required to electronically transmit information required under Regulation SBSR to a registered SDR in a format required by that SDR. *See* Rule 901(h); note 268, *supra,* and accompanying text.

[774] *See* 15 U.S.C. 78m(b)(2)(B).

[775] *See, e.g.,* FINRA Conduct Rule 3010(b) (requiring FINRA member broker-dealers to establish and maintain written procedures ''that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of [the NASD]''); FINRA Conduct Rule 3012 (requiring FINRA member broker-dealers to establish and maintain written supervisory procedures to ensure that internal policies and procedures are followed and achieve their intended objectives).

[776] *See* 75 FR 75234.

[777] 17 CFR 240.13n–7(b)(1) (''Every security-based swap data repository shall keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Act and the rules and regulations thereunder'').

[778] *See* SDR Adopting Release.

SBSR.[779] The Commission believes that, to carry out this responsibility, it will be necessary to obtain from each registered SDR information related to the timeliness, accuracy, and completeness of data reported to the registered SDR by the SDR's participants. Required data submissions that are untimely,[780] inaccurate,[781] or incomplete[782] could compromise the regulatory data that the Commission would utilize to carry out its oversight responsibilities. Furthermore, required data submissions that are untimely, inaccurate, or incomplete could diminish the value of publicly disseminated reports that are meant to promote transparency and price discovery.

Accordingly, the Commission proposed and re-proposed Rule 907(e), which would have required a registered SDR to ''have the capacity to provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it'' pursuant to Regulation SBSR and the registered SDR's policies and procedures. The sole commenter on this provision agreed that an SDR should be able to ''readily provide the Commission with any relevant information,'' but noted that an SDR might not be in the best position to confirm the accuracy of the trade information it receives.[783] The commenter believed that ultimate responsibility for the submission of accurate and complete information belongs with the reporting side, and that Rule 907(e) should be revised to reflect that an SDR's information will ''only be as timely, accurate, and complete as provided to it by parties to the trade.'' [784]

The Commission is adopting Rule 907(e) with a minor revision. The final rule provides that a registered SDR ''shall provide, upon request, information or reports . . .'' rather than, as proposed and re-proposed, that a registered SDR ''shall have the capacity to provide . . .'' This language better conveys the Commission's expectation that, not only must a registered SDR have the capacity to provide the relevant information or reports, it must in fact provide such information or reports when the Commission requests. The Commission believes that this revision accords with the commenter who stated that an SDR should be able to ''readily provide the Commission with any relevant information.'' [785]

However, the Commission is not revising Rule 907(e) to reflect that an SDR's information will ''only be as timely, accurate, and complete as provided to it by parties to the trade,'' as requested by the commenter.[786] The Commission appreciates that there could be certain data elements submitted by reporting sides that a registered SDR could not reasonably be expected to know are inaccurate. For example, if the reporting side submits a valid trader ID for trader X when in fact the transaction was carried out by trader Y, the Commission would not expect a Rule 907(e) report provided by a registered SDR to reflect this fact. The Commission notes, however, that Rule 13n–5(b)(1)(iii) under the Exchange Act requires an SDR to ''establish, maintain, and enforce written policies and procedures reasonably designed to satisfy itself that the transaction data that has been submitted to the security-based swap data repository is complete and accurate.'' Thus, the Commission could require a registered SDR to include in a Rule 907(e) report any instances where a reporting side reported a trader ID that fails the SDR's validation rules, because the SDR is in a position to know which trader IDs (and other UICs) are consistent with UICs assigned to traders of its participants.[787]

XV. Rule 908—Cross-Border Reach of Regulation SBSR

Security-based swap business currently takes place across national borders, with agreements negotiated and executed between counterparties in different jurisdictions (which might then be booked and risk-managed in still other jurisdictions).[788] Given the global nature of the market and to help ensure an effective regime for regulatory reporting and public dissemination of security-based swap transactions under Title VII, it is important that Regulation SBSR identify which transactions in this global market will be subject to these Title VII requirements. Regulation SBSR, as initially proposed in November 2010, included Rule 908, which sought to address the cross-border application of the regulatory reporting and public dissemination requirements. In the Cross-Border Proposing Release, issued in May 2013, the Commission re-proposed Rule 908 with substantial revisions. Commenters' views on re-proposed Rule 908 and the final rule, as adopted by the Commission, are discussed in detail below, following a discussion of the Commission's approach to cross-border application of its authority under Title VII and the Exchange Act generally.

A. General Considerations

As stated in the Cross-Border Adopting Release, the Commission continues to believe that a territorial approach to the application of Title VII—including the requirements relating to regulatory reporting and public dissemination of security-based swap transactions—is appropriate.[789] This approach, properly understood, is grounded in the text of the relevant statutory provisions and is designed to help ensure that the Commission's application of the relevant provisions is consistent with the goals that the statute was intended to achieve.[790] Once the Commission has identified the activity regulated by the statutory provision, it then determines whether a person is engaged in conduct that the statutory provision regulates and whether this conduct occurs within the United States.[791]

[779] Under Title VII, registered SDRs are not self-regulatory organizations and thus lack the enforcement authority that self-regulatory organizations have over their members under the Exchange Act. Any information or reports requested by the Commission under Rule 907(e) would assist the Commission in examining for and enforcing compliance with Regulation SBSR by reporting parties.

[780] For example, a registered SDR would be able to determine that a reporting side had reported late if the date and time of submission were more than 24 hours after the date and time of execution reported by the reporting side (or, if 24 hours after the time of execution would have fallen on a day that was not a business day, then after that same time on the next business day). *See* Rule 901(j).

[781] Some examples of clearly inaccurate data would include using lettered text in a field that clearly requires a number (or vice versa), or using a UIC that corresponds to no valid LEI or to a UIC issued or endorsed by the registered SDR.

[782] An example of an incomplete report would be leaving one or more required reporting fields blank.

[783] DTCC V at 14.

[784] *Id.*

[785] *See* note 783, *supra.*

[786] *Id.*

[787] *See also* Section 13(n)(5)(B) of the Exchange Act, 15 U.S.C. 78m(n)(5)(B) (requiring an SDR to ''confirm with both counterparties to the security-based swap the accuracy of the data that was submitted''); Rule 13n–4(b)(3) under the Exchange Act (implementing that requirement).

[788] Security-based swap market data indicates that many security-based swap transactions involve activity in more than one jurisdiction. *See infra* Section XXII(B)(1)(b) (noting that data in the Trade Information Warehouse reveals that approximately 13% of price-forming transactions in North American single-name CDS transaction from January 2008 to December 2013 were between two U.S.-domiciled counterparties; 48% of such transactions were cross-border transactions between a U.S.-domiciled counterparty and a foreign-domiciled counterparty; and an additional 39% were between two foreign-domiciled counterparties).

[789] *See* 79 FR 47287.

[790] *See Morrison* v. *Nat'l Australia Bank, Ltd.,* 130 S. Ct. 2869, 2884 (2010) (identifying focus of statutory language to determine what conduct was relevant in determining whether the statute was being applied to domestic conduct).

[791] When the statutory text does not describe the relevant activity with specificity or provides for

Continued

Under the foregoing analysis, when a U.S. person enters into a security-based swap, the security-based swap necessarily exists at least in part within the United States. The definition of ''U.S. person''—adopted in the Cross-Border Adopting Release and incorporated by reference into Regulation SBSR—is intended, in part, to identify those persons for whom it is reasonable to infer that a significant portion of their financial and legal relationships is likely to exist within the United States, and that it is therefore reasonable to conclude that risk arising from their security-based swap activities could manifest itself within the United States, regardless of the location of their counterparties, given the ongoing nature of the obligations that result from security-based swap transactions.[792] Under its territorial approach, the Commission seeks to apply Title VII's regulatory reporting and public dissemination requirements in a consistent manner to differing organizational structures that serve similar economic purposes, and thereby avoid creating different regulatory outcomes for differing legal arrangements that raise similar policy considerations and pose similar economic risks to the United States.[793] Therefore, as discussed in the Cross-Border Adopting Release, this territorial application of Title VII requirements extends to the activities of U.S. person conducted through a foreign branch or office [794] and to the activities of a non-U.S. person for which the U.S. person provides a recourse guarantee.[795]

The Commission further notes that Section 15F(f)(1)(A) of the Exchange Act [796] provides that each registered security-based swap dealer and major security-based swap participant ''shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the registered security-based swap dealer or major security-based swap participant.'' [797]

Finally, the Commission seeks to minimize the potential for duplicative or conflicting regulations. The Commission recognizes the potential for market participants who engage in cross-border security-based swap activity to be subject to regulation under Regulation SBSR and parallel rules in foreign jurisdictions in which they operate. To address this possibility, the Commission—as described in detail below—is adopting a ''substituted compliance'' framework. The Commission may issue a substituted compliance determination if it finds that the corresponding requirements of the foreign regulatory system are comparable to the relevant provisions of Regulation SBSR, and are accompanied by an effective supervisory and enforcement program administered by the relevant foreign authorities.[798] The availability of substituted compliance is designed to reduce the likelihood of cross-border market participants being subject to potentially conflicting or duplicative reporting requirements.

B. Definition of ''U.S. Person''

In the Regulation SBSR Proposing Release, the Commission proposed to define ''U.S. person'' as ''a natural person that is a U.S. citizen or U.S. resident or a legal person that is organized under the corporate laws of any part of the United States or has its principal place of business in the United States.'' [799] In the Cross-Border Proposing Release, the Commission introduced a new definition of ''U.S. person'' that it proposed to use in all Title VII rulemakings to promote consistency and transparency, which differed from the initially proposed definition in certain respects. Re-proposed Rule 900(pp) would have defined ''U.S. person'' by cross-referencing proposed Rule 3a71–3(a)(7), which would have defined ''U.S. person'' as:

(i) Any natural person resident in the United States;

(ii) any partnership, corporation, trust, or other legal person organized or incorporated under the laws of the United States or having its principal place of business in the United States; and

(iii) any account (whether discretionary or non-discretionary) of a U.S. person.[800]

The Commission received extensive comment on this proposed definition of ''U.S. person'' and responded to those comments in the Cross-Border Adopting Release.[801]

The Commission adopted a definition of ''U.S. person'' in the Cross-Border Adopting Release as Rule 3a71–3(a)(4) under the Exchange Act, which reflects a territorial approach to the application of Title VII.[802] The Commission believes that using the same definition of ''U.S. person'' in multiple Title VII rules could benefit market participants by eliminating complexity that might result from the use of different definitions for different Title VII rules. Accordingly, final Rule 900(ss) of Regulation SBSR defines ''U.S. person'' to have the same meaning as in Rule 3a71–3(a)(4). Rule 3a71–3(a)(4)(i) defines ''U.S. person'' as: (1) A natural person resident in the United States; [803] (2) a partnership, corporation, trust, investment vehicle, or other legal person organized, incorporated, or established under the laws of the United States or having its principal place of business [804] in the

further Commission interpretation of statutory terms or requirements, this analysis may require the Commission to identify through interpretation of the statutory text the specific activity that is relevant under the statute or to incorporate prior interpretations of the relevant statutory text. *See* Cross-Border Adopting Release, 79 FR 47287 (explaining the Commission's approach to interpreting Title VII requirements).

[792] *See* 79 FR 47288–89. As discussed below, the Commission is adopting a definition of ''U.S. person'' in Regulation SBSR that cross-references the definition adopted as part of the Cross-Border Adopting Release.

[793] *See id.* at 47344.

[794] *See id.* at 47289.

[795] *See id.* at 47289–90.

[796] 15 U.S.C. 78o–10(f)(1)(A).

[797] In addition, Section 30(c) of the Exchange Act, 15 U.S.C. 78dd(c), authorizes the Commission to apply Title VII to persons transacting a business ''without the jurisdiction of the United States'' if they contravene rules that the Commission has prescribed as ''necessary or appropriate to prevent the evasion of any provision'' of Title VII. As the Commission stated in the Cross-Border Adopting Release, Section 30(c) does not require a finding that actual evasion has occurred or is occurring to invoke the Commission's authority to reach activity ''without the jurisdiction of the United States'' or to limit application of Title VII to security-based swap activity ''without the jurisdiction of the United States'' only to business that is transacted in a way that is purposefully intended to evade Title VII. *See* 79 FR 47291. The focus of this provision is not whether such rules impose Title VII requirements only on entities engaged in activity that is consciously evasive, but whether the rules are generally ''necessary or appropriate'' to prevent potential evasion of Title VII. The Commission therefore disagrees with the commenter who stated that the Commission ''should not adopt an extraterritorial regulatory framework premised on the assumption that activities conducted outside the U.S. will be undertaken abroad for the purpose of evasion.'' Cleary III at 5.

[798] *See Rule* 908(c). *See also infra* Section XV(E).

[799] Rule 900 as initially proposed. *See also* Regulation SBSR Proposing Release, 75 FR 75284.

[800] *See* Cross-Border Proposing Release, 78 FR 31207.

[801] *See* 79 FR 47303–13. These comments focused on the proposed definition generally and did not address the application of the definition to Regulation SBSR.

[802] *See* Cross-Border Adopting Release, 79 FR 47308, note 255.

[803] Rule 3a71–3(a)(5) under the Exchange Act, 17 CFR 240.3a71–3(a)(4), defines ''United States'' as the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

[804] Rule 3a71–3(a)(4)(ii) under the Exchange Act, 17 CFR 240.3a71–3(a)(4)(ii), defines ''principal place of business'' as the location from which the officers, partners, or managers of the legal person primarily direct, control, and coordinate the activities of the legal person. With respect to an externally managed investment vehicle, this location is the office from which the manager of the vehicle primarily directs, controls, and coordinates the investment activities of the vehicle. *See also* Cross-Border Adopting Release, 79 FR 47308

United States; (3) an account (whether discretionary or non-discretionary) of a U.S. person; or (4) any estate of a decedent who was a resident of the United States at the time of death. As discussed in the Cross-Border Adopting Release, the Commission believes that a definition of ''U.S. person'' that focused solely on whether a legal person is organized, incorporated, or established in the United States could encourage some entities to move their place of incorporation to a non-U.S. jurisdiction to avoid complying with Title VII, while maintaining their principal place of business in the United States.[805]

By incorporating Rule 3a71–3(a)(4) by reference, Regulation SBSR also incorporates subparagraph (iv) of Rule 3a71–3(a)(4), which allows a person to rely on a counterparty's representation that the counterparty is not a U.S. person, unless such person knows or has reason to know that the representation is inaccurate. As explained in the Cross-Border Adopting Release,[806] Rule 3a71–3(a)(4)(iv) reflects a constructive knowledge standard for reliance. Under this standard, a counterparty is permitted to rely on a representation, unless such person knows or has reason to know that it is inaccurate. A person would have reason to know the representation is not accurate if a reasonable person should know, under all of the facts of which the person is aware, that it is not accurate.[807] Expressly permitting market participants to rely on such representations in the ''U.S. person'' definition should help facilitate the determination of which side to a security-based swap is the reporting side and mitigate challenges that could arise in determining a counterparty's U.S.-person status under the final rule.[808] It permits the party best positioned to make this determination to perform an analysis of its own U.S.-person status and convey, in the form of a representation, the results of that analysis to its counterparty. Such representations should help reduce the potential for inconsistent classification and treatment of a person by its counterparties and promote uniform application of Title VII.[809]

Rule 3a71–3(a)(4)(iii)—and thus Regulation SBSR—provides that the term ''U.S. person'' does not include the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations; their agencies and pension plans; and any other similar international organizations and their agencies and pension plans. Therefore, a security-based swap involving any such institution, for that fact alone, will not be subject to regulatory reporting or public dissemination under Regulation SBSR.[810] However, as discussed in Section XVI(A), *infra,* a security-based swap transaction involving such an institution could be subject to regulatory reporting and/or public dissemination, depending on the domicile and registration status of the other side of the transaction.

Finally, similar to the approach taken by the Commission in the Cross-Border Adopting Release for purposes of the *de minimis* calculation,[811] a change in a counterparty's U.S.-person status after a security-based swap is executed would not affect the original transaction's treatment under Regulation SBSR. However, if that person were to enter into another security-based swap following its change in status, any duties required by Regulation SBSR would be determined according to the new status of that person at the time of the second security-based swap.

C. Scope of Security-Based Swap Transactions Covered by Requirements of Regulation SBSR—Rule 908(a)

1. Transactions Involving a Direct Counterparty That Is a U.S. Person

Under both the proposal and re-proposal, any security-based swap that had a direct counterparty that is a U.S. person would have been subject to both regulatory reporting and public dissemination, regardless of the registration status or domicile of any counterparty on the other side of the transaction. Commenters generally did not object to this aspect of the proposal and the re-proposal.[812]

Final Rule 908(a)(1)(i) provides, in relevant part, that a security-based swap shall be subject to regulatory reporting and public dissemination if ''[t]here is a direct . . . counterparty that is a U.S. person on either or both sides of the transaction.'' Thus, any security-based swap that has a direct counterparty that is a U.S. person is subject to both regulatory reporting and public dissemination, regardless of the registration status or domicile of any counterparty on the other side of the transaction. This determination is consistent with the territorial application of Title VII described above, because any security-based swap that has a U.S.-person direct counterparty exists at least in part within the United States. One purpose of the rule is to allow the Commission and other relevant authorities to access, for regulatory and supervisory purposes, a record of each such transaction. A second purpose of the rule is to carry out the Title VII mandate for public dissemination of security-based swap transactions. The transparency benefits of requiring public dissemination of security-based swaps involving at least one U.S.-person direct counterparty would inure to other U.S. persons and the U.S. market generally, as other participants in the U.S. market are likely to transact in the same or related instruments.

(discussing the Commission's rationale for adopting the ''principal place of business'' test).

[805] *See id.,* 79 FR 47309, note 262 (''The final definition of 'principal place of business' will help ensure that entities do not restructure their business by incorporating under foreign law while continuing to direct, control, and coordinate the operations of the entity from within the United States, which would enable them to maintain a significant portion of their financial and legal relationships within the United States while avoiding application of Title VII requirements to such transactions'').

[806] *See id.* at 47313.

[807] To the extent that a person has knowledge of facts that could lead a reasonable person to believe that a counterparty may not be a U.S. person under the definition, it might need to conduct additional diligence before relying on the representation. *See id.* at 47313, note 302.

[808] As discussed below, under Rule 908(a), the U.S.-person status of the counterparties to a security-based swap is one factor in determining whether the security-based swap is subject to Regulation SBSR. If a security-based swap is subject to Regulation SBSR, the U.S.-person status of the counterparties may influence the determination of the reporting side under Rule 901(a)(2)(ii). *See supra* Section V(B).

[809] The final rule permitting reliance on representations with respect to a counterparty's U.S.-person status applies only to the definition of ''U.S. person'' as used in Regulation SBSR and does not apply to any determination of a person's U.S.-person status under any other provision of the federal securities laws, including Commission rules, regulations, interpretations, or guidance.

[810] *See infra* Section XV(C) (discussing when a security-based swap is subject to regulatory reporting and public dissemination).

[811] *See* 79 FR 47313, note 300.

[812] Some commenters supported a cross-border jurisdictional regime that would apply security-based swap regulation on the basis of whether a direct counterparty to a security-based swap is a U.S. person. *See, e.g.,* JFMC Letter at 5; JSDA Letter at 3–4; AFR Letter at 4, 13–14. These commenters did not, however, raise this suggestion specifically in the context of Regulation SBSR. *See also* IIB Letter at 11 (observing that a status-based test for jurisdictional application would be more appropriate than a territorial approach based on the location of conduct). The Cross-Border Adopting Release addressed these comments. *See* 79 FR 47302–06.

2. Transactions Conducted Through a Foreign Branch or Office

Rule 908(a), as initially proposed, treated foreign branches and offices of U.S. persons as integral parts of the U.S. person itself.[813] Therefore, Rule 908(a), as initially proposed, would not have treated a security-based swap transaction executed by or through a foreign branch or office of a U.S. person any differently than any other transaction executed by the U.S. person.

In the Cross-Border Proposing Release, the Commission revised its approach to transactions conducted through a foreign branch. Although all transactions conducted through a foreign branch or office would have been subject to regulatory reporting, re-proposed Rule 908(a)(2)(iii) would have provided an exception to public dissemination for transactions conducted through a foreign branch when the other side is a non-U.S. person who is not a security-based swap dealer.[814] In proposing this exception to public dissemination for such transactions conducted through a foreign branch, the Commission stated that it was ''concerned that, if it did not take this approach, non-U.S. market participants might avoid entering into security-based swaps with the foreign branches of U.S. banks so as to avoid their security-based swaps being publicly disseminated.'' [815] However, Rule 908(a)(2) would have subjected a transaction conducted through a foreign branch to public dissemination if there was, on the other side, a U.S. person (including a foreign branch) [816] or a security-based swap dealer.[817]

One commenter expressed the view that foreign branches should be treated the same as non-U.S.-person security-based swap dealers for purposes of public dissemination, and that security-based swaps between two non-U.S. persons, between a non-U.S. person and a foreign branch, and between two foreign branches should not be subject to public dissemination.[818] Another commenter, however, stated that ''it should be expected that most jurisdictions would seek to apply their rules to transactions between two of their own domiciled persons, despite some of the activity being conducted abroad.'' [819] A third commenter recommended that the exception to public dissemination for foreign branches be eliminated, so that security-based swaps between a foreign branch and any non-U.S. person would be subject to public dissemination.[820]

As noted above, the Commission is adopting the requirement that any security-based swap transaction having a direct counterparty that is a U.S. person, including a security-based swap conducted through a foreign branch, shall be subject to regulatory reporting. The Commission has determined *not* to adopt the proposed exception from public dissemination for certain transactions conducted through a foreign branch. Thus, under Rule 908(a)(1)(i), as adopted, any security-based swap transaction conducted through a foreign branch is subject to both regulatory reporting and public dissemination. Under the territorial approach to the application of Title VII requirements discussed above, a foreign branch has no separate existence from the U.S. person itself. Therefore, any security-based swap transaction conducted through a foreign branch is a security-based swap executed by the U.S. person itself, and any security-based swap executed by a U.S. person exists at least in part within the United States.[821] The Title VII requirements for regulatory reporting and public dissemination apply to all security-based swap transactions that exist in whole or in part within the United States, unless an exception applies.

Upon further consideration, the Commission believes that the exception from public dissemination for foreign branches in Rule 908(a), as re-proposed, is not warranted. Granting an exception to public dissemination for certain transactions conducted through a foreign branch could have created incentives for some U.S. persons to utilize foreign branches to evade Title VII's public dissemination requirements.[822] This could be the case particularly in a foreign jurisdiction that does not apply rules for public dissemination to all or some transactions conducted through foreign branches operating within that jurisdiction. Thus, the Commission disagrees with the commenter who expressed the view that foreign branches should be treated the same as non-U.S. person security-based swap dealers for purposes of public dissemination,[823] and that security-based swaps between two non-U.S. persons, between a non-U.S. person and a foreign branch, and between two foreign branches should not be subject to public dissemination.[824]

3. Transactions Guaranteed by a U.S. Person

Regulation SBSR, as initially proposed, did not impose reporting requirements based on whether a U.S. person acts as a guarantor of a security-based swap. As re-proposed, however, Rule 908(a)(1)(ii) would have required regulatory reporting of any security-based swap that had a U.S.-person guarantor, even when no direct counterparty was a U.S. person.[825] In addition, Rule 908(a)(2), as re-proposed, would have required public dissemination of some, but not all, transactions having a U.S.-person indirect counterparty. Re-proposed Rule 908(a)(2)(ii) would have provided, in

[813] *See* Regulation SBSR Proposing Release, 75 FR 75240 (''Because a branch or office has no separate legal existence under corporate law, the branch or office would be an integral part of the U.S. person itself'').

[814] In the Cross-Border Proposing Release, the term ''transaction conducted through a foreign branch'' was defined in re-proposed Rule 900(hh) to cross-reference the definition of that term in proposed Rule 3a71–3(a)(4) under the Exchange Act, and the term ''foreign branch'' was defined in re-proposed Rule 900(n) to cross-reference the definition of foreign branch in proposed Rule 3a71–3(a)(1). In the Cross-Border Adopting Release, the Commission adopted the term ''foreign branch'' as proposed and adopted the term ''transaction conducted through a foreign branch'' with certain modifications. *See* 79 FR 47322.

[815] Cross-Border Proposing Release, 78 FR 31063.

[816] *See* re-proposed Rule 908(a)(2)(ii).

[817] *See* re-proposed Rule 908(a)(2)(iv).

[818] *See* SIFMA/FIA/Roundtable Letter at A–43.

[819] IIB Letter at 9. The commenter also noted that ''EMIR [the European Markets Infrastructure Regulation] would apply to transactions between the U.S. branches of two entities established in the EU,'' *id.,* and thus appeared to suggest that U.S. regulation should apply to transactions between two foreign branches of U.S. persons.

[820] *See* Better Markets IV at 23.

[821] *See* Cross-Border Adopting Release, 79 FR 47289 (describing the application of the security-based swap dealer *de minimis* threshold with respect to foreign branches or offices of U.S. persons). The Commission notes that a transaction conducted by a U.S. person through any other office that does not have a separate legal identity from the U.S. person, even if such office does not meet the definition of ''foreign branch'' in Rule 3a71–3(a)(2) of the Exchange Act, also is a transaction conducted by the U.S. person directly, and thus is subject to regulatory reporting and public dissemination under Rule 908(a)(1)(i), as adopted.

[822] Under Rule 908(a)(2)(iii), as re-proposed, public dissemination would have applied to a security-based swap between a U.S. person direct counterparty and a non-U.S. person (other than a security-based swap dealer) unless the U.S. person conducted the transaction through a foreign branch. Thus, the U.S. person could have directed a non-U.S.-person counterparty to interact only with its foreign branch staff, which would have made the transaction eligible for the exception provided by re-proposed Rule 908(a)(2)(iii).

[823] As discussed in Section XV(C)(6), *infra,* if a transaction involving a registered security-based swap dealer or registered major security-based swap participant does not fall within Rule 908(a)(1), Rule 908(a)(2), as adopted, subjects that transaction to regulatory reporting but not public dissemination.

[824] *See* SIFMA/FIA/Roundtable Letter at A–43.

[825] Also in the Cross-Border Proposing Release, the Commission proposed new terms ''direct counterparty'' and ''indirect counterparty'' to distinguish the primary obligor on the security-based swap from the person who guarantees the primary obligor's performance, respectively. The Commission also proposed the term ''side'' to refer to the direct counterparty and any guarantor of the direct counterparty. *See* 78 FR 31211.

relevant part, that a security-based swap is subject to public dissemination if there is an indirect counterparty that is a U.S. person on *each* side of the transaction.[826] Re-proposed Rule 908(a)(2)(iv) would have provided, in relevant part, that a transaction where one side includes a U.S.-person (including an indirect counterparty that is a U.S. person) and the other side includes a non-U.S. person that is a security-based swap dealer would be subject to public dissemination. However, a transaction would have been excepted from public dissemination if one side consisted of a non-U.S.-person direct counterparty and a U.S.-person guarantor, where neither is a security-based swap dealer or major security-based swap participant, and the other side includes no counterparty that is a U.S. person, security-based swap dealer, or major security-based swap participant (a ''covered cross-border transaction'').[827]

Commenters generally did not object to the Commission's proposal to subject transactions between direct counterparties who are U.S. persons to regulatory reporting or public dissemination. However, commenters expressed mixed views about extending regulatory reporting and public dissemination requirements to transactions involving U.S.-person guarantors.[828] One of these commenters stated that a guarantee of a security-based swap transaction by a U.S. person should not affect whether the transaction is subject to regulatory reporting or public dissemination, because there is too tenuous a nexus to justify applying Regulation SBSR on the basis of the guarantee alone.[829] Another commenter recommended that a security-based swap between two non-U.S. persons be subject to Commission regulation only where the transaction is ''guaranteed by a U.S. person for a significant value.'' [830] A third commenter, however, recommended that the Commission apply Title VII rules to transactions in which the risk flows back to a U.S. entity, including transactions involving guaranteed foreign subsidiaries and branches of U.S. entities.[831]

The Commission is adopting, as re-proposed, in Rule 908(a)(1)(ii) the requirement that any transaction involving a U.S.-person guarantor is subject to regulatory reporting. The Commission has determined to continue to consider whether to carve out covered cross-border transactions from public dissemination. Thus, Rule 908(a)(1)(i), as adopted, requires public dissemination of all security-based swap transactions having a U.S.-person guarantor.[832] This approach is consistent with the territorial approach to applying Title VII requirements, described above. A security-based swap with a U.S.-person indirect counterparty is economically equivalent to a security-based swap with a U.S.-person direct counterparty, and both kinds of security-based swaps exist, at least in part, within the United States. As the Commission observed in the Cross-Border Adopting Release, the presence of a U.S. guarantor facilitates the activity of the non-U.S. person who is guaranteed and, as a result, the security-based swap activity of the non-U.S. person cannot reasonably be isolated from the U.S. person's activity in providing the guarantee.[833] The financial resources of the U.S.-person guarantor could be called upon to satisfy the contract if the non-U.S. person fails to meet its obligations. Thus, the extension of a guarantee is economically equivalent to a transaction entered into directly by the U.S.-person guarantor. Accordingly, Rule 908(a)(1)(i), as adopted, provides that a security-based swap shall be subject to regulatory reporting and public dissemination if ''[t]here is a direct *or indirect* counterparty that is a U.S. person *on either or both sides* of the transaction'' (emphasis added). The Commission disagrees with the commenter who stated that a guarantee of a security-based swap transaction by a U.S. person should not affect whether the transaction is subject to regulatory reporting or public dissemination, because there is too tenuous a nexus to justify applying Regulation SBSR on the basis of the guarantee alone.[834] Under the territorial approach described above, any security-based swap guaranteed by a U.S. person exists at least in part within the United States, which triggers the application of Title VII requirements. The Commission believes that this is true regardless of whether a particular guarantee is ''for a significant value.'' [835] Furthermore, if the Commission does not require regulatory reporting of security-based swaps that are guaranteed by U.S. persons—in addition to security-based swaps having a U.S.-person direct counterparty—the Commission and other relevant authorities could be less likely to detect potential market abuse or the build-up of potentially significant risks within individual firms or groups or more widespread systemic risks to the U.S. financial system.

The Commission anticipates seeking additional comment on whether or not to except covered cross-border transactions from public dissemination in the future. Furthermore, as discussed in the proposed compliance schedule for Rules 901, 902, 903, 904, 905, 906, and 908 of Regulation SBSR set forth in the Regulation SBSR Proposed Amendments Release, the Commission is proposing to defer the compliance date for Rule 908(a)(1)(i) with respect to the public dissemination of covered cross-border transactions until such time as the Commission has received and considered comment on such an exception. Thus, although covered cross-border transactions are subject to public dissemination under Rule 908(a)(1)(i), as adopted, there would be no public dissemination of any such transaction until the Commission considers whether these transactions should be excepted from public dissemination.

[826] The Commission noted in the Cross-Border Proposing Release that, where U.S. persons have an interest on both sides of a transaction, even if indirectly, the transaction generally should be subject to Title VII's public dissemination requirement. *See* 78 FR 31062.

[827] As used in this release, a ''covered cross-border transaction'' refers to a transaction that meets the description above and will not be submitted to clearing at a registered clearing agency having its principal place of business in the United States.

[828] *See* SIFMA/FIA/Roundtable Letter at A–41; ESMA Letter at 3; AFR Letter at 4, 13–14.

[829] *See* SIFMA/FIA/Roundtable Letter at A–41.

[830] ESMA Letter at 3.

[831] *See* AFR Letter at 4, 13–14 (noting that the geographic location of the entities ultimately responsible for security-based swap liabilities should determine the application of the Commission's rules implementing the Dodd-Frank Act). Another commenter stated that the proposed definition of ''indirect counterparty'' in Regulation SBSR implies that an indirect counterparty can cause a trade to be subject to reporting even in cases where the direct counterparties to the trade would not lead to the conclusion that the trade is reportable. The commenter recommended that the Commission amend the definition of ''indirect counterparty'' to make it clear that its scope is limited to U.S.-person guarantors and not all guarantors, to be consistent with the intent demonstrated by the Commission in the preamble where reference is made to U.S.-person guarantors. *See* ISDA IV at 4. Although the Commission has not amended the definition of ''indirect counterparty'' in this manner, such an amendment is not necessary because Rule 908(a)(i), as adopted, effectively reaches the same result. Rule 908(a)(i) provides that a security-based swap will be subject to regulatory reporting and public dissemination if there is a direct or indirect counterparty that is a U.S. person on either or both sides of the transaction.

[832] As discussed below, compliance with Rule 908(a)(1)(i) is not required until the Commission establishes a compliance date for this provision.

[833] *See* 79 FR 47289 (discussing dealing transactions of non-U.S. persons that are subject to recourse guarantees by their U.S. affiliates).

[834] *See* SIFMA/FIA/Roundtable Letter at A–41.

[835] *See* ESMA Letter at 3.

4. Transactions Accepted for Clearing by a U.S. Clearing Agency

Re-proposed Rules 908(a)(1)(iv) and 908(a)(2)(v) would have required regulatory reporting and public dissemination, respectively, of security-based swaps that are ''cleared through a clearing agency having its principal place of business in the United States.'' One commenter agreed that ''Dodd-Frank's reporting requirements should apply to any transaction that . . . was cleared through a registered clearing organization having its principal place of business in the U.S.'' [836] Two other commenters objected.[837] One of these commenters observed that Regulation SBSR could require regulatory reporting and public dissemination of transaction information before the transaction is submitted for clearing; as a result, circumstances could arise where the sides would not know whether a particular security-based swap is subject to regulatory reporting and public dissemination until after reporting deadlines have passed.[838] The other commenter argued that the proposed requirement might discourage market participants from clearing transactions in the United States, which would be contrary to the objective of reducing systemic risk.[839] Another commenter argued that a transaction between two non-U.S. persons that is cleared through a clearing agency having its principal place of business in the United States should not be subject to public dissemination, ''although the clearing agency can provide information for regulatory purposes.'' [840]

The Commission is adopting Rule 908(a)(1)(ii) with two modifications. The rule, as adopted, provides that a security-based swap shall be subject to regulatory reporting and public dissemination if ''[t]he security-based swap is accepted for clearing by a clearing agency having its principal place of business in the United States.'' Rule 908(a)(1)(ii), as adopted, is consistent with the territorial approach discussed above. Just as a security-based swap to which a U.S. person is a direct or indirect counterparty exists, at least in part, within the United States, a security-based swap that is accepted for clearing by a clearing agency having its principal place of business in the United States also exists, at least in part, within the United States. Such acceptance creates ongoing obligations that are borne by a U.S. person and thus are properly viewed as existing within the United States.[841]

The Commission acknowledges the concerns of the commenter who observed that Regulation SBSR, as re-proposed, could have required regulatory reporting and public dissemination of transaction information before the transaction is submitted for clearing.[842] Currently, clearing in the security-based swap market is voluntary. Therefore, counterparties—if they decide to clear a transaction at all—might not submit the transaction to a clearing agency until some time after it is executed. The final rule reflects the Commission's view that, if a security-based swap is subject to regulatory reporting and public dissemination solely because of Rule 908(a)(1)(ii),[843] the duty to report the trade is not triggered by the execution of the security-based swap but rather by the registered clearing agency's acceptance of the transaction for clearing.[844] The Commission believes that it would not be appropriate to link the reporting requirement to the time of execution, because the registered clearing agency's acceptance of the transaction for clearing might not take place until several days after the time of execution.

The Commission disagrees with the commenter who argued that a transaction between two non-U.S. persons that is cleared through a clearing agency having its principal place of business in the United States should not be subject to public dissemination, ''although the clearing agency can provide information for regulatory purposes.'' [845] The Commission believes that such transactions—subject to the modifications to the rule text noted above—should be subject to both regulatory reporting and public dissemination and therefore is not adopting the this commenter's recommendation. For the reasons described above, the Commission believes that such transactions exist at least in part within the United States; therefore, Title VII's requirements for both regulatory reporting and public dissemination properly apply to such transactions. This approach will permit the Commission and other relevant authorities the ability to observe in a registered SDR all of the alpha transactions that have been accepted by a registered clearing agency having its principal place of business in the United States and to carry out oversight of security-based swaps that exist at least in part within the United States. Furthermore, the Commission believes that public dissemination of such transactions will have value to participants in the U.S. security-based swap market, who are likely to trade the same or similar products, as these products have been made eligible for clearing by a registered clearing agency having its principal place of business in the United States.[846]

Furthermore, the Commission disagrees with the commenter who argued that requiring regulatory reporting and public dissemination of transactions cleared through a U.S. clearing agency is likely to discourage market participants from clearing transactions in the United States.[847] The Commission questions whether the commenters' assertion would in fact come to pass. Market participants are likely to consider multiple factors when deciding whether and where to clear a security-based swap. These factors could include the cost of clearing, the

[836] *Id.* at 4.

[837] *See* CME II at 5; SIFMA/FIA/Roundtable Letter at A–42.

[838] *See* CME II at 5.

[839] *See* SIFMA/FIA/Roundtable Letter at A–42.

[840] ISDA/SIFMA I at 19. The Regulation SBSR Proposed Amendments Release addresses the issue of whether registered clearing agencies should be required to report security-based swap transaction information to a registered SDR.

[841] *See* Cross-Border Adopting Release, 79 FR 47302–03, note 186 (explaining that security-based swap activity that ''results in a transaction involving a U.S. counterparty creates ongoing obligations that are borne by a U.S. person, and thus is properly viewed as occurring within the United States'').

[842] *See* CME II at 5.

[843] A transaction also could be subject to regulatory reporting and public dissemination because it meets the first prong of Rule 908(a)(1): It could have a U.S. person on either or both sides of the transaction. Such a transaction must be reported within 24 hours after the time of execution, regardless of whether the transaction is accepted for clearing. *See* Rule 901(j).

[844] *See supra* Sections II(A)(2)(a) and II(B)(2) (explaining that Rule 901(j) provides that the reporting timeframes applicable to Rules 901(c) and 901(d) are triggered by acceptance for clearing, not the time of execution, if a security-based swap is subject to regulatory reporting and public dissemination solely by operation of Rule 908(a)(1)(ii)).

[845] ISDA/SIFMA I at 19.

[846] Another commenter argued that, if the Commission applied Regulation SBSR to security-based swaps involving non-U.S. counterparties that nevertheless are cleared through a clearing agency having its principal place of business in the United States, the Commission could require reporting of such transactions to a registered SDR ''without exercising further jurisdiction over'' the transaction. Société Générale Letter at 12. The commenter believed that ''[t]his solution would provide the Commission and U.S. market participants with information about swaps cleared in the United States without conflicting with foreign regulatory schemes.'' *Id.* The Commission's decision to require such transactions to be reported and publicly disseminated pursuant to Regulation SBSR does not necessarily indicate that they will be subjected to other requirements of Title VII. The Commission intends to address the scope of each of those requirements, including their applicability to the types of transactions identified by this commenter, in subsequent rulemakings.

[847] *See* SIFMA/FIA/Roundtable Letter at A–42.

types of products that can be cleared, the safeguards that clearing agencies put in place for customer funds, and clearing agency policies on netting and margin. Commenters offered no support for the assertion that the application of regulatory reporting and public dissemination requirements to transactions that are accepted for clearing by a U.S. clearing agency would be a deciding or even a significant factor in whether to clear or the choice of clearing agency. Even if this assertion were true, however, the Commission believes that it is appropriate, for the reasons discussed above, to subject these transactions to regulatory reporting and public dissemination.

Finally, the Commission recognizes that the reporting hierarchy in Rule 901(a)(2)(ii), as adopted, does not assign reporting obligations for two kinds of cross-border transaction: (1) A transaction where there is no U.S. person, registered security-based swap dealer, or registered major security-based swap participant on either side; and (2) a transaction where there is no registered security-based swap dealer or registered major security-based swap participant on either side and there is a U.S. person on only one side. If such a transaction is accepted for clearing by a registered clearing agency having its principal place of business in the United States, neither side—under Regulation SBSR as adopted by the Commission—is required to report the transaction to a registered SDR. However, as described in Section V(B), *supra,* the Commission anticipates soliciting further comment on how Regulation SBSR should be applied to transactions involving unregistered non-U.S. persons, including how reporting duties should be assigned for the two kinds of transaction noted above.

5. Transactions Involving a Registered Security-Based Swap Dealer or Registered Major Security-Based Swap Participant That Is Not a U.S. Person

Under re-proposed Rule 908(a)(1)(iii), a security-based swap would have been subject to regulatory reporting if there is a direct or indirect counterparty that is a security-based swap dealer or major security-based swap participant on either side of the transaction, regardless of the counterparties' place of domicile and regardless of the place of execution of the transaction. Under Rule 908(a), as initially proposed, a counterparty's status as a security-based swap dealer or major security-based swap participant would not by itself have triggered reporting obligations for a particular security-based swap.[848]

One commenter recommended expanding the public dissemination requirement to include security-based swaps that occur outside the United States between a non-U.S. person security-based swap dealer and a non-U.S. person that is not guaranteed by a U.S. person,[849] and between two non-U.S. person security-based swap dealers.[850]

Rule 908(a)(2), as adopted, provides: ''A security-based swap that is not included within paragraph (a)(1) of this section shall be subject to regulatory reporting but not public dissemination if there is a direct or indirect counterparty on either or both sides of the transaction that is a registered security-based swap dealer or a registered major security-based swap participant.'' [851] Thus, a security-based swap between a non-U.S. person registered security-based swap dealer or registered major security-based swap participant and another non-U.S. person (which could include another non-U.S. person registered security-based swap dealer or registered major security-based swap participant), and where neither direct counterparty is guaranteed by a U.S. person, would be subject to regulatory reporting but not public dissemination. This treatment of security-based swaps involving non-U.S. person registered security-based swap dealers and non-U.S. person registered major security-based swap participants is generally consistent with re-proposed Rule 908(a); the language of final Rule 908(a)(2) is designed to clarify that outcome.[852]

The Commission is not at this time taking the view that a security-based swap involving a registered security-based swap dealer or registered major security-based swap participant, for that reason alone, exists within the United States. Therefore, the Commission is not subjecting any transactions involving a non-U.S.-person registered security-based swap dealer or registered major security-based swap participant, for its registration status alone, to any requirement under Regulation SBSR based on a territorial application of Title VII. However, the Commission is requiring non-U.S.-person registered security-based swap dealers and registered major security-based swap participants to report their security-based swap transactions pursuant to Rule 908(a)(2).[853] Requiring reporting to a registered SDR of all transactions entered into by registered security-based swap dealers and registered major security-based swap participants will provide the Commission and other relevant authorities with important information to help with the assessment of their positions and financial condition.[854] Such information could in turn assist the Commission and other relevant authorities in assessing and addressing potential systemic risks caused by these security-based swap positions, or in detecting insider trading or other market abuse.

The Commission notes that a non-U.S. person that is registered as a security-based swap dealer or major security-based swap participant, when reporting a transaction that falls within Rule 908(a)(2), must comply with the policies and procedures of the registered SDR regarding how to flag the transaction as not subject to public dissemination. The Commission would not view a registered SDR as acting inconsistent with Rule 902 for publicly disseminating a security-based swap that falls within Rule 908(a)(2) if the reporting side had failed to appropriately flag the transaction.

6. No Final Rule Regarding Transactions Conducted Within the United States.

Under re-proposed Rule 908(a)(1)(i), a security-based swap would have been subject to regulatory reporting if it was a transaction conducted within the

[848] *See* proposed Rule 908(a); Regulation SBSR Proposing Release, 75 FR 75239–40.

[849] *See* Better Markets IV at 23.

[850] *See id.* at 24.

[851] A security-based swap involving a U.S.-person that is registered as a security-based swap dealer or major security-based swap participant is included in Rule 908(a)(1) and is thus subject to both regulatory reporting and public dissemination. A security-based swap between a non-U.S. person that is registered as a security-based swap dealer or major security-based swap participant and a U.S. person (including a foreign branch or office) also is included in Rule 908(a)(1).

[852] Rule 908(a)(1)(iii), as re-proposed, would have required regulatory reporting of a security-based swap having a direct or indirect counterparty that is a registered security-based swap dealer or registered major security-based swap participant on either side of the transaction. However, Rule 908(a)(2), as re-proposed, did not list the existence of a registered security-based swap dealer or registered major security-based swap participant on either side of the transaction, for that reason alone, as triggering public dissemination.

[853] *See* Section 15F(f)(1)(A) of the Exchange Act, 15 U.S.C. 78o–10(f)(1)(A) (providing that each registered security-based swap dealer and major security-based swap participant ''shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the registered security-based swap dealer or major security-based swap participant'').

[854] In the Cross-Border Proposing Release, the Commission noted its longstanding view that an entity that has registered with the Commission subjects itself to the entire regulatory system governing such regulated entities. *See* 78 FR 30986.

United States.[855] Re-proposed Rule 908(a)(1)(i) preserved the principle—but not the specific language—from the initial proposal that a security-based swap would be subject to regulatory reporting if it is executed in the United States.[856] When the Commission re-proposed Rule 908(a)(1)(i) in the Cross-Border Proposing Release, the Commission expressed concern that the language in the Regulation SBSR Proposing Release could have required a security-based swap to be reported if it had only the slightest connection with the United States.[857]

Re-proposed Rules 908(a)(1)(i) and 908(a)(2)(i) would have subjected a security-based swap transaction to Regulation SBSR's regulatory reporting and public dissemination requirements, respectively, if the security-based swap was a ''transaction conducted within the United States.'' Commenters expressed divergent views regarding this provision [858] and, after careful consideration, the Commission has decided not to adopt re-proposed Rule 908(a)(1)(i) or 908(a)(2)(i) at this time. As discussed above, the Commission anticipates seeking additional public comment on whether and, if so, how regulatory reporting and public dissemination requirements should be applied to transactions involving non-U.S. persons when they engage in conduct within the United States.[859]

D. Limitations on Counterparty Reporting Obligations—Rule 908(b)

As-proposed, Rule 908(b) would have provided that, notwithstanding any other provision of Regulation SBSR, a direct or indirect counterparty to a security-based swap would not incur any obligation under Regulation SBSR unless the counterparty is:

(1) A U.S. person;

(2) a security-based swap dealer or major security-based swap participant; or

(3) a counterparty to a transaction conducted within the United States.

The Commission received no comments that specifically addressed re-proposed Rule 908(b).[860]

At this time, the Commission is adopting only the first two prongs of Rule 908(b). Thus, Rule 908(b), as adopted, provides that, notwithstanding any other provision of Regulation SBSR, a person shall not incur any obligation under Regulation SBSR unless it is a U.S. person, a registered security-based swap dealer, or a registered major security-based swap participant. As discussed above, U.S. persons can be subjected to requirements under Title VII because their transactions, whether undertaken directly or indirectly, exist at least in part within the United States. Furthermore, registered security-based swap dealers and registered major security-based swap participants are required to report their security-based swap transactions.[861]

Rule 908(b) is designed to specify the types of persons that will incur duties under Regulation SBSR. If a person does not come within any of the categories enumerated by Rule 908(b), it would not incur any duties under Regulation SBSR. Under Rule 908(b), as adopted, a non-U.S. person incurs no duties under Regulation SBSR unless it is a *registered* security-based swap dealer or *registered* major security-based swap participant. The Commission believes that this modification will reduce assessment costs and provide greater legal certainty to counterparties engaging in cross-border security-based swaps. The Commission anticipates soliciting additional public comment on whether regulatory reporting and/or public dissemination requirements should be extended to transactions occurring within the United States between non-U.S. persons and, if so, which non-U.S. persons should incur reporting duties under Regulation SBSR.

E. Substituted Compliance—Rule 908(c)

1. General Considerations

The security-based swap market is global in scope, and relevant authorities around the globe are in the process of adopting security-based swap reporting and public dissemination requirements within their jurisdictions. Once these new requirements are finalized and take effect, market participants that engage in security-based swap transactions involving more than one jurisdiction could be subject to conflicting or duplicative reporting or public dissemination obligations. As initially proposed, Regulation SBSR did not contemplate that the reporting and public dissemination requirements associated with cross-border security-based swaps could be satisfied by complying with the rules of a foreign jurisdiction instead of U.S. rules. Thus, in many cases, counterparties to a security-based swap would have been required to comply with proposed Regulation SBSR even if reporting of a security-based swap also was required under the rules of a foreign jurisdiction.

As discussed in the Cross-Border Proposing Release,[862] a number of commenters urged the Commission to allow compliance with comparable home country requirements to substitute for compliance with the parallel U.S. requirements.[863] In response to those comments and recognizing that other jurisdictions may implement regulatory reporting and public dissemination regimes for security-based swaps that are comparable to the requirements set forth in Title VII and Regulation SBSR, the Commission re-proposed Rule 908 in the Cross-Border Proposing Release to include a new paragraph (c). Rule 908(c), as re-proposed, would have permitted, under certain conditions, substituted compliance for regulatory reporting and public dissemination requirements relating to security-based swaps. The Commission preliminarily believed that the availability of substituted compliance would reduce the likelihood that market participants would be subject to potentially conflicting or duplicative sets of rules while still meeting the statutory and policy objectives of Title VII. Re-proposed Rule 908(c) would have

[855] A security-based swap would be a ''transaction conducted within the United States'' if it is solicited, negotiated, executed, or booked within the United States, by or on behalf of either counterparty to the transaction, regardless of the location, domicile, or residence status of either counterparty to the transaction. *See* proposed Rule 240.3a71–3(a)(5) under the Exchange Act; Cross-Border Proposing Release, 78 FR 31297; re-proposed Rule 900(ii). The word ''counterparty'' as used within this term would have the same meaning as ''direct counterparty'' in re-proposed Rule 900(j) of Regulation SBSR. *See* Cross-Border Proposing Release, 78 FR 31061.

[856] Rule 908(a), as initially proposed, would have required regulatory reporting of any security-based swap that is ''executed in the United States or through any means of interstate commerce.'' *See* Regulation SBSR Proposing Release, 75 FR 75287.

[857] *See* 78 FR 31061.

[858] *See* ABA Letter at 3; Citadel Letter at 1–2; Cleary III at 28; IAA Letter at 6; IIB Letter at 9; SIFMA/FIA/Roundtable Letter at A–42; Pearson Letter at 2; FOA Letter at 7–8; JFMC Letter at 4–5; ISDA IV at 18.

[859] In addition, the Commission has authority to promulgate rules, including additional regulatory requirements, applicable to persons transacting a business in security-based swaps ''without the jurisdiction of the United States'' when ''necessary or appropriate'' to prevent evasion of the provisions of Title VII of the Dodd-Frank Act. The Commission is not necessarily exercising the full extent of its authorities today but will be monitoring for gaps in reporting of swaps outside the United States that could be an evasion of the Commission's rules and regulations. *See* Section 30(c) of the Exchange Act, 15 U.S.C. 78dd(c).

[860] However, several commenters argued that specific requirements under Regulation SBSR should not apply to certain kinds of counterparties in certain circumstances. All of these comments are discussed in relation to Rule 908(a) in the section immediately above.

[861] *See supra* Section XV(C)(5), note 853 and accompanying text.

[862] *See* 78 FR 31092.

[863] *See, e.g.,* Cleary III at 15–16; Davis Polk I at 7, 11; Davis Polk II at 21–22; Société Générale Letter at 11; CCMR II at 2. *See also* Cross-Border Adopting Release, 79 FR 47357–58 (discussing several comments relating to substituted compliance issues generally).

specified the security-based swaps that would be eligible for substituted compliance and would have established procedures for market participants to request, and for the Commission to issue, substituted compliance orders.

As discussed in detail below, the Commission is adopting Rule 908(c) substantially as re-proposed, with minor modifications also described below. The Commission believes in general that, if a foreign jurisdiction applies a comparable system for the regulatory reporting and public dissemination of security-based swaps, it would be appropriate to consider permitting affected market participants to comply with the foreign requirements to satisfy the comparable requirements of Regulation SBSR. Where the Commission finds that a foreign jurisdiction's reporting and public dissemination requirements are comparable to those implemented by the Commission, Rule 908(c) provides that the Commission may make a substituted compliance determination with respect to such jurisdiction for these requirements. The Commission believes that permitting substituted compliance could reduce the likelihood that market participants would be subject to conflicting or duplicative regulation with respect to a security-based swap transaction.

In adopting Rule 908(c), the Commission is not making any assessment at this time regarding whether any foreign jurisdiction's requirements for regulatory reporting and public dissemination of security-based swaps are comparable to Regulation SBSR. Furthermore, because the analysis of any particular foreign jurisdiction would be very fact specific, it is impractical for the Commission to opine at this time on whether specific aspects of a foreign system would or would not allow the Commission to make a comparability determination. In view of the many technical differences that could exist between the Commission's Title VII rules and parallel requirements in other jurisdictions, the Commission stated in the Cross-Border Proposing Release that ''the Commission would endeavor to take a holistic approach in making substituted compliance determinations—that is, we would ultimately focus on regulatory outcomes as a whole with respect to the requirements within the same category rather than a rule-by-rule comparison.'' [864] The Commission continues to believe that this approach to comparability is appropriate, and intends to focus on regulatory outcomes as a whole when considering whether to make a comparability determination.

2. Substituted Compliance Procedure—Rule 908(c)(2)(i)

Rule 908(c)(2)(i), as re-proposed, would have allowed the Commission, conditionally or unconditionally, by order, to make a substituted compliance determination regarding regulatory reporting and public dissemination with respect to a foreign jurisdiction ''if that foreign jurisdiction's requirements for regulatory reporting and public dissemination of security-based swaps are comparable to otherwise applicable requirements'' under Regulation SBSR.

A number of commenters endorsed the Commission's proposal to permit substituted compliance with Regulation SBSR.[865] One of these commenters noted, for example, that substituted compliance would reduce burdens on businesses in the United States and elsewhere without weakening oversight, thus allowing firms to use funds more efficiently.[866] However, two commenters recommended that the Commission narrow the proposed availability of substituted compliance. One of these commenters stated that the Commission's proposed controls on substituted compliance would be inadequate.[867] The commenter further stated that, although substituted compliance potentially has a legitimate role to play in a cross-border regulatory regime, the greater the scope for substituted compliance, the stricter the controls should be on the ability to substitute foreign rules for U.S. rules.[868] The other commenter stated that the Cross-Border Proposing Release failed to provide an adequate legal or policy justification for allowing substituted compliance.[869] This commenter believed that, rather than using substituted compliance, the Commission should exercise its exemptive authority sparingly and only upon finding an actual conflict exists with a particular foreign regulation.[870]

The Commission has carefully considered these comments and determined to adopt Rule 908(c)(2)(i) as re-proposed, with one modification, as described in Section XV(E)(3), *infra.* Permitting substituted compliance should reduce the likelihood that market participants face duplicative or contradictory reporting or public dissemination requirements, and thereby decrease costs and administrative burdens on market participants without compromising the regulatory goals of Title VII. The requirements for substituted compliance are designed to ensure that the Title VII requirements for regulatory reporting and public dissemination of security-based swaps are being satisfied, albeit through compliance with the rules of a foreign jurisdiction rather than the specific provisions of Regulation SBSR.

3. Security-Based Swaps Eligible for Substituted Compliance—Rule 908(c)(1)

Rule 908(c)(1), as re-proposed, would have provided that compliance with the regulatory reporting and public dissemination requirements in Sections 13(m) and 13A of the Exchange Act, and the rules and regulations thereunder, may be satisfied by compliance with the rules of a foreign jurisdiction that is the subject of a substituted compliance order issued by the Commission, provided that at least one of the direct counterparties to the security-based swap is either a non-U.S. person or a foreign branch, and the transaction is not solicited, negotiated, or executed within the United States. Thus, under re-proposed Rule 908(c)(1), certain kinds of security-based swaps would *not* have been eligible for substituted compliance even if they were subject to reporting and public dissemination requirements in a foreign jurisdiction.[871] Specifically, a security-based swap between *two U.S. persons* would *not* have been eligible for substituted compliance with respect to regulatory reporting and public dissemination, even if the security-based swap was solicited, negotiated, and executed outside the United States.[872] Furthermore, re-proposed Rule 908(c)(1) would not have allowed for the possibility of substituted compliance with respect to regulatory reporting and public dissemination if the relevant direct counterparty that was

[864] 78 FR 31085–86.

[865] *See* ESMA Letter at 2–3; FOA Letter at 2–3; IIF Letter at 1–2; JSDA Letter at 2; MFA/AIMA Letter at 5–7.

[866] *See* IIF Letter at 3.

[867] *See* AFR Letter at 8.

[868] *See id.*

[869] *See* Better Markets IV at 3, 24–25 (noting that the Commission's duty is to protect investors and the public consistent with congressional policy, not to minimize the costs, burdens, or inconvenience that regulation imposes on industry).

[870] *See id.* at 26.

[871] If the rules of a foreign jurisdiction did not apply to the security-based swap, there would be no need to consider the possibility of substituted compliance, because there would be no foreign rules that could substitute for the applicable U.S. rules.

[872] As noted in the Cross-Border Proposing Release, this assumed that neither U.S. person is acting through a foreign branch. If either or both U.S. persons is acting through a foreign branch, the security-based swap between those U.S. persons *would* have been eligible for substituted compliance under Rule 908(c)(1), as re-proposed. *See* 78 FR 31093–94, note 1149.

either a non-U.S. person or foreign branch (or its agent)—regardless of place of domicile—solicited, negotiated, or executed a security-based swap from within the United States.

The Commission received two comment letters in response to re-proposed Rule 908(c)(1), both of which addressed the proposal to limit substituted compliance availability to security-based swaps that are not solicited, negotiated, or executed in the United States.[873] One of these commenters recommended that the Commission remove this requirement altogether.[874] The other commenter noted that, as a general matter, it is virtually impossible to determine on a trade-by-trade basis whether each specific contact with a counterparty or potential counterparty has some nexus to the United States, and urged the Commission to subject security-based swaps to Title VII regulation solely according to whether counterparties are U.S. persons.[875]

In response to these comments, the Commission has decided to adopt a modified version of Rule 908(c)(1) that does not condition substituted compliance eligibility on the location of execution, negotiation, or solicitation of a particular transaction.[876] Under Rule 908(c)(1), as adopted, a security-based swap is eligible for substituted compliance with respect to regulatory reporting and public dissemination if at least one of the direct counterparties to the security-based swap is either a non-U.S. person or a foreign branch. Thus, Rule 908(c)(1) permits a security-based swap between a U.S. person and the New York branch of a foreign bank (*i.e.,* a non-U.S. person with operations inside the United States) to be eligible for substituted compliance, provided that a substituted compliance order is in effect with respect to the home country of the foreign bank that operates the U.S. branch. The standard in Rule 908(c)(1), as adopted, is consistent with the Commission's decision not to impose, at this time, reporting or public dissemination requirements based solely on whether a transaction is conducted within the United States.

Regarding which security-based swaps are eligible for the possibility of substituted compliance, the Commission believes that, if at least one direct counterparty to a security-based swap is a foreign branch or a non-U.S. person (even if the non-U.S. person is a registered security-based swap dealer or registered major security-based swap participant, or is guaranteed by a U.S. person), the security-based swap should be eligible for consideration for a substituted compliance determination under Regulation SBSR. This approach recognizes that a transaction involving a foreign branch or a non-U.S. person faces the possibility of being subject to reporting requirements in multiple jurisdictions (the United States and another jurisdiction whose rules may govern the transaction). The approach adopted by the Commission of allowing any transaction involving a foreign branch or non-U.S. person to be eligible to be considered for substituted compliance is designed to limit disincentives for non-U.S. persons to transact security-based swaps with U.S. persons by allowing for the possibility that compliance with the rules of a foreign jurisdiction could be substituted for compliance with the specific provisions of Regulation SBSR when the non-U.S. person transacts with a U.S. person. This approach also would allow for a reasonable minimization of reporting burdens on foreign branches and non-U.S. persons in situations where the local jurisdiction in which they operate does not offer the possibility of substituted compliance.

4. Requests for Substituted Compliance—Rule 908(c)(2)(ii)

Rule 908(c)(2)(ii), as re-proposed, would have established the process for market participants to follow when applying for a substituted compliance determination: ''Any person that executes security-based swaps that would, in the absence of a substituted compliance order, be required to be reported pursuant to [Regulation SBSR] may file an application, pursuant to the procedures set forth in § 240.0–13 of this chapter, requesting that the Commission make a substituted compliance determination regarding regulatory reporting and public dissemination with respect to a foreign jurisdiction the rules of which also would require reporting and public dissemination of those security-based swaps. Such application shall include the reasons therefor and such other information as the Commission may request.''

A number of commenters recommended that the Commission permit foreign regulators, as well as market participants, to file an application for a substituted compliance determination.[877] Some of these commenters noted that foreign regulatory authorities would be well-positioned to describe their regulatory frameworks and manner of supervision, and, in any event, their involvement would be needed to negotiate the memorandum of understanding that the Commission proposed to require as a precondition of granting a substituted compliance order.[878] One commenter also stated that the CFTC's Cross-Border Guidance [879] contemplates accepting applications for substituted compliance from non-U.S. regulators.[880] Two commenters suggested that substituted compliance applications should be submitted by foreign regulatory authorities, rather than individual firms.[881]

The Commission is adopting Rule 908(c)(2)(ii) largely as re-proposed, with a few minor revisions. First, consistent with the adoption of Rule 0–13 in the Cross-Border Adopting Release, the Commission has revised Rule 908(c)(2)(ii) to permit foreign financial regulatory authorities to submit applications for substituted compliance determinations on behalf of market participants subject to their jurisdictions.[882]

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[873] *See* ISDA II at 5; SIFMA/FIA/Roundtable Letter at 3–4. A third commenter expressed the view that any swap involving a U.S. person and a non-U.S. person should be eligible for substituted compliance. *See* CCMR II at 2–3.

[874] *See* ISDA II at 5.

[875] *See* SIFMA/FIA/Roundtable Letter at 3–4. This commenter did not raise this comment expressly in the context of Rule 908(c)(1), however.

[876] Rule 908(c)(1), as adopted, provides: ''Compliance with the regulatory reporting and public dissemination requirements in sections 13(m) and 13A of the Act (15 U.S.C. 78m(m) and 78m–1), and the rules and regulations thereunder, may be satisfied by compliance with the rules of a foreign jurisdiction that is the subject of a Commission order described in paragraph (c)(2) of this section, provided that at least one of the direct counterparties to the security-based swap is either a non-U.S. person or a foreign branch.''

[877] *See* ABA Letter at 5; ICI II at 11; IIB Letter at 27; IIF Letter at 4; ISDA II at 4; JFMC Letter at 7–8; FOA Letter at 4 (noting that the Commission should begin discussions with the European Commission to establish an agreed approach for the coordinated oversight of the transatlantic security-based swap markets); SIFMA/FIA/Roundtable Letter at A–36.

[878] *See* ICI II at 11; ISDA II at 4. Re-proposed Rule 908(c)(2)(iv), described below, would have required the Commission to enter into a supervisory and enforcement memorandum of understanding or other agreement with the relevant foreign regulator(s) prior to issuing a substituted compliance order covering a foreign jurisdiction.

[879] Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 FR 45292 (July 26, 2013).

[880] *See* ISDA II at 4.

[881] *See* ESMA Letter at 3 (recommending that comparability determinations should be requested at the European Union-level, rather than by individual firms); JSDA Letter at 2. *See also* Pearson Letter at 3 (recommending that the review of a foreign regime be conducted in cooperation solely with the relevant foreign regulators or legislators, not firms).

[882] *See* 79 FR 47358 (''We are persuaded that allowing foreign regulators to submit such requests would promote the completeness of requests and promote efficiency in the process for considering such requests, in light of foreign regulators' expertise regarding their domestic regulatory system, including the effectiveness of their

Second, Rule 908(c)(2)(ii), as re-proposed, would have permitted filing by any ''person that executes security-based swaps.'' Read literally, this language in the re-proposed rule could have permitted persons who are not subject to Regulation SBSR to seek a substituted compliance determination. The Commission seeks to limit the scope of persons who can apply for substituted compliance determinations to foreign financial regulators and parties that would be subject to Regulation SBSR, because these persons have the greatest knowledge about the foreign jurisdiction in question. Moreover, in the case of market participants active in that jurisdiction, they will be directly impacted by potentially overlapping rules and thus have the greatest interest in making the strongest case for substituted compliance. Accordingly, Rule 908(c)(2)(ii), as adopted, permits a ''party that potentially would comply with requirements under [Regulation SBSR] pursuant to a substituted compliance order,'' [883] or the relevant foreign financial regulatory authority or authorities in that jurisdiction,[884] to file an application requesting a substituted compliance determination.[885]

Third, the Commission has determined not to include the final sentence of re-proposed Rule 908(c)(2)(ii)—''[s]uch application shall include the reasons therefor and such other information as the Commission may request''—in final Rule 908(c)(2)(ii). Rule 0–13(e) under the Exchange Act, as adopted in the Cross-Border Adopting Release, provides detailed requirements regarding the information required to be submitted (*e.g.,* supporting documentation, including information regarding applicable regulatory requirements, compliance monitoring by foreign regulators, and applicable precedent).[886] In light of the cross-reference to Rule 0–13 in final Rule 908(c)(2)(ii), the last sentence of re-proposed Rule 908(c)(2)(ii) is unnecessary and therefore is not included in final Rule 908(c)(2)(ii).

5. Findings Necessary for Substituted Compliance—Rule 908(c)(2)(iii)

Rule 908(c)(2)(iii), as re-proposed, would have provided that, in making a substituted compliance determination with respect to a foreign jurisdiction, the Commission shall take into account such factors as it determines are appropriate, such as the scope and objectives of the relevant foreign regulatory requirements, as well as the effectiveness of the supervisory compliance program administered, and the enforcement authority exercised, by the foreign financial regulatory authority to support oversight of its regulatory reporting and public dissemination system for security-based swaps. Furthermore, Rule 908(c)(2)(iii), as re-proposed, would have provided that the Commission would not make a substituted compliance determination with respect to regulatory reporting and public dissemination unless the Commission found that the relevant foreign regulatory regime provided for the reporting and public dissemination of comparable data elements in a manner and timeframe comparable to those required by Regulation SBSR.[887] As a prerequisite to any substituted compliance determination, re-proposed Rule 908(c)(2)(iii) also would have required that the Commission have direct electronic access to the security-based swap data held by the trade repository or foreign regulatory authority.[888] Lastly, re-proposed Rule 908(c)(2)(iii) would have required the Commission to find that any trade repository or foreign regulatory authority in the foreign jurisdiction is subject to requirements regarding data collection and maintenance; systems capacity, resiliency, and security; and recordkeeping that are comparable to the requirements imposed on registered SDRs.[889]

The Commission has determined to adopt Rule 908(c)(2)(iii) as re-proposed, subject to two minor changes, one in each of Rules 908(c)(2)(iii)(B) and 908(c)(2)(iii)(D), which are discussed below. Final Rule 908(c)(2)(iii) provides that, in making a substituted compliance determination, the Commission shall take into account such factors that it determines are appropriate, which include but are not limited to the scope and objectives of the relevant foreign regulatory requirements, as well as the effectiveness of the supervisory compliance program administered, and the enforcement authority exercised, by the foreign financial regulatory authority to support oversight of its regulatory reporting and public dissemination system for security-based swaps. The rule further provides that the Commission shall not make such a substituted compliance determination unless it finds that:

(A) The data elements that are required to be reported pursuant to the rules of the foreign jurisdiction are comparable to those required to be reported pursuant to Rule 901;

(B) The rules of the foreign jurisdiction require the security-based swap to be reported and publicly disseminated in a manner and a timeframe comparable to those required by Regulation SBSR (or, in the case of transactions that are subject to regulatory reporting but not public dissemination, the rules of the foreign jurisdiction require the security-based swaps to be reported in a manner and timeframe comparable to those required by Regulation SBSR);

(C) The Commission has direct electronic access to the security-based swap data held by a trade repository or foreign regulatory authority to which security-based swaps are reported pursuant to the rules of that foreign jurisdiction; and

(D) Any trade repository or foreign regulatory authority in the foreign jurisdiction that receives and maintains required transaction reports of security-based swaps pursuant to the laws of that foreign jurisdiction is subject to requirements regarding data collection and maintenance; systems capacity, integrity, resiliency, availability, and security; and recordkeeping that are comparable to the requirements imposed on security-based swap data

compliance and enforcement mechanisms, and to allow for a single point of contact to facilitate the consideration of substituted compliance requests associated with the jurisdiction'').

[883] This could be either a U.S. person or a non-U.S. person that engages in activity in that jurisdiction.

[884] This formulation of final Rule 908(c)(2)(ii) closely follows the language of Rule 0–13(a) under the Exchange Act, 17 CFR 240.0–13(a), which provides in relevant part that an application for substituted compliance must be submitted to the Commission ''by a party that potentially would comply with requirements under the Exchange Act pursuant to a substituted compliance order, or by the relevant foreign financial regulatory authority or authorities.''

[885] Thus, the Commission disagrees with the commenters who argued that substituted compliance applications should be submitted only by foreign regulatory authorities, rather than individual firms. *See* ESMA Letter at 3; JSDA Letter at 2. Although obtaining information from foreign regulatory authorities could be an important aspect of the substituted compliance review, the Commission sees no basis for denying individual firms that might comply with requirements of Regulation SBSR pursuant to a substituted compliance order the ability to request substituted compliance and thereby initiate that review. *See* Cross-Border Adopting Release, 79 FR 47358 (''We are not . . . foreclosing the ability of a market participant itself to submit a request that it be able to comply with Exchange Act requirements pursuant to a substituted compliance order'').

[886] *See id.* In addition, Rule 0–13(h) requires the Commission to publish in the **Federal Register** a notice that a complete application has been submitted.

[887] *See* Cross-Border Proposing Release, 78 FR 31215.

[888] *See id.*

[889] *See id.*

repositories by the Commission's rules and regulations.[890]

Although no commenters discussed the appropriateness of considering the examination and enforcement practices of foreign regulators in making a substituted compliance determination for Regulation SBSR specifically, a number of commenters addressed the general concept of considering actual practices in the foreign jurisdiction as part of the substituted compliance determination. Certain commenters generally supported the retention by the Commission of the authority to decline to make a comparability finding based on the substantive enforcement of foreign regulatory regimes.[891] Two of these commenters noted, however, that supervisory practices differ significantly among jurisdictions.[892] One of these commenters stated: ''This lack of commonality should not be assumed to be a defect in supervisory standards; common objectives may be reached through differing means.'' [893] This commenter expressed the general view, however, that ''a general, high-level inquiry into the existence of an examination and enforcement process and institutions to support it arguably should inform views about the comparability of outcomes.'' [894]

The Commission agrees that the examination and enforcement practices of each foreign jurisdiction will need to be evaluated on a case-by-case basis, and anticipates that it will consider whether the regulatory protections provided in that jurisdiction's security-based swap markets are substantially realized through sufficiently vigorous supervision and enforcement. While the Commission believes that common objectives may be reached through differing means, the Commission also believes that compliance with a foreign jurisdiction's rules for reporting and public dissemination of security-based swaps should be a substitute for compliance with the U.S. rules only when the foreign jurisdiction has a reporting and public dissemination regime comparable to that of the United States. This determination must consider actual practices and implementation as well as written laws and regulations of the foreign jurisdiction.

a. Data Element Comparability—Rule 908(c)(2)(iii)(A)

The Commission received several comments regarding the data element comparability determination required by what is now final Rule 908(c)(2)(iii)(A). Two commenters recommended that the Commission determine whether a foreign jurisdiction has comparable security-based swap reporting requirements based on a holistic review of that jurisdiction's regulations and the local market environment.[895] Some commenters suggested that the Commission should determine whether the security-based swap reporting framework of a foreign jurisdiction is designed to achieve the G–20 goals of transparency in the derivatives markets.[896]

The Commission is adopting re-proposed Rule 908(c)(2)(iii)(A) without revision. Under the final rule, the foreign jurisdiction must require reporting of data elements comparable to those required under Rule 901 of Regulation SBSR for the Commission to make a comparability determination. If the data elements required by the foreign jurisdiction are not comparable, important information about a security-based swap might not be captured by the foreign trade repository or foreign regulatory authority. This could create gaps or inconsistencies in the information available to the Commission and impair the Commission's ability to monitor the security-based swap market. As noted in Section XV(E)(1), *supra,* the Commission generally agrees with the commenters who expressed the view that the Commission should take a ''holistic'' or ''outcomes-based'' view of another jurisdiction's rules when making a substituted compliance determination, rather than conduct a ''line-by-line'' or ''rule-by-rule'' analysis. At this time, the Commission does not believe that it is sufficient to consider only whether the data elements required by the foreign regulatory regime are designed to achieve the objectives of the G–20 with respect to reporting. The G–20 objectives are a high-level set of principles designed to guide jurisdictions in adopting reforms for the OTC derivatives markets. Therefore, the Commission believes that it is necessary and appropriate to consider whether the data elements reported under that jurisdiction's rules are comparable to those required under Rule 901 of Regulation SBSR—not whether they are comparable to the G–20 standards—in deciding whether to grant a substituted compliance determination. If the Commission took the opposite view, it would be difficult to conclude that the oversight and transparency goals of Title VII were being satisfied through compliance with the rules of the foreign jurisdiction in lieu of Regulation SBSR.[897]

b. Timeframe of Reporting and Public Dissemination—Rule 908(c)(2)(iii)(B)

The Commission also is adopting Rule 908(c)(2)(iii)(B) as re-proposed, subject to certain conforming changes.[898] Rule 908(c)(2)(iii)(B), as adopted, provides that the Commission shall not issue a substituted compliance determination unless the relevant foreign jurisdiction requires security-based swaps to be reported and publicly disseminated ''in

[890] *See* Rule 908(c)(2)(iii)(A)–(D), as adopted, and *infra* note 910.

[891] *See* ABA Letter at 5; AFR Letter at 12; Better Markets IV at 3, 29–32; ISDA II at 6.

[892] *See* FOA Letter at 6; ISDA II at 6.

[893] ISDA II at 6.

[894] *Id.*

[895] *See* JFMC Letter at 7; ISDA II at 8. Other commenters expressed a general preference for a holistic review of a relevant jurisdiction's security-based swap regulatory regime but did not expressly reference Regulation SBSR in this context. *See, e.g.,* SIFMA/FIA/Roundtable Letter at A–37–A–38; Pearson Letter at 3; IIF Letter at 5; ICI II at 11; JFMC Letter at 1; MFA/AIMA Letter at 5 (observing that a line-by-line or rule-by-rule analysis would place a significant burden on the Commission, and potentially result in disjointed regulation); ABA Letter at 5.

[896] *See* ICI II at 12; ISDA II at 8 (noting also that jurisdictions may choose to establish goals and requirements that are ancillary to the G–20 regulatory goals, but these ancillary requirements should not become a barrier to an effective cross-border compliance regime that furthers the G–20 goals). With respect to security-based swap reporting, the ''G–20 goals'' referenced by these commenters were articulated in the Leaders' Statement at the Pittsburgh Summit (September 24–25, 2009), available at: *https://www.g20.org/sites/default/files/g20_resources/library/Pittsburgh_Declaration.pdf,* last visited September 22, 2014.

[897] One commenter urged the Commission to ''replace the apparently subjective 'outcomes-based' standard for comparison with a more rigorous and objective standard based on the underlying rules.'' AFR Letter at 9. For the reasons noted above, the Commission is adopting a ''comparable'' standard, rather than the type of review suggested by the commenter. This commenter further stated: ''Another reason that 'outcomes-based' assessment may not be adequate is that the inter-operability of different rule sets may be critical to the effectiveness of the overall international regime . . . this is the case for standardization of data formats in reporting, and may also be true for various risk management elements that must be standardized across a global financial institution.'' *Id.* at 10. The Commission intends to work with foreign regulatory authorities to develop more uniform data standards to allow maximum aggregability while minimizing market participant costs and burdens that would result from having to report in different jurisdictions using different data standards and formats.

[898] As re-proposed, this rule would have provided that the Commission shall not make a substituted compliance determination unless it finds that the ''rules of the foreign jurisdiction require the security-based swap to be reported and publicly disseminated in a manner and a timeframe comparable to those required by §§ 242.900 through 242.911.'' As discussed previously, Regulation SBSR, as adopted, consists of Rules 900 through 909 under the Exchange Act. Therefore, the reference in re-proposed Rule 908(c)(2)(iii)(B) to ''§§ 242.900 through 242.911'' is being revised to read: ''§§ 242.900 through 242.909.''

a manner and a timeframe comparable to those required by [Regulation SBSR].'' Given the Title VII requirements that all security-based swaps be reported to a registered SDR and that security-based swaps be publicly disseminated in real time, the Commission believes that allowing substituted compliance with the rules of a foreign jurisdiction that has reporting timeframes and dissemination outcomes not comparable to those in the United States would run counter to the objectives and requirements of Title VII. If the Commission allowed substituted compliance for such a jurisdiction, the Commission might have access to less regulatory data about the security-based swap market, or price discovery could be less efficient, than would have been the case if Regulation SBSR applied in its entirety. Thus, for example, the Commission generally does not anticipate permitting substituted compliance with respect to regulatory reporting and public dissemination under Rule 908(c) if a foreign jurisdiction does not (among other things) impose public dissemination requirements for all security-based swaps on a trade-by-trade basis.[899] Thus, the Commission disagrees with the commenter who suggested that a non-U.S. public dissemination regime that disseminates data on an aggregate basis should be deemed comparable to Regulation SBSR.[900]

One commenter stated that ''[c]omparability should be addressed flexibly with respect to public dissemination, recognizing that in certain jurisdictions' [*sic*] transparency obligations are linked to use of a trading venue and fall on the venue.'' [901] Another commenter recommended that the Commission should not determine that a foreign jurisdiction lacks comparable security-based swap reporting rules based on technical differences in the timeframes for, or manner of, reporting.[902] Whether the Commission grants a substituted compliance determination will depend on the facts and circumstances pertaining to a particular request. Thus, it is difficult to address concerns such as those raised by these two commenters in the abstract. As the Commission noted in Section XV(E)(1), *supra,* it will assess comparability in a holistic manner rather than on a rule-by-rule basis.

c. Direct Electronic Access—Rule 908(c)(2)(iii)(C)

The Commission also is adopting Rule 908(c)(2)(iii)(C) as re-proposed. Rule 908(c)(2)(iii)(C) provides that the Commission may not issue a substituted compliance order with respect to regulatory reporting and public dissemination in a foreign jurisdiction unless ''[t]he Commission has direct electronic access to the security-based swap data held by a trade repository or foreign regulatory authority to which security-based swaps are reported pursuant to the rules of that foreign jurisdiction.'' [903] Commenters expressed differing views regarding the direct electronic access requirement in re-proposed Rule 908(c)(2)(iii)(C). One commenter expressed support for the proposed requirement, believing that direct electronic access is a critical element for adequate monitoring of risks to U.S. financial stability.[904] However, two commenters objected to the proposed direct electronic access requirement.[905] One of these commenters suggested that the Commission should not require direct electronic access at this time, but should instead wait for the ''FSB'' to develop plans ''to produce and share globally aggregated trade repository data that authorities need for monitoring systemic risks.'' [906] Another commenter ''urge[d] the Commission to take into account the issue of foreign jurisdictions' privacy laws before imposing a blanket requirement that [the Commission] have direct electronic access.'' [907]

After carefully considering the comments received, the Commission continues to believe that requiring direct electronic access to security-based swap data held by a trade repository or foreign regulatory authority is a necessary part of any substituted compliance determination. Thus, the Commission does not believe that it should rely instead on the FSB or other international bodies developing arrangements for trade repositories and relevant authorities to share information across jurisdictions. While these cross-border information-sharing arrangements are important, and the Commission will continue to participate in such efforts, granting substituted compliance without direct electronic access would not be consistent with the underlying premise of substituted compliance: That a comparable regulatory result is reached through compliance with foreign rules rather than with the corresponding U.S. rules. If the Commission were to grant substituted compliance for a foreign jurisdiction where the Commission did not have direct electronic access to the facility to which security-based swap transactions of that jurisdiction are reported, the Commission might not have access to transaction information for portions of the security-based swap market that it otherwise would have the ability to surveil.[908] If the Commission were to rely solely on international information-sharing agreements, it could face substantial delays before a foreign trade repository or foreign regulatory authority, even acting expeditiously, could compile and make available to the Commission data relating to a substantial volume of transactions. Delays in obtaining such data could compromise the ability of the Commission to supervise security-based swap market participants, or to share information with other relevant U.S. authorities in a timely fashion. Thus,

[899] Although the Commission is requiring reporting and public dissemination of security-based swaps within 24 hours of the time of execution during the first initial phase of Regulation SBSR, *see* Rule 901(j), the Commission anticipates considering provisions to implement the Title VII requirement for real-time public dissemination. Therefore, the Commission would view a foreign jurisdiction's regime for public dissemination of security-based swaps as comparable only if it (1) had rules providing for real-time public dissemination of all security-based swaps currently, or (2) was following a comparable process of moving to real-time public dissemination for all security-based swaps in phases.

[900] *See* JSDA Letter at 2. Another commenter requested that the Commission determine that Japan has comparable security-based swap reporting standards. *See* JFMC Letter at 8. This comment is beyond the scope of this rulemaking. However, after Regulation SBSR becomes effective, market participants in this jurisdiction that would rely on a substituted compliance determination, or their regulators, may submit a request for substituted compliance with respect to regulatory reporting and public dissemination if they believe that the rules in that jurisdiction satisfy the criteria for substituted compliance described in Rule 908(c).

[901] ISDA II at 9.

[902] *See* ICI II at 12.

[903] Under Rule 900(*l*), as adopted, ''direct electronic access'' has the same meaning as in Rule 13n–4(a)(5) under the Exchange Act, discussed in the SDR Adopting Release. Rule 13n–4(a)(5) defines ''direct electronic access'' to mean access, which shall be in a form and manner acceptable to the Commission, to data stored by an SDR in an electronic format and updated at the same time as the SDR's data is updated so as to provide the Commission or any of its designees with the ability to query or analyze the data in the same manner that the SDR can query or analyze the data.

[904] *See* AFR Letter at 9 (noting that the Commission should seek to analyze data from foreign repositories in conjunction with U.S.-sourced data to determine the swap exposure of an entity on a global basis).

[905] *See* IIF Letter at 7; ISDA II at 8.

[906] *Id.* at 8. The second commenter did not offer a rationale for its opposition to the proposed direct electronic access requirement. *See* IIF Letter at 7.

[907] SIFMA/FIA/Roundtable Letter at A–46 (stating that over a dozen jurisdictions have been identified where local law prohibits the disclosure of client names to non-local regulators that do not have an information-sharing treaty or agreement in place with the local regulator, some of which cannot be satisfied by counterparty consent).

[908] *See supra* note 788 (providing statistics regarding the amount of cross-border trading in the security-based swap market).

the Commission believes that direct electronic access to security-based swap data held by the foreign trade repository or foreign regulatory authority to which security-based swap transactions are reported in the foreign jurisdiction must be a prerequisite to issuing a substituted compliance order with respect to Regulation SBSR applying to that jurisdiction.

The Commission has taken into consideration the comment that certain jurisdictions have privacy laws or blocking statutes that could, in certain cases, render a foreign trade repository or foreign regulatory authority unable to provide the Commission with direct electronic access to transaction information that would include the identity of the counterparties. The Commission is not persuaded that this consideration should remove direct electronic access as a requirement for substituted compliance under Regulation SBSR. Indeed, if foreign privacy laws result in the Commission having less than comparable access to the security-based swap transaction data held at a foreign trade repository or foreign regulatory authority than the Commission otherwise would have if no substituted compliance order were in effect, then the premise of substituted compliance would not be met. Although foreign regulatory authorities would likely have access to information about security-based swap transactions that exist at least in part in their jurisdictions, these authorities might lack the ability to share this information with the Commission. As a result, it could be difficult if not impossible for the Commission or any other relevant authority, foreign or domestic, to observe the build-up of systemic risks created by the global security-based swap activity of U.S. persons. In sum, the Commission believes that, if it does not have direct electronic access to the transaction information reported to the foreign trade repository or foreign regulatory authority, substituted compliance would not yield a comparable outcome and the requirements of Rule 908(c)(2) would not be met.[909] The Commission believes that, in this situation, the specific requirements of Regulation SBSR should continue to apply; if necessary supervisory information cannot be obtained via direct electronic access to the security-based swap data held by a foreign trade repository or foreign regulatory authority, then such transactions must continue to be reported to a registered SDR, from which the Commission can obtain such information.

d. Trade Repository Capabilities—Rule 908(c)(2)(iii)(D)

The Commission received no comments on Rule 908(c)(2)(iii)(D) and is adopting that rule as re-proposed, with certain minor changes. Final Rule 908(c)(2)(iii)(D) provides that the Commission shall not make a substituted compliance determination with respect to regulatory reporting and public dissemination unless it finds that ''[a]ny trade repository or foreign regulatory authority in the foreign jurisdiction that receives and maintains required transaction reports of security-based swaps pursuant to the laws of that foreign jurisdiction is subject to requirements regarding data collection and maintenance; systems capacity, integrity, resiliency, availability, and security; and recordkeeping that are comparable to the requirements imposed on security-based swap data repositories *by the Commission's rules and regulations*'' (emphasis added). In the re-proposed rule, the highlighted language would have read ''. . . by §§ 240.13n–5 through 240.13n–7 of this chapter.'' Because requirements imposed on registered SDRs relating to data collection and maintenance; systems capacity, integrity, resiliency, availability, and security; and recordkeeping could be imposed by Commission rules and regulations other than or in addition to Rules 13n–5 through 13n–7 under the Exchange Act, the Commission believes that it would be more appropriate to use the broader language in the text of final Rule 908(c)(2)(iii)(D). The Commission continues to believe that, to allow substituted compliance for regulatory reporting and public dissemination with respect to a foreign jurisdiction, any entity in that foreign jurisdiction that is required to receive and maintain security-based swap transaction data must have protections and operability standards comparable to those imposed on SEC-registered SDRs.

In addition, the re-proposed rule would have required, in relevant part, that—in connection with a substituted compliance determination—the foreign trade repository or foreign regulatory authority must be subject to requirements for ''systems capacity, resiliency, and security'' that are comparable to parallel U.S. requirements. That provision in final Rule 908(c)(2)(iii)(D) now states, ''systems capacity, integrity, resiliency, availability, and security.'' The addition of ''integrity'' and ''availability'' to characterize the expected operational capability of the foreign trade repository or foreign regulatory authority is derived from a parallel change that the Commission made in adopting final Rule 13n–6 under the Exchange Act that applies to SEC-registered SDRs.[910] Because these standards apply to SEC-registered SDRs, the Commission believes that it is appropriate for Rule 908(c)(2)(iii)(D) to include them as elements necessary for a finding that a foreign trade repository or foreign regulatory authority is subject to comparable regulatory duties.

e. Memoranda of Understanding—Rule 908(c)(2)(iv)

Rule 908(c)(2)(iv), as re-proposed, would have required that, before issuing a substituted compliance order relating to regulatory reporting and public dissemination with respect to a foreign jurisdiction, the Commission shall have entered into a supervisory and enforcement memorandum of understanding (''MOU'') or other arrangement with the relevant foreign financial regulatory authority or authorities under such foreign financial regulatory system addressing oversight and supervision of the applicable security-based swap market. No commenters addressed this proposed requirement.

The Commission is adopting Rule 908(c)(2)(iv) with certain minor revisions. First, the Commission is modifying the rule to indicate that a substituted compliance determination may require the Commission to enter into more than one MOU or other arrangement with a foreign authority. Second, the Commission has modified the rule to provide that such MOUs or other arrangements would ''address[ ] supervisory and enforcement cooperation and other matters arising under the substituted compliance determination.'' [911] These clarifications are designed to facilitate discussions between the Commission and relevant foreign regulators.

The Commission expects that any grant of substituted compliance would be predicated on the presence of enforcement MOUs or other arrangements that provide formal mechanisms by which the Commission can request assistance and obtain documents and information from foreign authorities regarding enforcement matters involving securities. Substituted compliance also may be expected to be predicated on the presence of supervisory MOUs or other

[909] *See also infra* Section XVI(A) (addressing the impact of foreign privacy laws on Regulation SBSR).

[910] *See* SDR Adopting Release, note 831.

[911] Rule 908(c)(2)(iv).

arrangements that provide formal mechanisms by which the Commission can request assistance and obtain non-public information from foreign authorities related to the oversight of dually regulated entities. As a result, such MOUs or other arrangements should help the Commission ensure compliance with Title VII requirements for regulatory reporting and public dissemination.

In addition, any grant of substituted compliance may be conditioned upon the Commission entering into other MOUs or arrangements that address additional matters specific to the substituted compliance determination. Such MOUs or other arrangements, among other respects, may be expected to help promote the effectiveness of substituted compliance by providing mechanisms by which the Commission may request information and/or monitor for circumstances where the foreign regime may no longer be comparable to the counterpart Title VII requirements (due, for example, to changes in the substantive legal framework of the foreign regime that are inconsistent with the understandings that underpinned the Commission's initial grant of substituted compliance). In addition, such MOUs or other arrangements may provide mechanisms by which the Commission could request information and monitor the effectiveness of the enforcement and supervision capabilities of the appropriate foreign regulator(s). More generally, such MOUs or other arrangements can provide mechanisms by which the Commission could obtain information relevant to the assessment of comparability.

f. Modification or Withdrawal of Substituted Compliance Order

Rule 908(c)(2)(v), as re-proposed, would have provided that the Commission may, on its own initiative, modify or withdraw a substituted compliance order with respect to regulatory reporting and public dissemination in a foreign jurisdiction, at any time, after appropriate notice and opportunity for comment. The Commission is adopting Rule 908(c)(2)(v) as re-proposed, without revision.

Situations can arise where it would be necessary or appropriate to modify or withdraw a substituted compliance order. A modification or withdrawal could be necessary if, after the Commission issues a substituted compliance order, the facts or understandings on which the Commission relied when issuing that order are no longer true. The Commission believes, therefore, that it is appropriate to establish a mechanism whereby it could, at any time and on its own initiative, modify or withdraw a previously issued substituted compliance order with respect to regulatory reporting and public dissemination, after appropriate notice and opportunity for comment. Having made a comparability determination, the Commission should have the ability to periodically review the determination and decide whether the substituted compliance determination should continue to apply.[912] The Commission could determine to condition a substituted compliance order on an ongoing duty to disclose relevant information. Thus, the Commission generally agrees with the commenter who argued that persons making use of substituted compliance should be responsible for informing the Commission if factors on which the Commission relied in making the determination change in any material way.[913]

Two commenters generally supported the re-proposed Rule 908(c)(2)(v) requirement for the Commission to publish for comment proposed withdrawals or modifications.[914] Several commenters also recommended that any final decision by the Commission to modify or withdraw a comparability determination should include a phase-in period to provide market participants adequate opportunity to make necessary adjustments to their compliance systems and processes.[915] The Commission generally agrees with these comments, and believes that all affected persons should have appropriate notice of the introduction, withdrawal, or modification of a substituted compliance order so as to minimize undue disruptions in the market. The Commission will address phase-in issues and timeframes on a case-by-case basis—in the relevant order that introduces, modifies, or withdraws substituted compliance—depending on the facts and circumstances of the particular situation.

6. Consideration of Regulatory Reporting and Public Dissemination in the Commission's Analysis of Substituted Compliance

When the Commission re-proposed Rule 908(c) in the Cross-Border Proposing Release, it expressed a preliminary view that regulatory reporting and public dissemination should be considered together in the Commission's analysis of whether to permit substituted compliance.[916] If the Commission were to adopt that approach, security-based swap transactions would not be eligible for substituted compliance if there were comparable foreign rules in one area but not the other. In other words, a foreign jurisdiction that has comparable rules for regulatory reporting of security-based swap transactions but not comparable rules for public dissemination of such transactions would not have been eligible for substituted compliance under Regulation SBSR.

Three commenters suggested that the Commission consider making separate substituted compliance determinations for regulatory reporting and public dissemination.[917] One of these commenters expressed the view that making separate determinations is appropriate because regulatory reporting and public dissemination serve distinct goals.[918] This commenter also argued that, due to the significant costs associated with documentation, procedures, and technological systems necessary to comply with reporting regimes, the possibility of separate substituted compliance determinations for regulatory reporting and public dissemination could substantially reduce costs for non-U.S. market participants while still achieving the Commission's important market surveillance and transparency goals.[919] One of the other commenters argued that ''[d]ifferences among jurisdictions in the timing of reporting . . . should be evaluated in light of systemic risk and market supervisory objectives, rather than policies of facilitating price discovery.'' [920] The commenter concluded, therefore, that ''[s]uch flexibility should include the potential for separate determinations regarding

[912] The Commission made a similar statement in the Cross-Border Proposing Release. *See* 78 FR 31089. Three commenters agreed with the statement. *See* AFR Letter at 12; Better Markets IV at 30; IIF Letter at 4, 7.

[913] *See* Better Markets IV at 29, 32.

[914] *See* ABA Letter at 6; ISDA II at 9.

[915] *See* FOA Letter at 5; IIF Letter at 7; SIFMA/FIA/Roundtable Letter at A–37.

[916] *See* 78 FR 31096.

[917] *See* IIB Letter at 25; ISDA II at 9; SIFMA/FIA/Roundtable Letter at A–45.

[918] *See* IIB Letter at 25 (''regulatory reporting provides the Commission with the tools for market surveillance and oversight of its regulated markets, while public dissemination is designed to provide the market, rather than regulators, real-time price transparency'').

[919] *See id.*

[920] ISDA II at 9.

regulatory reporting and public dissemination requirements.'' [921]

Notwithstanding these comments, the Commission continues to believe that—subject to one exception described below—regulatory reporting and public dissemination should be considered together for purposes of substituted compliance under Rule 908(c). Even if regulatory reporting and public dissemination serve different policy goals, the Commission believes that treating regulatory reporting and public dissemination separately would not further those goals as effectively as considering these requirements together. The Commission agrees with the commenters who argued that regulatory reporting serves important market oversight goals.[922] However, the Commission disagrees that these objectives should be pursued ''rather than policies of facilitating price discovery.'' [923] Title VII requires the Commission to pursue both sets of policy goals. If the Commission were to permit substituted compliance for regulatory reporting but not for public dissemination, certain transactions could be reported to a foreign trade repository or a foreign regulatory authority in lieu of a registered SDR but would (in theory) still be subject to the Regulation SBSR's public dissemination requirements in Rule 902. Under Regulation SBSR, registered SDRs are charged with publicly disseminating information about security-based swap transactions. To carry out its public dissemination function, a registered SDR must obtain data about security-based swap transactions that Regulation SBSR requires it to publicly disseminate. If this data were reported to a foreign trade repository or foreign regulatory authority under the terms of a substituted compliance order, it would be impractical, if not impossible, for a registered SDR to disseminate that transaction data, as required under Rule 902. In other words, because the registered SDR needs a report of the transaction from the reporting side in order to carry out public dissemination, no purpose would be served—and indeed public dissemination could be compromised—by removing the duty to report the transaction to a registered SDR in lieu of the duty to report it to the foreign trade repository or foreign regulatory authority.[924] The Commission continues to believe that it is impractical and unnecessary to devise an alternate method of public dissemination for security-based swaps that are reported in a foreign jurisdiction pursuant to a substituted compliance order. The Commission concludes, therefore, that a foreign jurisdiction's regulatory reporting and public dissemination requirements—subject to one exception described immediately below—shall be considered together for purposes of evaluating comparability for purposes of a substituted compliance determination under Rule 908(c).

One commenter argued that the Commission should be able to issue a substituted compliance order solely in respect of regulatory reporting that would apply to cross-border security-based swaps that are subject to regulatory reporting but not public dissemination under Regulation SBSR.[925] Under Rule 908(a), as adopted, there is one kind of security-based swap that is subject to regulatory reporting but not public dissemination: A transaction with a non-U.S. person that is registered as a security-based swap dealer or major security-based swap participant on one side and no U.S. person on the other side. Upon further consideration, the Commission agrees with the commenter and is adopting Rule 908(c) with certain revisions that will allow the Commission to issue a substituted compliance order with respect to regulatory reporting but not public dissemination with respect to this subset of cross-border transactions. The Commission has added a second sentence to the language in re-proposed Rule 908(c)(2)(i) to carry out this aim.[926] The Commission also revised one prong of re-proposed Rule 908(c)(iii) to exclude consideration of the reporting timeframes for public dissemination in cases where the Commission is considering a substituted compliance request with respect to cross-border transactions that are, under Regulation SBSR, subject to regulatory reporting but not public dissemination. The Commission believes that offering the possibility of substituted compliance for these kinds of cross-border transactions could reduce compliance burdens for affected persons without reducing the capability of the Commission and other relevant authorities to oversee the security-based swap market.

XVI. Other Cross-Border Issues

A. Foreign Public Sector Financial Institutions

In response to the Regulation SBSR Proposing Release, six commenters expressed concern about applying the requirements of Title VII to the activities of foreign public sector financial institutions (''FPSFIs''), such as foreign central banks and multilateral development banks.[927] One commenter, the European Central Bank (''ECB''), noted that security-based swaps entered into by the Federal Reserve Banks are excluded from the definition of ''swap'' in the Commodity Exchange Act (''CEA'') [928] and that the functions of foreign central banks and the Federal Reserve are broadly comparable. The ECB argued, therefore, that security-based swaps entered into by foreign central banks should likewise be excluded from the definition of ''swap.'' [929] A second commenter, the World Bank (representing the International Bank for Reconstruction and Development, the International Finance Corporation, and other multilateral development institutions of which the United States is a member) also argued generally that the term ''swap'' should be defined to exclude any transaction involving a multilateral development bank.[930] The World Bank further noted that EMIR—the E.U. counterpart to Title VII of the Dodd-Frank Act—would expressly exclude multilateral development banks from its coverage.[931]

The ECB and BIS stated that foreign central banks enter into security-based swaps solely in connection with their public mandates, which require them to

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[921] *Id.*

[922] *Id.;* IIB Letter at 25.

[923] ISDA II at 9.

[924] The Commission specifically raised this issue in the Cross-Border Proposing Release and asked how public dissemination could be carried out if substituted compliance were in effect for regulatory reporting but not for public dissemination. *See* 78 FR 31096.

[925] *See* IIB Letter at 25 (''the separate possibility of substituted compliance for either regulatory reporting or public dissemination could substantially reduce costs for non-U.S. market participants while still achieving the Commission's important market surveillance and transparency goals'').

[926] Rule 908(c)(2)(i).

[927] *See* BIS Letter *passim;* CEB at 2, 4; ECB Letter *passim;* ECB Letter II *passim;* EIB Letter *passim;* Nordic Investment Bank Letter at 1; World Bank Letter I *passim.*

[928] Section 1a(47)(B)(ix) of the CEA, 7 U.S.C. 1a(47)(B)(ix), excludes from the definition of ''swap'' any agreement, contract, or transaction a counterparty of which is a Federal Reserve Bank, the federal government, or a federal agency that is expressly backed by the full faith and credit of the United States. A security-based swap includes any swap, as defined in the CEA, that is based on, among other things, a narrow-based index or a single security or loan. *See* Section 3(a)(68) of the Exchange Act, 15 U.S.C. 78c3(a)(68).

[929] *See* ECB Letter I at 2; ECB Letter II at 2. *See also* EIB Letter at 1; Nordic Development Bank at 1.

[930] *See* World Bank Letter I at 6–7.

[931] *See id.* at 4. *See also* EIB Letter at 7 (''As a matter of comity, actions by U.S. financial regulators should be consistent with the laws of other jurisdictions that provide exemption from national regulation for government-owned multinational developments such as the [EIB]'').

act confidentially in certain circumstances.[932] The ECB argued in particular that public disclosure of its market activities could compromise its ability to take necessary actions and ''could cause signaling effects to other market players and finally hinder the policy objectives of such actions.'' [933] Another commenter, the Council of Europe Development Banks (''CEB''), while opposing application of Title VII requirements to multilateral development banks generally, did not object to the CFTC and SEC preserving their authority over certain aspects of their transactions, such as by imposing reporting requirements.[934] Similarly, the World Bank believed that the definition of ''swap'' could be qualified by a requirement that counterparties would treat such transactions as swaps solely for reporting purposes.[935]

In the Cross-Border Proposing Release, the Commission sought additional information to assist with analysis of this issue and asked a number of questions, including questions relating to how active FPSFIs are in the security-based swap market generally; the extent to which FPSFIs engage in security-based swap activity with U.S. persons; whether there are any characteristics of FPSFI activity in the security-based swap market that could make it easier for market observers to detect an FPSFI as a counterparty or that could make it easier to detect an FPSFI's business transactions or market positions; and whether there are steps that the Commission could take to minimize such information leakage short of suppressing all FPSFI trades from public dissemination.[936] The Commission specifically requested that commenters on this issue focus on the *security-based* swap market, not the market for other swaps. In addition, commenters were requested to answer only with respect to security-based swap activity that would be subject to Regulation SBSR, and not with respect to activity that, because of other factors, would not be subject to Regulation SBSR in any case.[937]

Only a few commenters on the Cross-Border Proposing Release responded to any of these questions or offered additional comments on FPSFI issues related to Regulation SBSR. One commenter, FMS-Wertmanagement (''FMS''), an instrumentality of the government of the Federal Republic of Germany that manages certain legacy financial portfolios, stated that security-based swaps form only a small portion of its overall derivatives portfolio, and that it does not enter into any new security-based swaps ''except with the purpose of restructuring existing security-based swaps within the limits of its winding-up strategy.'' [938] This commenter, however, did not provide an opinion regarding how any provisions of Regulation SBSR would affect its operations; instead, the primary opinion expressed in the comment was that FPSFIs such as FMS should not be required to register as security-based swap dealers or major security-based swap participants and be subject to the attendant requirements.[939] Another commenter, KfW Bankengruppe (''KfW''), is also an instrumentality of the Federal Republic of Germany and engages in ''promotional lending opportunities.'' [940] KfW indicated that it has in the past engaged in a small number of security-based swap transactions but none recently.[941] Like FMS, KfW argued that FPSFIs should not be subject to regulation as security-based swap dealers or major security-based swap participants and did not otherwise comment on any issues specific to Regulation SBSR.[942] A third commenter, the World Bank, stated that, ''We do not object to reporting of our transactions by U.S. counterparties or non-U.S. counterparties that are independently required to be registered with the Commission. Our concern is limited to ensuring that non-U.S. counterparties that are otherwise not subject to regulation could become subject to certain requirements solely because a transaction with us could be deemed to be a 'Transaction conducted within the United States.' We are amenable to any solution that fixes this problem.'' [943] A fourth commenter agreed with the World Bank, arguing that the term ''transaction conducted within the United States,'' which as proposed in the Cross-Border Proposing Release would trigger the regulatory reporting requirement, should be modified to exclude transactions with FPSPIs.[944]

The Commission believes that a security-based swap to which an FPSFI is a counterparty (''FPSFI trade'') should not, on that basis alone, be exempt from regulatory reporting. By the same token, however, the Commission also believes that a security-based swap to which an FPSFI is a counterparty—even if headquartered in the United States—should not, on that basis alone, be subject to regulatory reporting. All FPSFIs, even FPSFIs that are based in the United States, are deemed non-U.S. persons under the Commission's Title VII rules.[945] As with any other security-based swap transaction having a direct counterparty that is a non-U.S. person, a transaction involving an FPSFI as a direct counterparty would be subject to Regulation SBSR's regulatory reporting requirements only if it met one of the conditions in Rule 908(a)(1). Thus, a transaction between an FPSFI and a U.S. person would be subject to regulatory reporting.[946] However, a transaction between an FPSFI and a non-U.S. person would be subject to regulatory reporting only if the non-U.S. person is a registered security-based swap dealer or a registered major security-based swap participant or is guaranteed by a U.S. person, a registered security-based swap dealer, or a registered major security-based swap participant.[947] As noted above,[948] the Commission has declined to adopt the term ''transaction conducted within the United States,'' which was proposed in the Cross-Border Proposing Release. In the Conduct Re-Proposal, the Commission anticipates soliciting additional comment on such transactions as they relate to regulatory reporting and public dissemination under Regulation SBSR.

Regulatory reporting of FPSFI trades involving, on the other side, a U.S. person, a registered security-based swap dealer, or a registered major security-based swap participant will facilitate

[932] *See* BIS Letter at 4–5; ECB Letter I at 3.

[933] ECB Letter I at 3. *See also* ECB Letter II at 2.

[934] *See* CEB Letter at 4. However, the CEB did not state a view as to whether FPSFI trades should be subject to post-trade transparency.

[935] *See* World Bank Letter I at 7.

[936] *See* 78 FR 31074.

[937] *See id.*

[938] FMS Letter at 8. *See also* IDB Letter at 1 (noting that IDB does not currently enter into security-based swaps but that it may do so in the future, and expressing concern about applying the requirements of Title VII to the activities of FPSFIs).

[939] *See id.* at 8–11.

[940] KfW Letter at 1.

[941] KfW indicated, for example, that between 2009 and 2012 it engaged in only four new trades to acquire credit protection, all in 2011; that the last time it had sold credit protection was in 2009; and that as of 2012 the outstanding notional amount of the credit protection it had purchased was zero. *See id.* at Annex A.

[942] *See id.* at 1–6.

[943] World Bank Letter at 6, note 11.

[944] *See* Sullivan Letter at 18–19.

[945] *See* Rule 3a71–3(a)(4)(iii) under the Exchange Act (specifically excluding from the term ''U.S. person'' the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, and their agencies, affiliates, and pension plans, and any other similar international organizations, their agencies, affiliates, and pension plans).

[946] *See* Rule 908(a)(1) (requiring regulatory reporting of a security-based swap where there is a direct or indirect counterparty that is a U.S. person on either side of the transaction).

[947] *See* Rule 901(a)(1)(i) and (ii).

[948] *See supra* Section XV(C)(3)(iv).

the Commission's ability to carry out our regulatory oversight responsibilities with respect to registered entities, U.S. persons, and the U.S. security-based swap market more generally. The Commission notes that this approach was endorsed by the World Bank and another commenter in response to the original Regulation SBSR Proposing Release.[949]

Finally, the Commission does not believe that a sufficient basis exists to support an exemption from public dissemination for FPSFI trades. The Commission is aware of no characteristics of security-based swap transactions executed by FPSFIs that indicate that an exemption from the public dissemination requirements of Regulation SBSR would be appropriate. No commenters suggested that FPSFIs use security-based swaps differently from other market participants or that publicly disseminating FPSFI trades would provide an inaccurate view of the market. Moreover, based on the comments received, it appears that that FPSFI participation in the *security-based* swap market—rather than the swap market generally—is extremely limited.[950] Thus, if security-based swap activity consists of such a small portion of FPSFI activities, it is less apparent that an exemption is warranted; the harm that would result from disseminating security-based swap transactions—assuming such harm exists—would, all other things being equal, be less the fewer such transactions there are. The Commission notes, in any event, that Regulation SBSR contains provisions relating to public dissemination that are designed to protect the identity of security-based swap counterparties [951] and prohibit a registered SDR (with respect to uncleared security-based swaps) from disclosing the business transactions and market positions of any person.[952] The Commission also notes that, during the interim phase of Regulation SBSR, no transaction must be reported before 24 hours after execution. This approach is designed to minimize any adverse market impact of publicly disseminating any security-based swap transactions, when the Commission has not yet proposed and adopted block trades thresholds and the associated dissemination delays for the benefit of all counterparties, including FPSFIs. Given these potential protections for all security-based swap counterparties, not just FPSFIs, the Commission does not at this time see a basis to exempt FPSFI trades from public dissemination.

B. Foreign Privacy Laws Versus Duty To Report Counterparty IDs

Rule 901(d), as adopted, sets forth the data elements that must be reported to a registered SDR for regulatory purposes. One such element is the ''counterparty ID'' of each counterparty, which will enable the Commission to determine every person who is a counterparty, direct or indirect, to a security-based swap. The Commission believes that it could be necessary to assess the positions and trading activity of any counterparty in order to carry out its regulatory duties for market oversight.[953] Since only one side of the transaction is required to report, the reporting side is required to provide the counterparty ID of any counterparty on the other side.[954] Without this requirement, the registered SDR would not have a record of the identity of the other side.

Some commenters cautioned that U.S. persons might be restricted from complying with such a requirement in cases where a security-based swap is executed outside the United States.[955] One of these commenters stated, for example, that the London branch of a U.S. person would need its counterparty's consent to identify that party under U.K. law.[956] The commenter noted that, in this case, the reporting party is located in a jurisdiction where applicable local law restricts the reporting party from reporting the identity of a counterparty. The same commenter added that, in a similar transaction executed by a Paris branch of a U.S. firm, French law requires the branch to obtain the consent of the counterparty every time that it wants to report that counterparty's identity.[957] Another of these commenters urged the Commission to ''consider carefully and provide for consistency with, foreign privacy laws, some of which carry criminal penalties for wrongful disclosure of information,'' [958] but did not provide further detail. A third commenter argued, without further explanation, that allowing substituted compliance when both parties are not domiciled in the United States could avoid problems with foreign privacy laws conflicting with U.S. reporting requirements.[959]

In the Cross-Border Proposing Release, the Commission stated that it sought to understand more precisely if—and, if so, how—requiring a party to report the transaction pursuant to Regulation SBSR (including disclosure of the other side's identity to a registered SDR) might cause it to violate local law in a foreign jurisdiction where it operates. Before determining whether any exception to reporting the counterparty's counterparty ID might be necessary or appropriate, the

[949] *See* CEB Letter at 4; World Bank Letter I at 7 (stating that, although swaps involving FPSFIs as counterparties generally should be exempt from the definition of ''swap,'' they should be treated as swaps solely for reporting purposes).

[950] *See* BIS Letter at 3 (stating that the BIS generally does not transact security-based swaps such as credit default swaps or equity derivatives); KfW Letter at Annex A; FMS Letter at 8.

[951] *See* Rule 902(c)(1) (requiring a registered SDR not to disseminate the identity of any counterparty to a security-based swap).

[952] *See* Rule 902(c)(2).

[953] The Commission and other relevant authorities have a strong interest in being able to monitor the risk exposures of U.S. persons, particularly those involved in the security-based swap market, as the failure or financial distress of a U.S. person could impact other U.S. persons and the U.S. economy as a whole. The Commission and other relevant authorities also have an interest in obtaining information about non-U.S. counterparties that enter into security-based swaps with U.S. persons, because the ability of such non-U.S. counterparties to perform their obligations under those security-based swaps could impact the financial soundness of U.S. persons. *See, e.g.,* S. Comm. on Banking, Hous., & Urban Affairs, The Restoring American Financial Stability Act of 2010, S. Rep. No. 111–176, at 32 (''As a key element of reducing systemic risk and protecting taxpayers in the future, protections must include comprehensive regulation and rules for how the OTC derivatives market operates. Increasing the use of central clearinghouses, exchanges, appropriate margining, capital requirements, and *reporting* will provide safeguards for American taxpayers and the financial system as a whole'') (emphasis added).

[954] However, as described above in Section II(C)(3)(b), the reporting side might not know the counterparty ID of a counterparty by the time it must report the transaction (*e.g.,* if the trade is to be allocated to a series of funds, and the fund manager has not yet determined the allocation). In such case, the reporting side would know the identity of the execution agent acting for the funds and thus would be required to report the execution agent ID instead of the counterparty ID with the initial transaction report.

[955] *See* DTCC Letter II at 21; ISDA/SIFMA Letter I at 20. In addition, two comments on the Commission's interim final temporary rule on the reporting of security-based swaps entered into before July 21, 2010, Securities Exchange Act Release No. 63094 (October 13, 2010), 75 FR 64643 (October 20, 2010), made similar points. *See* Deutsche Bank Letter at 5 (''In some cases, dissemination or disclosure of [counterparty] information could lead to severe civil or criminal penalties for those required to submit information to an SDR pursuant to the Interim Final Rules. These concerns are particularly pronounced because of the expectation that Reportable Swap data will be reported, on a counterparty identifying basis, to SDRs, which will be non-governmental entities, and not directly to the Commissions''); ISDA I at 6 (''In many cases, counterparties to cross-border security-based swap transactions will face significant legal and reputational obstacles to the reporting of such information. Indeed, disclosure of such information may lead to civil penalties in some jurisdictions and even criminal sanctions in other jurisdictions'').

[956] *See* DTCC Letter II at 21.

[957] *See id.*

[958] ISDA/SIFMA Letter I at 20.

[959] *See* Cleary II at 17–18.

Commission sought additional information about any such foreign privacy laws and asked a number of questions about this issue.[960]

In response to the questions, one commenter listed specific provisions in foreign laws that would prevent the reporting side from identifying its foreign counterparty.[961] Another commenter noted that reporting parties could face issues with identifying the counterparty if ''either (i) consent is required for disclosing trade data to the Commission and such consent has not or cannot be obtained or (ii) a counterparty consent is not sufficient to overcome the data privacy restrictions.'' [962] This commenter requested that the Commission ''recognize in [Regulation SBSR] the necessity for reporting parties to redact/mask counterparty-identifying information'' if they reasonably believe that disclosure of such information may violate the laws of another jurisdiction.[963] Commenters did not suggest any rule text for a possible exemption from proposed Rule 901(d)(1)(i) or discuss the effects of granting substituted compliance on avoiding foreign legal barriers to reporting.

Based on the comment received as well as other sources consulted,[964] the Commission understands that some laws and regulations exist in foreign jurisdictions that may limit or prevent reporting of counterparty ID to an SEC-registered SDR pursuant to Regulation SBSR. These types of restrictions may include privacy laws, which generally restrict disclosure of certain identifying information about a natural person or entity,[965] and so-called ''blocking statutes'' (including secrecy laws) which typically prevent the disclosure of information relating to third parties and/or foreign governments.[966] Several jurisdictions with possible legal and regulatory barriers also have reported that they are in the process of modifying their legislation and regulations to remove such barriers.[967] Therefore, it is difficult for the Commission to assess the extent to which legal and regulatory barriers will continue to exist that would hinder the ability of parties to meet the reporting requirement of Regulation SBSR.

The Commission recognizes that security-based swap counterparties that will incur the duty to report pre-enactment and transactional security-based swaps pursuant to Rule 901(i) may have entered into some of those transactions with counterparties in jurisdictions that have privacy laws or blocking statutes that may prohibit these reporting sides from disclosing the identities of these foreign counterparties. At the time that these transactions were executed, there was no regulatory requirement to report the identity of the counterparty under the United States securities laws. Therefore, the Commission believes that it would be inappropriate to compel a reporting side to disclose the identity of a counterparty to a historical security-based swap now, if such disclosure would violate applicable foreign law and the reporting side could not reasonably have foreseen a future conflict with applicable U.S. law. The Commission will consider requests from reporting sides for exemptions, pursuant to Section 36 of the Exchange Act,[968] from the requirement to report counterparty IDs of historical security-based swaps executed up to the last day before the effective date of these final rules. Any such request should be filed pursuant to Rule 0–12 under the Exchange Act [969] and include: (1) The name of the jurisdiction or jurisdictions which the requester believes prohibit it from being able to carry out the duty under Rule 901(i) of reporting the identity of a counterparty; and (2) a discussion of the laws of the jurisdiction or jurisdictions that prohibit such reporting, and why compliance with the duty to report the counterparty ID under Rule 901(i) is limited or prohibited.[970] Upon the effective date of these final rules, every security-based swap counterparty that is the reporting side for one or more security-based swaps will eventually have to report, among other things, the identity of each of its counterparties.[971]

C. Antifraud Authority

The provisions of Regulation SBSR and the interpretive guidance discussed above relate solely to the applicability of the security-based swap regulatory reporting and public dissemination requirements under Title VII. Regulation SBSR does not limit the cross-border reach of the antifraud provisions or other provisions of the federal securities laws that are not addressed by this release.[972]

In Section 929P(b) of the Dodd-Frank Act,[973] Congress added provisions to the federal securities laws confirming the Commission's broad cross-border antifraud authority.

In the Cross-Border Adopting Release, the Commission adopted Rule 250.1

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[960] *See* 78 FR 31073.

[961] *See* IIB Letter at 19, note 45.

[962] ISDA IV at 19.

[963] *Id.*

[964] *See* letter from Robert Pickel, Chief Executive Officer, ISDA, to David A. Stawick, Secretary, CFTC, dated August 27, 2012 (''ISDA CFTC Letter''), *passim,* available at *www2.isda.org/attachment/NjY2NQ==/Comment%20Letter%20-%20CFTC%20Reporting%20Obligations%20Cross%20Border%20FINAL%20082712.pdf* (last visited January 13, 2015) (discussing a survey of privacy laws in a number of foreign jurisdictions); FSB OTC Derivatives Working Group (ODWG), OTC Derivatives Market Reforms: Fifth Progress Report on Implementation (April 15, 2013); Seventh Progress Report on Implementation (April 8, 2014); OTC Derivatives Regulators Group (ODRG), Report on Agreed Understandings to Resolving Cross-Border Conflicts, Inconsistencies, Gaps And Duplicative Requirements (August 2013); ODRG, Report on Cross-Border Implementation Issues (September 2013).

[965] The Commission understands that the privacy law limitations on disclosure of certain identifying information related to natural persons or entities can usually (but not always) be overcome by counterparty consent to such disclosure. Even where express consent resolves any outstanding privacy law issues, obtaining consent from the necessary counterparties may require market education and additional time to implement. *See* ISDA CFTC Letter at 8.

[966] The Commission understands that blocking statue barriers to reporting normally cannot be waived by the person or entity that is the subject of the information, though the person or entity may, in some circumstances, apply for an exemption to report certain information. *See id.*

[967] *See* ODWG Seventh Progress Report, *supra* note 965, at 10.

[968] 15 U.S.C. 78mm.

[969] 17 CFR 240.0–12.

[970] For example, to support an exemption request, the requester should consider discussing whether obtaining waivers from its counterparties is an acceptable practice under the law of the foreign jurisdiction.

[971] The rules adopted in this release will be effective 60 days after publication in the **Federal Register**. For Rules 900, 907, and 909, the compliance date is the same as the effective date. The Commission is proposing a new compliance schedule for Rules 901, 902, 903, 904, 905, 906, and 908 of Regulation SBSR. *See* Regulation SBSR Proposed Amendments Release, Section VII. Market participants will not have to comply with the requirements in those rules—such as the requirement in Rule 901(i) to report historical security-based swaps—until certain dates that will be specified when the Commission takes final action on the proposed compliance schedule.

[972] For example, security-based swaps, as securities, are subject to the provisions of the Securities Act and the rules and regulations thereunder applicable to securities. The Securities Act requires that any offer and sale of a security must either be registered under the Securities Act, *see* Section 5 of the Securities Act, 15 U.S.C. 77e, or made pursuant to an exemption from registration, *see, e.g.,* Sections 3 and 4 of the Securities Act, 15 U.S.C. 77c and 77d. In addition, the Securities Act requires that any offer to sell, offer to buy or purchase, or sale of a security-based swap to any person who is not an eligible contract participant must be registered under the Securities Act. *See* Section 5(e) of the Securities Act, 15 U.S.C. 77e(e). Because of the statutory language of Section 5(e), exemptions from this requirement in Sections 3 and 4 of the Securities Act are not available.

[973] The antifraud provisions of the securities laws include Section 17(a) of the Securities Act, 15 U.S.C. 77q(a); Sections 9, 10(b), 14(e), and 15(c)(1)–(2) and (7) of the Exchange Act, 15 U.S.C. 78i, 78j, 78n, 78o(c)(1)–(2); Section 206 of the Investment Advisers Act of 1940, 15 U.S.C. 80b–6; and any rule or regulation of the Commission promulgated under these statutory provisions.

under the Exchange Act,[974] which sets forth the Commission's interpretation of its cross-border authority.[975] Rule 250.1(a) provides that the antifraud provisions of the securities laws apply to: ''(1) Conduct within the United States that constitutes significant steps in furtherance of the violation; or (2) Conduct occurring outside the United States that has a foreseeable substantial effect within the United States.'' Nothing in this Regulation SBSR limits the broad cross-border application of the anti-fraud provisions as set forth in Rule 250.1.

D. International Coordination Generally

Several commenters urged the Commission to coordinate their efforts to implement Title VII requirements with those of foreign regulators who also are imposing new requirements on the OTC derivatives markets.[976] For example, one commenter urged the SEC and CFTC ''to harmonize their real-time reporting regimes with each other and with those of comparable international regulators.'' [977] Similarly, a second commenter stated that the SEC and CFTC ''should work with foreign regulators that plan to create their own real-time reporting regimes to harmonize their requirements regarding the timing of dissemination and the data to be disseminated.'' [978] The same commenter urged the SEC and CFTC ''to continue their efforts in establishing a globally harmonized approach to creating [LEIs].'' [979] Other commenters believed generally that global coordination is necessary to develop LEIs and other identification codes.[980]

The Commission agrees broadly with these commenters that international coordination will be helpful in developing robust and efficient regimes for regulating cross-border security-based swap activity and overseeing the security-based swap market. The Commission is cognizant of its duty under Section 752(a) of the Dodd-Frank Act [981] and remains committed to engaging in bilateral and multilateral discussions with foreign regulatory authorities to carry out this goal. The Commission staff has consulted and coordinated with the CFTC, prudential regulators,[982] and foreign regulatory authorities consistent with the consultation provisions of the Dodd-Frank Act,[983] and more generally as part of its domestic and international coordination efforts. The Commission staff has participated in numerous bilateral and multilateral discussions with foreign regulatory authorities addressing the regulation of OTC derivatives.[984] Through these discussions and the Commission's participation in various international task forces and working groups, it has gathered information about foreign regulatory reform efforts and discussed the possibility of conflicts and gaps, as well as inconsistencies and duplications, between U.S. and foreign regulatory regimes. The Commission has taken and will continue to take these discussions into consideration in developing rules, forms, and interpretations for implementing Title VII of the Dodd-Frank Act.

XVII. Rule 909—SIP Registration

Section 3(a)(22)(A) of the Exchange Act [985] defines a SIP as ''any person engaged in the business of (i) collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security (other than an exempted security) or (ii) distributing or publishing (whether by means of a ticker tape, a communications network, a terminal display device, or otherwise) on a current and continuing basis, information with respect to such transactions or quotations.'' Security-based swaps are securities under the Exchange Act.[986] Because Regulation SBSR requires registered SDRs to collect security-based swap transaction reports from participants and to distribute data from such reports, registered SDRs will be SIPs for purposes of the Exchange Act.

Section 11A(c)(1) of the Exchange Act [987] provides that the Commission may prescribe rules requiring SIPs to, among other things, assure ''the fairness and usefulness of the form and content'' [988] of the information that they disseminate, and to assure that ''all other persons may obtain on terms which are not unreasonably discriminatory'' the transaction information published or distributed by SIPs.[989] Section 11A(c)(1) applies regardless of whether a SIP is registered with the Commission as such.

The provisions of Section 11A(b)(5) and11A(b)(6) of the Exchange Act, however, apply only to registered SIPs. Requiring a registered SDR to register with the Commission as a SIP would subject that entity to Section 11A(b)(5) of the Exchange Act,[990] which requires a registered SIP to notify the Commission whenever it prohibits or limits any person's access to its services. Upon its own motion or upon application by any aggrieved person, the Commission could review the registered SIP's action.[991] If the Commission finds that the person has been discriminated

[974] 17 CFR 250.1.

[975] *See* Cross-Border Adopting Release, 79 FR 47360.

[976] *See, e.g.,* Cleary III at 36; Markit III at 2; SIFMA I at 5–6; WMBAA III at 3 (''U.S. regulations also need to be in harmony with regulations of foreign jurisdictions''); NGFP Letter at 1–2; AFGI Letter at 1 (urging the Commission to ensure the consistent regulation of financial guaranty insurers); CDEU Letter at 2; PensionsEurope Letter at 1–2 (urging the Commission to avoid conflicts with European regulatory requirements); Barnard II at 1–2; Six Associations Letter at 1–2 (expressing general support for coordination among regulators with respect to the regulation of swaps and security-based swaps); CCMR II, *passim.*

[977] SIFMA I at 5–6.

[978] Markit III at 2.

[979] *Id.* at 4–5.

[980] *See* Benchmark at 1; Bloomberg Letter at 1; DTCC V at 14.

[981] 15 U.S.C. 8325 (''In order to promote effective and consistent global regulation of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the prudential regulators . . . as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps'').

[982] The term ''prudential regulator'' is defined in Section 1a(39) of the CEA, 7 U.S.C. 1a(39), and that definition is incorporated by reference in Section 3(a)(74) of the Exchange Act, 15 U.S.C. 78c(a)(74).

[983] Section 712(a)(2) of the Dodd-Frank Act provides in part that the Commission shall ''consult and coordinate to the extent possible with the Commodity Futures Trading Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.''

[984] Senior representatives of OTC derivatives market regulators from G20 jurisdictions have met on a number of occasions to discuss international coordination of OTC derivatives regulations, including as part of the OTC Derivatives Regulators Group. *See, e.g.,* Report of the OTC Derivatives Regulators Group on Cross-Border Implementation Issues (March 2014), available at *https://www.g20.org/sites/default/files/g20_resources/library/Report%20of%20the%20OTC%20Derivatives%20Regulators%20Group%20on%20Cross-Border%20Implementation%20Issues.pdf*; Joint Press Statement of Leaders on Operating Principles and Areas of Exploration in the Regulation of the Cross-Border OTC Derivatives Market (December 4, 2012), available at *http://www.sec.gov/news/press/2012/2012-251.htm*; Joint Statement on Regulation of OTC Derivatives Markets (May 7, 2012), available at: *http://www.sec.gov/news/press/2012/2012-85.htm*; Joint Statement on Regulation of OTC Derivatives Markets (December 9, 2011), available at: *http://www.sec.gov/news/press/2011/2011-260.htm*, each last visited September 22, 2014. The Commission participates in the FSB's Working Group on OTC Derivatives Regulation (''ODWG''), both on its own behalf and as the representative of the International Organization of Securities Commissions (''IOSCO''), which is co-chair of the ODWG. The Commission also serves as one of the co-chairs of the IOSCO Task Force on OTC Derivatives Regulation.

[985] 15 U.S.C. 78c(a)(22)(A).

[986] *See* 15 U.S.C. 78c(a)(10).

[987] 15 U.S.C. 78k–1(c)(1).

[988] 15 U.S.C. 78k–1(c)(1)(B).

[989] 15 U.S.C. 78k–1(c)(1)(D).

[990] 15 U.S.C. 78k–1(b)(5).

[991] *See* 15 U.S.C. 78k–1(b)(5)(A)

against unfairly, it could require the SIP to provide access to that person.[992] Section 11A(b)(6) of the Exchange Act also authorizes the Commission to take certain regulatory action as may be necessary or appropriate against a registered SIP.[993]

Section 11A(b)(1) of the Exchange Act [994] provides that a SIP not acting as the ''exclusive processor'' [995] of any information with respect to quotations for or transactions in securities is exempt from the requirement to register with the Commission as a SIP unless the Commission, by rule or order, determines that the registration of such SIP ''is necessary or appropriate in the public interest, for the protection of investors, or for the achievement of the purposes of [Section 11A].'' An SDR does not engage on an exclusive basis on behalf of any national securities exchange or registered securities association in collecting, processing, or preparing for distribution or publication any information with respect to transactions or quotations in securities; therefore, an SDR does not fall under the statutory definition of ''exclusive processor.''

To subject an SDR to the requirements of Sections 11A(b)(5) and 11A(b)(6), the Commission would need, by rule or order, to make the determination under Section 11A(b)(1) noted above. Accordingly, the Commission proposed Rule 909 to require a registered SDR also to register with the Commission as a SIP on existing Form SIP. The Commission requested comment on this proposed requirement, and whether it should combine Form SIP and Form SDR to create a joint registration form. In the Cross-Border Proposing Release, the Commission re-proposed Rule 909 without revision.

The Commission believes that requiring registered SDRs to register as SIPs will help to ensure fair access to important security-based swap transaction data reported to and publicly disseminated by them. The Commission believes that the additional authority over a registered SDR/SIP provided by Sections 11A(b)(5) and 11A(b)(6) of the Exchange Act will ensure that these entities offer security-based swap market data on terms that are fair and reasonable and not unreasonably discriminatory. Therefore, the Commission believes that registering SDRs as SIPs is necessary or appropriate in the public interest, for the protection of investors, or for the achievement of the purposes of Section 11A of the Exchange Act. Section 11A of the Exchange Act establishes broad goals for the development of the securities markets and charges the Commission with establishing rules and policies that are designed to further these objectives. Section 11A(a) states, among other things, that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions; the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities; and an opportunity for investors' orders to be executed without the participation of a dealer. Requiring registered SDRs also to register with the Commission as SIPs is designed to help achieve these objectives in the still-developing security-based swap market.

One commenter stated that, because of the duplicative nature of the information required by Form SDR and Form SIP, the Commission should combine the two forms so that an SDR could register as both an SDR and a SIP using only one form.[996] As an alternative, the commenter suggested that an SDR be permitted to use either Form SDR or Form SIP to register as both an SDR and a SIP.[997]

Rule 909, as re-proposed, stated that ''[a] registered security-based swap data repository shall also register with the Commission as a securities information processor on Form SIP.'' For reasons discussed in the SDR Adopting Release, the Commission agrees that Form SDR should be revised to accommodate SIP registration.[998] Accordingly, Rule 909, as adopted, eliminates the reference to Form SIP and states instead that ''[a] registered security-based swap data repository shall also register with the Commission as a securities information processor on Form SDR.'' There are no filing requirements in addition to the Form SDR for a person to register as both a SIP and an SDR.

XVIII. Constitutional Questions About Reporting and Public Dissemination

One commenter argued that the reporting and dissemination requirements of Regulation SBSR could violate the First and Fifth Amendments to the Constitution by compelling ''non-commercial speech'' without satisfying a strict scrutiny standard and by ''taking'' transaction and/or holding data without just compensation.[999]

As a preliminary matter, the Commission presumes ''that Congress acted constitutionally when it passed the statute.'' [1000] Furthermore, the Commission has carefully considered the commenter's arguments and pertinent judicial precedent, and believes that the commenter does not raise any issue that would preclude the Commission's adoption of Regulation SBSR's regulatory reporting and public dissemination requirements substantially as proposed and re-proposed. The Commission does not believe that the public dissemination requirements of Regulation SBSR violate the First Amendment. Under the federal securities laws, the Commission imposes a number of requirements that compel the provision of information to the Commission itself or to the public. The Supreme Court has suggested that only limited scrutiny under the First Amendment applies to securities regulation, and that the government permissibly regulates ''public expression by issuers of and dealers in

[992] *See* 15 U.S.C. 78k–1(b)(5)(B).

[993] *See* 15 U.S.C. 78k–1(b)(6) (providing that the Commission, by order, may censure or place limitations upon the activities, functions, or operations of any registered SIP or suspend for a period not exceeding 12 months or revoke the registration of the SIP, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest, necessary or appropriate for the protection of investors or to assure the prompt, accurate, or reliable performance of the functions of such SIP, and that such SIP has violated or is unable to comply with any provision of this title or the rules or regulations thereunder).

[994] 15 U.S.C. 78k–1(b)(1).

[995] 15 U.S.C. 78c(a)(22)(B) (defining ''exclusive processor'' as any securities information processor or self-regulatory organization which, directly or indirectly, engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication any information with respect to (1) transactions or quotations on or effected or made by means of any facility of such exchange or (2) quotations distributed or published by means of any electronic system operated or controlled by such association).

[996] *See* DTCC III at 9.

[997] *See id.*

[998] *See* SDR Adopting Release, Section VI(A)(1)(c). Form SDR is being adopted by the Commission as part of the SDR Adopting Release. Form SDR will be used by SIPs that also register as SDRs. Form SIP will continue to be used by applicants for registration as SIPs not seeking to become dually registered as an SDR and a SIP, and for amendments by registered SIPs that are not dually registered as an SDR and a SIP.

[999] *See* Viola Letter at 3–4.

[1000] See *Nebraska* v. *EPA,* 331 F.3d 995, 997 (D.C. Cir. 2003) (''Agencies do not ordinarily have jurisdiction to pass on the constitutionality of federal statutes.'') (citing *Thunder Basin Coal Co.* v. *Reich,* 510 U.S. 200, 215 (1994)); *Todd* v. *SEC,* 137 F.2d 475, 478 (6th Cir. 1943) (same); *William J. Haberman,* 53 SEC 1024, 1029 note 14 (1998) (''[W]e have no power to invalidate the very statutes that Congress has directed us to enforce.'') (citing *Milton J. Wallace,* 45 SEC 694, 697 (1975); *Walston & Co.,* 5 SEC 112, 113 (1939)).

securities.'' [1001] And in other contexts, the required disclosure of purely factual and uncontroversial information has also been subjected to only limited First Amendment scrutiny.[1002]

Nor does the Commission believe that public dissemination requirements of Regulation SBSR violate the Fifth Amendment. To constitute a regulatory taking, the government action must (1) affect a property interest, and (2) go ''too far'' in so doing.[1003] The Supreme Court has identified several factors to be considered in determining whether the government action goes too far, such as ''the character of the governmental action, its economic impact, and its interference with reasonable investment-backed expectations.'' [1004] The requirements at issue here directly advance the government's legitimate interest in enhancing price discovery by, among other things, reducing information asymmetries, enhancing transparency, and improving confidence in the market. The character of the government action, therefore, weighs against Rule 902(a) being a taking. The Commission further believes that the regulatory reporting and public dissemination requirements of Regulation SBSR do not impose an unconstitutional economic impact [1005] or interfere with reasonable investment-backed expectations. Regulation SBSR does not interfere with market participants' reasonable investment-backed expectations because the financial markets are an industry with a long tradition of regulation focused on promoting disclosure of information to investors. Businesses that operate in an industry with a history of regulation have no reasonable expectation that regulation will not be strengthened to achieve established legislative ends.[1006] Although security-based swaps did not become securities and thus did not become fully subject to the regulatory regime for securities regulation until after passage of the Dodd-Frank Act, the Commission believes that the economic similarity of markets in securities and security-based swaps strongly suggests that market participants could have anticipated regulation at a future date. Furthermore, the Commission believes that the commenter has provided no argument to support the proposition that the mere fact that security-based swaps were not fully subject to the Exchange Act until passage of the Dodd-Frank Act necessarily implies that it was unconstitutional for Congress to amend the Exchange Act to cover these securities.

XIX. What happens if there are multiple SDRs?

The provisions of Title VII that amended the Exchange Act to require the registration of security-based swap data repositories do not require that there be only a single SDR; in fact, these provisions contemplate that there could be multiple SDRs registered with the Commission.[1007] Therefore, no provision of Regulation SBSR, as adopted, is designed to require or promote the use of only a single SDR. The Commission believes, however, that it must consider how the Title VII goals of monitoring and reducing systemic risk and promoting transparency in the security-based swap market will be achieved if there are multiple registered SDRs.

One commenter believed that a diverse range of options for reporting security-based swap data would benefit the market and market participants.[1008] However, other commenters raised various concerns with having multiple registered SDRs. Two commenters recommended that the Commission designate a single registered SDR per asset class.[1009] Similarly, a third commenter stated that ''the Commission should consider designating one [registered SDR] per SBS asset class to act as the industry consolidator of SBS data for the Commission and for the purpose of public reporting.'' [1010] This commenter also recommended that all life cycle events be reported to the same registered SDR that received the original transaction report and that registered SDRs be required to accept all security-based swaps in an asset class to further reduce fragmentation of data across multiple SDRs.

Another commenter warned of the risks of security-based swaps being reported to multiple SDRs, stating that, ''[u]nless data fragmentation can be avoided, the primary lessons of the 2008 financial crisis, as related to OTC derivatives trading, will not have been realistically or adequately taken into account.'' [1011] This commenter noted the ''large one-way trades put on by AIG in mortgage related credit derivatives'' and stated that ''if AIG had chosen to try to hide [its] trades by reporting to multiple repositories, these systemically risky positions would not have been discovered absent a 'super repository' that aggregated the trade level data of the various reporting repositories in a manner as to detect the large one-way aggregate positions.'' [1012] The same commenter stated in a subsequent comment letter that, if there are multiple registered SDRs, the ''Commission should take such action as is necessary to eliminate any overstatements of open interest or other inaccuracies that may result from having broader market data published from separate SDRs.'' [1013] One option suggested by this commenter was utilizing Section 13(n)(5)(D)(i) of the Exchange Act,[1014] which requires an

[1001] *See, e.g., Paris Adult Theatre I* v. *Slaton,* 413 U.S. 49, 64 (1973) (stating also that the First Amendment does not ''preclude[ ] States from having 'blue sky' laws to regulate what sellers of securities may write or publish . . . ''). *See also SEC* v. *Wall St. Pub. Inst., Inc.,* 851 F.2d 365, 373 (D.C. Cir. 1988) (''Speech relating to the purchase and sale of securities . . . forms a distinct category of communications'' in which ''the government's power to regulate [speech about securities] is at least as broad as with respect to the general rubric of commercial speech'').

[1002] *See, e.g., Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.,* 547 U.S. 47, 61–62 (2006); *Am. Meat Inst.* v. *U.S. Dep't of Agric.,* 760 F.3d 18, 21–22 (D.C. Cir. 2014); *N.Y. State Rest. Ass'n* v. *N.Y. City Bd. of Health,* 556 F.3d 114, 132 (2d Cir. 2009) (citing *Nat'l Elec. Mfrs. Ass'n* v. *Sorrell,* 272 F.3d 104, 113–115 (2d Cir. 2001)).

[1003] *See Ruckleshaus* v. *Monsanto Co.,* 467 U.S. 986, 1000–01, 1005 (1984).

[1004] *Id.* at 1005 (quoting *PruneYard Shopping Center* v. *Robins,* 447 U.S. 74, 83 (1980)).

[1005] *See District Intown Properties Ltd. P'ship* v. *District of Columbia,* 198 F.3d 874, 883 (D.C. Cir. 1999) (requiring a Fifth Amendment claim to ''put forth striking evidence of economic effects'').

[1006] *District Intown Properties Ltd. P'ship* v. *District of Columbia,* 198 F.3d 874, 884 (D.C. Cir. 1999); *see also Ruckelshaus* v. *Monsanto Co.,* 467 U.S. 986, 1008–09 (1984) (finding no reasonable investment-backed expectations because ''the possibility was substantial'' in an industry long ''the focus of great public concern and significant government regulation'' that Congress ''would find disclosure to be in the public interest''); *Maine Educ. Ass'n Benefits Trust* v. *Cioppa,* 695 F.3d 154–156 (1st Cir. 2012) (finding no reasonable investment-backed expectations because the Maine legislature's ''continued expansion of this right of access'' to information about insurance plans to a type of plan not covered by previous statutes providing a right of access was ''reasonably foreseeable'' in light of ''the historically heavy and continuous regulation of insurance in Maine'').

[1007] *See* Section 13(n) of the Exchange Act, 15 U.S.C. 78m.

[1008] *See* MFA Letter at 6.

[1009] *See* ISDA I at 4; ISDA/SIFMA I at 9, note 12 (noting that, with a single SDR, there would be no redundancy of platforms, no need for additional levels of data aggregation for each asset class, reduced risk of errors, and greater transparency).

[1010] MarkitSERV I at 8. The commenter also urged the Commission to ''ensure that there is consistency between the fields that different SBS SDRs in the same asset class would collect and report in order to lay the foundation for the data to be consolidatable.'' *Id. See also* DTCC IX at 3. *See supra* Section II(B)(2) for discussion of the Commission's approach to ensure consistency. Another commenter also noted that ''if there is more than one registered SDR for an asset class, it may prove difficult for the Commission to ensure that all registered SDRs calculate the same block thresholds for the same SBS instruments.'' WMBAA II at 4. As discussed in more detail above in Section VII, the Commission is not yet adopting or proposing block trade rules.

[1011] *See* DTCC II at 15.

[1012] *Id.*

[1013] DTCC IV at 5.

[1014] 15 U.S.C. 78m(n)(5)(D)(i).

SDR to ''provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity).'' The commenter explained that, using this authority, ''the Commission could designate one [SDR] as the recipient of information from other [SDRs] in order to have consolidation and direct electronic access for the Commission.'' [1015]

Four commenters urged the Commission to mandate the consolidation of publicly disseminated security-based swap data.[1016] One of these commenters stated that ''in order to most effectively increase transparency in the swaps markets, it will be important for the real-time swaps data to be available on a consolidated basis.'' [1017] The second commenter believed that a central consolidator or the Commission must have the authority to compel all participants, including registered SDRs, to submit data to assure that there is a single, comprehensive, and accurate source for security-based swap data.[1018] A third commenter, citing the regime for producing consolidated public information in the U.S. equity markets, stated that ''there is no obvious reason why a similar regime could not succeed for security-based swaps.'' [1019] In addition, this commenter believed that ''the ideal approach would be collaboration by the SEC and the CFTC to create (or facilitate the direct creation of) a single, central system that performs these data dissemination functions.'' [1020] The fourth commenter cautioned that the failure to make real-time data available on a consolidated basis would especially disadvantage less frequent and smaller users of the transaction data, who would not be able to obtain an accurate view of market activity because of the cost and complexity of accessing multiple data sources.[1021]

The Commission shares the concerns of these commenters. The regulatory goals underpinning the Title VII requirements for regulatory reporting and public dissemination of security-based swap transaction information could be frustrated if the information cannot be easily aggregated and normalized. The Commission notes, however, that the statutory provisions allow for the possibility of multiple SDRs.[1022] The Commission therefore seeks to develop a regulatory framework that would accommodate multiple SDRs, but mitigates the undesirable fragmentation of regulatory data that would come from incompatible data standards.

At the same time, the Commission generally agrees with the commenter who stated that the ''Commission should take such action as is necessary to eliminate any overstatements of open interest or other inaccuracies that may result from having broader market data published from separate SDRs.'' [1023] The requirement that all life cycle events must be reported to the same registered SDR that received the report of the initial transaction is designed to minimize some potential problems of having multiple registered SDRs, such as overstating open interest. Although the reporting side can choose the registered SDR to which to report the initial transaction, all subsequent life cycle events must then be reported to that registered SDR. The Commission believes that this requirement will facilitate its ability to track security-based swaps over their duration and minimize instances of double counting the same economic activity, which could occur if the records of life cycle event reports did not indicate their relationship to earlier occurring transactions.[1024]

Similarly, the Commission is adopting Rules 902(c)(4) and 907(a)(4) to address potential issues arising from non-mandatory reports (which could include duplicate reports of transactions reported to a second SDR when a mandatory report has already been provided to a first SDR). Rule 902(c)(4) prohibits a registered SDR from publicly disseminating a report of a non-mandatory transaction; this requirement is designed to prevent market observers from over-estimating the true amount of market activity, which could occur if the same transaction was disseminated by two SDRs. Rule 907(a)(4) requires registered SDRs to establish and maintain policies and procedures, among other things, for how participants must identify non-mandatory reports to the SDR, so that the SDR will be able to avoid publicly disseminating them.

The Commission believes that problems associated with the existence of multiple registered SDRs can be minimized to the extent that such SDRs refer to the same persons or things in the same manner. Thus, final Rule 903 provides that, if an IRSS that meets certain criteria is recognized by the Commission and has assigned a UIC to a person, unit of a person, or product, all registered SDRs must use that UIC in carrying out their responsibilities under Regulation SBSR. As discussed in Section X(B)(2), *supra,* the Commission has recognized the GLEIS—through which LEIs can be obtained—as an IRSS that meets the criteria of Rule 903. Therefore, if an entity has an LEI issued by or through the GLEIS, that LEI must be used for all purposes under Regulation SBSR. Furthermore, Rule 903(a)—in connection with the Commission's recognition of the GLEIS—requires all persons who are participants of at least one registered SDR to obtain an LEI from or through the GLEIS for use under Regulation SBSR, and each participant that acts as a guarantor of a direct counterparty's performance of any obligation under a security-based swap that is subject to Rule 908(a) shall, if the direct counterparty has not already done so, obtain a UIC for identifying the direct counterparty from or through that system, if that system permits third-party registration without a requirement to obtain prior permission of the direct counterparty.

The Commission is particularly hopeful that a robust system for product IDs could greatly improve the usability of security-based swap data, both for regulators and for market observers that obtain publicly disseminated transaction information. The product ID could minimize administrative burdens by rendering unnecessary the separate reporting of several data elements. Product IDs also should more easily distinguish standardized from non-standardized products and, thus, should

[1015] DTCC I at 7.

[1016] *See* Barnard I at 3; Better Markets II at 6; FINRA Letter at 5; MarkitSERV I at 7.

[1017] MarkitSERV I at 7.

[1018] *See* FINRA Letter at 5 (also noting that mandating the consolidation of security-based swap transaction data would help to assure uniformity, thereby promoting market integrity and investor protection).

[1019] Better Markets II at 6. However, the commenter cautioned that the security-based swap data dissemination regime must avoid the direct data feeds that have developed in the equity markets because these data feeds allow ''high-frequency traders to bypass the aggregation and dissemination procedure, at the expense of retail and other investors.'' *Id.*

[1020] *Id.* at 4.

[1021] *See* MarkitSERV I at 7–8.

[1022] In the Regulation SBSR Proposing Release, the Commission stated that requiring registered SDRs to be the registered entities with the duty to disseminate security-based swap transaction information—rather than, for example, SB SEFs, clearing agencies, or the counterparties themselves—would produce some degree of mandated consolidation of that information and help to provide consistency in the form of the reported information. *See* 75 FR 75227. However, the Commission acknowledges that this approach cannot guarantee consolidation of the published data because of the possibility of multiple registered SDRs.

[1023] DTCC IV at 5.

[1024] Thus, the Commission concurs with the commenter who recommended that all life cycle events be reported to the same registered SDR that received the original transaction report. *See* MarkitSERV I at 8.

facilitate aggregation of the public feeds issued from different registered SDRs.

The Commission did not propose to take any specific actions towards consolidation of the security-based swap data disseminated by different registered SDRs. As the Commission stated in the Regulation SBSR Proposing Release, it considered mandating one consolidated reporting entity to disseminate all security-based swap transaction data for each asset class by requiring each registered SDR in an asset class to provide all of its security-based swap data to a ''central processor'' that would also be a registered SDR.[1025] The Commission noted that there is substantial precedent for this approach in the equity markets, where market participants may access a consolidated quote for national markets system securities and a consolidated tape reporting executed transactions. The Commission stated, however, that such approach ''may not be warranted given the present [security-based swap] market structure.'' [1026]

The Commission continues to believe there is no need at this time to require consolidation of the publicly disseminated security-based swap data.[1027] Although it is likely that there will be multiple registered SDRs, it is unclear at present the extent to which each will be publicly disseminating a significant number of transactions.[1028] Furthermore, the Commission currently believes that, to the extent that there are different SDR data feeds that warrant consolidation and that such feeds cannot readily be aggregated by market observers themselves, certain market data vendors may be able to do so for commercially reasonable fees. As different SDRs register with the Commission and these SDRs implement Regulation SBSR, the Commission will monitor the situation and consider taking such action as it deems necessary in order to better carry about the Title VII policy of promoting greater transparency in the security-based swap market.

The Commission also acknowledges the recommendation made by one commenter to use Section 13(n)(5)(D)(i) of the Exchange Act to direct all regulatory reports received by multiple registered SDRs into a single ''aggregator'' SDR.[1029] The Commission believes that Rule 13n–4(b)(5), as adopted,[1030] helps to address these concerns. Rule 13n–4(b)(5) requires an SDR to provide the Commission with direct electronic access to the data stored by the SDR. As stated in the SDR Adopting Release:

> data [provided by an SDR to the Commission] must be in a form and manner acceptable to the Commission . . . [T]he form and manner with which an SDR provides the data to the Commission should not only permit the Commission to accurately analyze the data maintained by a single SDR, but also allow the Commission to aggregate and analyze data received from multiple SDRs.[1031]

Thus, the Commission does not believe that it is necessary or appropriate at this time to direct registered SDRs to provide their transaction data to a single ''aggregator'' SDR, because the SDR rules are designed to facilitate the Commission's ability to aggregate information directly. As registered SDRs and their participants develop experience with the Regulation SBSR reporting regime and the Commission develops experience with overseeing that regime, the Commission may consider re-evaluating the need for or the desirability of an aggregator SDR in the future.

XX. Section 31 Fees

In the Regulation SBSR Proposing Release,[1032] the Commission also proposed certain amendments to Rule 31 under the Exchange Act,[1033] which governs the calculation and collection of fees and assessments owed by self-regulatory organizations to the Commission pursuant to Section 31 of the Exchange Act.[1034]

Section 991 of the Dodd-Frank Act amended Section 31(e)(2) of the Exchange Act to provide that certain fees and assessments required under Section 31 will be required to be paid by September 25, rather than September 30.[1035] Therefore, the Commission proposed to make a corresponding change to the definition of ''due date'' in Rule 31(a)(10)(ii) under the Exchange Act [1036] by replacing a reference to ''September 30'' with a reference to ''September 25.''

The Commission also proposed to exempt security-based swap transactions from the application of Section 31 transaction fees. Section 31(c) of the Exchange Act [1037] requires a national securities association to pay fees based on the ''aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange of securities . . . registered on a national securities exchange or subject to prompt last sale reporting pursuant to the rules of the Commission or a registered national securities association.'' Pursuant to Section 761(a) of the Dodd-Frank Act,[1038] security-based swaps are securities.[1039] Accordingly, when security-based swap transactions become subject to prompt last-sale reporting pursuant to the rules of the Commission, the members of a national securities association that effect sales of security-based swaps other than on an exchange would become liable for Section 31 fees for any such sales.[1040] Because of certain potential difficulties in fairly and evenly applying Section 31 fees for sales of security-based swaps,[1041] the Commission proposed to exercise its authority under Section 31(f) of the Exchange Act [1042] to exempt

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[1025] *See* 75 FR 75227.

[1026] *Id.*

[1027] In response to the commenter who recommended requiring registered SDRs to accept all security-based swaps in an asset class to reduce fragmentation of data, the Commission notes that Rule 13n–5(b)(1)(ii) under the Exchange Act, adopted as part of the SDR Adopting Release, requires an SDR that accepts reports for any security-based swap in a particular asset class to accept reports for all security-based swaps in that asset class that are reported to the SDR in accordance with that SDR's policies and procedures.

[1028] The Commission notes that, under Rule 902(c)(6), most clearing transactions will not be publicly disseminated. Therefore, to the extent that a registered SDR receives only clearing transactions, it would likely be required to publicly disseminate few if any security-based swap transactions.

[1029] *See* DTCC I at 7 (''Under Section 13 of the Exchange Act . . . security-based swap data repositories shall 'provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity.' Under this authority, the Commission could designate one security-based swap data repository as the recipient of information from other security based-swap data repositories in order to have consolidation and direct access for the Commission'') (citation omitted).

[1030] *See* SDR Adopting Release, Section VI(D)(2)(c)(ii).

[1031] *See id.* The SDR Adopting Release states, further, that ''[t]he Commission recognizes that as the [security-based swap] market develops, new or different data fields may be needed to accurately represent new types of [security-based swap data], in which case the Commission may provide updated specifications of formats and taxonomies to reflect these new developments. Therefore, the Commission intends to publish guidance, as appropriate, on the form and manner that will be acceptable to it for the purposes of direct electronic access'' (internal citations omitted).

[1032] *See* 75 FR 75245–46.

[1033] 17 CFR 240.31.

[1034] 15 U.S.C. 78ee.

[1035] Section 991 of the Dodd Frank Act provides, in relevant part: ''(1) AMENDMENTS.—Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended . . . in subsection (e)(2), by striking 'September 30' and inserting 'September 25'.''

[1036] 17 CFR 240.31(a)(10)(ii).

[1037] 15 U.S.C. 78ee(c).

[1038] 15 U.S.C. 78c(a)

[1039] *See* 15 U.S.C. 78c(a)(10).

[1040] A national securities exchange also would be liable for fees in connection with any transactions in security-based swaps executed on its market. *See* 15 U.S.C. 78ee(b).

[1041] *See* Regulation SBSR Proposing Release, 75 FR 75245–46.

[1042] 15 U.S.C. 78ee(f) (''The Commission, by rule, may exempt any sale of securities or any class of

all such sales from the application of Section 31 fees. To carry out that objective, the Commission proposed to add a new subparagraph (ix) to Rule 31(a)(11), which defines the term ''exempt sale,'' to include as an exempt sale ''[a]ny sale of a security-based swap.'' The Commission also proposed to add a new paragraph (19) to Rule 31(a) to provide a definition for the term ''security-based swap.''

One commenter submitted two comment letters on this aspect of the proposal relating to Rule 31.[1043]

The Commission is not adopting these proposed revisions to Rule 31(a). As discussed above, the Commission is not yet requiring that security-based swap transactions be publicly disseminated in real time. Because security-based swaps are not yet subject to prompt last-sale reporting pursuant to the rules of the Commission or a national securities association,[1044] sales of security-based swaps are not yet subject to Section 31 fees. In the future, the Commission anticipates soliciting public comment on block thresholds and the timeframe in which non-block security-based swap transactions must be publicly disseminated. At such time, when implementation of prompt last-sale public dissemination of security-based swap transactions would subject them to Section 31 fees, the Commission can revisit whether to adopt the proposed exemption for security-based swaps from Section 31 fees.

XXI. Paperwork Reduction Act

Certain provisions of Regulation SBSR contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[1045] The Commission published notices requesting comment on the collection of information requirements relating to Regulation SBSR, as originally proposed, in the Regulation SBSR Proposing Release [1046] and, as re-proposed, in the Cross-Border Proposing Release [1047] and submitted relevant information to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[1048] The titles for the collections are: (1) Rule 901—Reporting Obligations—For Reporting Sides; (2) Rule 901—Reporting Obligations—For Registered SDRs; (3) Rule 902—Public Dissemination of Transaction Reports; (4) Rule 904—Operating Hours of Registered Security-Based Swap Data Repositories; (5) Rule 905—Correction of Errors in Security-Based Swap Information—For Reporting Sides; (6) Rule 905—Correction of Errors in Security-Based Swap Information—Non-Reporting Sides; (7) Rule 906(a)—Other Duties of All Participants—For Registered SDRs; (8) Rule 906(a)—Other Duties of All Participants—For Non-Reporting Sides; (9) Rule 906(b)—Other Duties of All Participants—For All Participants; (10) Rule 906(c)—Other Duties of All Participants—For Covered Participants; (11) Rule 907—Policies and Procedures of Registered Security-Based Swap Data Repositories; and (12) Rule 908(c)—Substituted Compliance (OMB Control No. 3235–0718). Compliance with these collections of information requirements is mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a currently valid control number.

The Commission is adopting Regulation SBSR, which contains these 12 collections of information, largely as re-proposed, with certain revisions suggested by commenters or designed to clarify the rules.[1049] The rules, as adopted, establish a ''reporting hierarchy'' that specifies the side that has the duty to report a security-based swap that is a covered transaction [1050] and provides for public dissemination of security-based swap transaction information (except as provided in Rule 902(c)). Registered SDRs are required to establish and maintain certain policies and procedures regarding how transaction data are reported and disseminated, and participants of registered SDRs that are registered security-based swap dealers or registered major security-based swap participants are required to establish and maintain policies and procedures that are reasonably designed to ensure that they comply with applicable reporting obligations. Regulation SBSR also requires a person that registers with the Commission as an SDR also to register with the Commission as a SIP.

The hours and costs associated with complying with Regulation SBSR constitute reporting and cost burdens imposed by each collection of information. Certain estimates (*e.g.,* the number of reporting sides, the number of non-reporting sides, the number of participants, and the number of reportable events [1051] pertaining to a security-based swap transaction) contained in the Commission's earlier PRA assessments have been updated to reflect the rule text of Regulation SBSR, as adopted, as well as additional information and data now available to the Commission, as discussed in further detail below. The Commission believes that the methodology used for calculating the re-proposed paperwork burdens set forth in the Cross-Border Proposing Release is appropriate and has received no comments to the contrary. The revised paperwork burdens estimated by the Commission herein are consistent with those made in connection with the re-proposal of Regulation SBSR, which was included in the Cross-Border Proposing Release. However, as described in more detail below, certain estimates have been modified, as necessary, to conform to the adopted rules and to reflect the most recent data available to the Commission.

The Commission requested comment on the collection of information requirements included in both the Regulation SBSR Proposing Release and the Cross-Border Proposing Release. As noted above, the Commission received 86 comment letters on the Regulation SBSR Proposing Release and six comment letters on the Cross-Border Proposing Release that specifically referenced Regulation SBSR. Although the comment letters did not specifically address the Commission's estimates for the proposed collection of information requirements, views of commenters relevant to the Commission's analysis of burdens, costs, and benefits of Regulation SBSR are discussed below.

The rules containing these specific collections of information are discussed further below.

sales of securities from any fee or assessment imposed by this section, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system.'').

[1043] *See* OneChicago I at 2–3 (arguing that, because ''exchange for physical'' (''EFP'') transactions conducted on OneChicago are economically similar to security-based swap transactions, EFP transactions also should be exempt from Section 31 fees or, alternatively, that security-based swaps should be subject to Section 31 fees); OneChicago II (same).

[1044] *See supra* Section VII (discussing phased approach to public dissemination and block trades, which will permit security-based swap transactions to be reported any time up to 24 hours after the time of execution (or, if 24 hours after the time of execution would fall on a day that is not a business day, by the same time on the next day that is a business day) during the first phase).

[1045] 44 U.S.C. 3501 *et seq.*

[1046] *See* Regulation SBSR Proposing Release, 75 FR 75251–61.

[1047] *See* Cross-Border Proposing Release, 78 FR 31115–18.

[1048] 44 U.S.C. 3507; 5 CFR 1320.11.

[1049] In addition, the Commission, in separate releases, is adopting rules relating to SDR registration, duties, and core principles and proposing amendments to Regulation SBSR.

[1050] *See supra* notes 11–12 and accompanying text.

[1051] A reportable event includes both an initial security-based swap transaction, required to be reported pursuant to Rule 901(a), as well as a life cycle event, the reporting of which is governed by Rule 901(e).

A. Definitions—Rule 900

Rule 900 sets forth definitions of various terms used in Regulation SBSR. In the Regulation SBSR Proposing Release, the Commission stated its belief that Rule 900, since it contains only definitions of relevant terms, would not be a ''collection of information'' within the meaning of the PRA.[1052] Although Rule 900, as adopted, contains revisions to re-proposed Rule 900, including additions and deletions of certain defined terms and modification of others, the Commission continues to believe that Rule 900 does not constitute a ''collection of information'' within the meaning of the PRA.

B. Reporting Obligations—Rule 901

Rule 901, as adopted, sets forth various requirements relating to the reporting of covered transactions. Rule 901 of Regulation SBSR, as adopted, contains ''collection of information requirements'' within the meaning of the PRA. The title of this collection is ''Rule 901—Reporting Obligations.''

1. Summary of Collection of Information

Title VII of the Dodd-Frank Act amended the Exchange Act to require the reporting of security-based swap transactions. Accordingly, the Commission is adopting Rule 901 under the Exchange Act to implement this requirement. Rule 901 specifies, with respect to each reportable event pertaining to covered transactions, who is required to report, what data must be reported, when it must be reported, where it must be reported, and how it must be reported. Rule 901(a), as adopted, establishes a ''reporting hierarchy'' that specifies the side that has the duty to report a security-based swap that is a covered transaction.[1053] The reporting side, as determined by the reporting hierarchy, is required to submit the information required by Regulation SBSR to a registered SDR. The reporting side may select the registered SDR to which it makes the required report.

Pursuant to Rule 901(b), as adopted, if there is no registered SDR that will accept the report required by Rule 901(a), the person required to make the report must report the transaction to the Commission. Rule 901(c) sets forth the primary trade information and Rule 901(d) sets forth the secondary trade information that must be reported. Under the final rules, covered transactions—regardless of their notional amount—must be reported to a registered SDR at any point up to 24 hours after the time of execution, or, in the case of a security-based swap that is subject to regulatory reporting and public dissemination solely by operation of Rule 908(a)(1)(ii), within 24 hours after the time of acceptance for clearing.[1054] Except as required by Rule 902(c), the information reported pursuant to Rule 901(c) must be publicly disseminated. Information reported pursuant to Rule 901(d) is for regulatory purposes only and will not be publicly disseminated.

Rule 901(e) requires the reporting of life cycle events, and adjustments due to life cycle events, within 24 hours of the time of occurrence, to the entity to which the original transaction was reported. The report must contain the transaction ID of the original transaction.

In addition to the reporting duties that reporting sides incur under Rule 901, Rule 901 also imposes certain duties on a registered SDR that receives security-based swap transaction data. Rule 901(f) requires a registered SDR to timestamp, to the second, any information submitted to it pursuant to Rule 901, and Rule 901(g) requires a registered SDR to assign a transaction ID to each security-based swap, or establish or endorse a methodology for transaction IDs to be assigned by third parties. Rule 901(h) requires reporting sides to electronically transmit the information required by Rule 901 in a format required by the registered SDR.

Rule 901(i) requires reporting of pre-enactment security-based swaps and transitional security-based swaps to the extent that information about such transactions is available.

As detailed in Sections II to V, *supra,* in adopting Rule 901, the Commission has made certain changes to Rule 901, both as originally proposed and as re-proposed in the Cross-Border Proposing Release, in response to comments or in order to clarify various provisions. The Commission believes that these changes do not substantially alter the underlying method of computing the paperwork burdens, but do result in changes to the number of impacted entities and the number to transactions covered by the rules, thus impacting the paperwork burden totals that were previously estimated for Rule 901.

2. Use of Information

The security-based swap transaction information required to be reported pursuant to Rule 901 will be used by registered SDRs, market participants, the Commission, and other relevant authorities. The information reported by reporting sides pursuant to Rule 901 will be used by registered SDRs to publicly disseminate reports of security-based swap transactions, as well as to offer a resource for the Commission and other relevant authorities to obtain detailed information about the security-based swap market. Market participants will use the public market data feed, among other things, to assess the current market for security-based swaps and to assist in the valuation of their own positions. The Commission and other relevant authorities will use information about security-based swap transactions reported to and held by registered SDRs to monitor and assess systemic risks, as well as for market surveillance purposes.

3. Respondents

Rule 901(a) assigns reporting duties for covered transactions. In the Cross-Border Proposing Release, the Commission revised its preliminary estimate to 300 respondents.[1055] The Commission continues to believe that it is reasonable to use 300 as an estimate of ''reporting sides'' (as that term was used in the Cross-Border Proposing Release).

The Commission notes that, since issuing the Regulation SBSR Proposing Release, the Commission has obtained additional and more granular data regarding participation in the security-based swap market from DTCC–TIW. These historical data suggest that, among the 300 reporting sides, approximately 50 are likely to be required to register with the Commission as security-based swap dealers and approximately five are likely to register as major security-based swap participants.[1056] These data further suggest that these 55 reporting sides likely will account for the vast majority of recent security-based swap transactions and reports and that there

[1052] *See* Regulation SBSR Proposing Release, 75 FR 75246.

[1053] *See supra* notes 11–12 and accompanying text.

[1054] *See supra* Section VII(B)(1) (discussing Rule 901(j) and the rationale for 24-hour reporting timeframe). In addition, as discussed in more detail in Section VII(B), *supra,* if 24 hours after the time of execution would fall on a non-business day (*i.e.,* a Saturday, Sunday, or U.S. federal holiday), reporting would be required by the same time on the next business day. As discussed in Section XV(C)(4), *supra,* Rule 908(a)(1)(ii), as adopted, provides that a security-based swap that is subject to regulatory reporting and public dissemination solely by operation of Rule 908(a)(1)(ii)—*i.e.,* because the security-based swap has been accepted for clearing by a clearing agency having its principal place of business in the United States—must be reported within 24 hours of acceptance for clearing.

[1055] *See* Cross-Border Proposing Release, 78 FR 31113 (lowering the estimate of reporting sides from 1,000 to 300).

[1056] *See id.* at 31103.

are only a limited number of security-based swap transactions that do not include at least one of these larger counterparties on either side.[1057]

Rule 901 imposes certain duties on registered SDRs. In the Regulation SBSR Proposing Release, the Commission preliminarily estimated that the number of registered SDRs would not exceed ten, an estimate that was affirmed in the Cross-Border Proposing Release.[1058] The Commission continues to believe that it is reasonable to estimate ten registered SDR respondents for the purpose of estimating collection of information burdens for Regulation SBSR.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

Pursuant to Rule 901, covered transactions must be reported to a registered SDR or to the Commission. Together, sections (a), (b), (c), (d), (e), (h), and (j) of Rule 901 set forth the parameters that govern how reporting sides report covered transactions. Rule 901(i) addresses the reporting of pre-enactment and transitional security-based swaps. These reporting requirements impose initial and ongoing burdens on reporting sides. The Commission believes that these burdens will be a function of, among other things, the number of reportable events and the data elements required to be reported for each such event. Rule 901(f) requires a registered SDR to the time stamp, to the second, all reported information, and Rule 901(g) requires a registered SDR to assign a transaction ID to each security-based swap, or establish or endorse a methodology for transaction IDs to be assigned by third parties. These requirements impose initial and ongoing burdens on registered SDRs.

a. Baseline Burdens

In the Regulation SBSR Proposing Release, the Commission estimated that respondents would face three categories of burdens to comply with Rule 901.[1059] First, each entity that would incur a duty to report security-based swap transactions pursuant to Regulation SBSR (a ''reporting party'' [1060]) would likely have to develop an internal order and trade management system (''OMS'') capable of capturing the relevant transaction information.[1061] Second, each such entity would have to implement a reporting mechanism.[1062] Third, each such entity would have to establish an appropriate compliance program and support for the operation of any OMS and reporting mechanism.[1063] In the Regulation SBSR Proposing Release, the Commission preliminarily estimated that the initial, aggregate annualized burden associated with Rule 901 would be 1,438 hours per reporting party—for a total of 1,438,300 hours for all reporting parties—in order to develop an OMS, implement a reporting mechanism, and establish an appropriate compliance program and support system.[1064] The Commission preliminarily estimated that the ongoing aggregate annualized burden associated with Rule 901 would be 731 hours per reporting party, for a total of 731,300 hours for all reporting parties.[1065] The Commission further estimated that the initial aggregate annualized dollar cost burden on reporting parties associated with Rule 901 would be $201,000 per reporting party, for a total of $201,000,000 for all reporting parties.[1066]

b. Burdens of Final Rule 901

For Reporting Sides. The reporting hierarchy is designed to place the duty to report covered transactions on counterparties who are most likely to have the resources and who are best able to support the reporting function.

Reporting sides that fall under the reporting hierarchy in Rule 901(a)(2)(ii) incur certain burdens as a result thereof with respect to their reporting of covered transactions. As stated above, the Commission believes that an estimate of 300 reporting sides that would incur the duty to report under Regulation SBSR is reasonable for estimating collection of information burdens under the PRA. This estimate includes all of those persons that incur a reporting duty under Regulation SBSR, as adopted, including registered security-based swap dealers and registered major security-based swap participants. This estimate also includes some smaller counterparties to security-based swaps that could incur a reporting duty, but many fewer than estimated in the PRA of the Regulation SBSR Proposing Release.

As discussed in more detail in Section V, *supra,* Rule 901(a)(2)(ii) adopts the reporting hierarchy set forth in the Cross-Border Proposing Release, but limits its application to uncleared transactions. The Commission believes, however, that this limitation will not materially change the number of reporting sides for PRA purposes, as there likely would be a significant overlap between the approximately 300 reporting sides reporting uncleared transactions and those reporting other security-based swaps.

In the Regulation SBSR Proposing Release, the Commission preliminarily estimated that there would be 15.5 million reportable events associated with security-based swap transactions per year.[1067] In the Cross-Border Proposing Release, in addition to lowering its estimate of the number of reporting sides from 1,000 to 300, the Commission also revised its estimate of the number of reportable events to approximately 5 million.[1068] Since issuing the Cross-Border Proposing Release, however, the Commission has obtained additional and more granular data regarding participation in the security-based swap market from DTCC–TIW. As a result, the Commission is now further revising its estimate of the number of reportable events. Accordingly, the Commission now estimates that there will be approximately 3 million reportable events per year under Rule 901, as adopted.[1069] The Commission further

[1057] As a result, the Commission generally will continue to use 300 as an estimate of the number of reporting sides. In cases where a rule is more limited in its application, for example Rule 906(c), the Commission may use a different number that reflects some subset of the estimated 300 reporting sides. *See also* Cross-Border Adopting Release, 79 FR 47300 (stating that 55 firms might register as security-based swap dealers or major security-based swap participants).

[1058] *See* Regulation SBSR Proposing Release, 75 FR 75247; *See also* Cross-Border Proposing Release, 78 FR 31113.

[1059] *See* Regulation SBSR Proposing Release, 75 FR 75248.

[1060] In the Regulation SBSR Proposing Release, the Commission proposed the term ''reporting party'' to describe the entity with the duty to report a particular security-based swap transaction. *See* 75 FR 75211. In the Cross-Border Proposing Release, the Commission revised the term ''reporting party'' to ''reporting side'' as part of the re-proposal of Regulation SBSR. *See* 78 FR 31059.

[1061] *See* Regulation SBSR Proposing Release, 75 FR 75248.

[1062] *See id.*

[1063] *See id.*

[1064] *See id.* at 75250.

[1065] *See id.*

[1066] *See id.* In the Cross-Border Proposing Release, the Commission noted that the Regulation SBSR Proposing Release incorrectly stated this total as $301,000 per reporting party. The correct number is $201,000 per reporting party ($200,000+$1,000). *See* 78 FR 31113, note 1259.

[1067] *See* Regulation SBSR Proposing Release, 75 FR 75248.

[1068] *See* Cross-Border Proposing Release, 78 FR 31114.

[1069] According to data published by the Bank for International Settlements, the global notional amount outstanding in equity forwards and swaps as of December 2013 was $2.28 trillion. The notional amount outstanding in single-name CDS was approximately $11.32 trillion, in multi-name index CDS was approximately $8.75 trillion, and in multi-name, non-index CDS was approximately $950 billion. *See* Semi-annual OTC derivatives statistics at end-December 2013 (June 2014), Table 19, available at *http://www.bis.org/statistics/dt1920a.pdf* (last visited September 22, 2014). For the purposes of this analysis, the Commission assumes that multi-name index CDS are not narrow-

Continued

estimates that approximately 2 million of these reportable events will consist of uncleared transactions (*i.e.,* those transactions that will be reported to a registered SDR by the reporting sides). The Commission noted in the Cross-Border Proposing Release, and continues to believe, that the reduction in the estimate of the number of reportable events per year is likely a result of several factors.[1070]

The Commission believes that, once a respondent's reporting infrastructure and compliance systems are in place, the burden of reporting each individual reportable event will be *small* when compared to the burdens of establishing the reporting infrastructure and compliance systems.[1071] As stated above, the Commission estimates that 2 million of the 3 million total reportable events would consist of the initial reporting of security-based swaps as well as the reporting of any life cycle events. The Commission estimates that of the 2 million reportable events, approximately 900,000 would involve the reporting of new security-based swap transactions, and approximately 1,100,000 would involve the reporting of life cycle events under Rule 901(e). The Commission estimates that Rule 901(a) would result in reporting sides having a total burden of 4,500 hours attributable to the initial reporting of security-based swaps by reporting sides to registered SDRs under Rules 901(c) and 901(d) over the course of a year.[1072] The Commission further estimates that reporting sides would have a total burden of 5,500 hours attributable to the reporting of life cycle events under Rule 901(e) over the course of a year.[1073] Therefore, the Commission believes that Rule 901, as adopted, would result in a total reporting burden for reporting sides under Rules 901(c) and (d) along with the reporting of life cycle events under Rule 901(e) of 10,000 burden hours per year. The Commission continues to believe that many reportable events will be reported through electronic means and that the ratio of electronic reporting to manual reporting is likely to increase over time. The Commission continues to believe that the bulk of the burden hours estimated above will be attributable to manually reported transactions. Thus, reporting sides that capture and report transactions electronically will likely incur bear fewer burden hours than those reporting sides that capture and report transactions manually.

Based on the foregoing, the Commission estimates that Rule 901, as adopted, will impose an estimated total first-year burden of approximately 1,394 hours[1074] per reporting side for a total first-year burden of 418,200 hours for all reporting sides.[1075] The Commission estimates that Rule 901, as adopted, will impose ongoing annualized aggregate burdens of approximately 687 hours[1076] per reporting side for a total aggregate annualized cost of 206,100 hours for all reporting sides.[1077] The Commission further estimates that Rule 901, as adopted, will impose initial and ongoing annualized dollar cost burdens of $201,000 per reporting side, for total aggregate initial and ongoing annualized dollar cost burdens of $60,300,000.[1078]

For Registered SDRs. In the Regulation SBSR Proposing Release, the Commission set forth estimated burdens on registered SDRs related to Rule 901.[1079] The Commission continues to believe that these estimated burdens are reasonable.

Rule 901(f) requires a registered SDR to time-stamp, to the second, information that it receives. Rule 901(g) requires a registered SDR to assign a unique transaction ID to each security-based swap it receives or establish or endorse a methodology for transaction IDs to be assigned by third parties. The Commission continues to believe that such design elements will pose some additional burdens to incorporate in the context of designing and building the technological framework that will be required of an SDR to become registered.[1080] Therefore, the Commission estimates that Rules 901(f) and 901(g) will impose an initial one-time aggregate burden of 1,200 burden hours, which corresponds to 120 burden hours per registered SDR.[1081] This figure is based on an estimate of ten registered SDRs, which the Commission continues to believe is reasonable.

Once operational, these elements of each registered SDR's system will have to be supported and maintained. Accordingly, the Commission estimates that Rule 901(f) and 901(g) will impose

based index CDS and, therefore, are not security-based swaps. The Commission also assumes that all instruments reported as equity forwards and swaps are security-based swaps, potentially resulting in underestimation of the proportion of the security-based swap market represented by single-name CDS. Based on those assumptions, single-name CDS appear to constitute roughly 82% of the security-based swap market. Although the BIS data reflect the global OTC derivatives market, and not just the U.S. market, the Commission believes that it is reasonable to assume these ratios would be similar in the U.S. market. The Commission now estimates that there were approximately 2.26 million single-name CDS transactions in 2013. Because single-name CDS appear to constitute roughly 78% of the security-based swap market, the Commission now estimates that there are approximately 3 million security-based swap transactions (*i.e.,* 2,260,000/0.78=2,898,329 reportable events).

[1070] *See* 78 FR 31115.

[1071] In the Regulation SBSR Proposing Release, the Commission preliminarily estimated that reporting specific security-based swap transactions to a registered SDR—separate from the establishing of infrastructure and compliance systems that support reporting—would impose an annual aggregate cost of approximately $5,400,000. *See* 75 FR 75265. The Commission further estimated that Rule 901 would impose an aggregate total first-year cost of approximately $1,039,000,000 and an ongoing annualized aggregate cost of approximately $703,000,000. *See id.* at 75280. *See also* Cross-Border Proposing Release, 78 FR 31115 (stating the Commission's preliminary belief that the reporting of a single reportable event would be *de minimis* when compared to the burdens of establishing the reporting infrastructure and compliance systems).

[1072] In the Regulation SBSR Proposing Release, the Commission estimated that it would take approximately 0.005 hours for each security-based swap transaction to be reported. *See* 75 FR 75249, note 195. The Commission calculates the following: ((900,000 × 0.005)/(300 reporting sides)) = 15 burden hours per reporting side or 4,500 total burden hours attributable to the initial reporting of security-based swaps.

[1073] In the Regulation SBSR Proposing Release, the Commission estimated that it would take approximately 0.005 hours for each security-based swap transaction to be reported. *See* 75 FR 75249, note 195. The Commission calculates the following: ((1,100,000 × 0.005)/(300 reporting sides)) = 18.33 burden hours per reporting side or 5,500 total burden hours attributable to the reporting of life cycle events under Rule 901(e).

[1074] The Commission derived its estimate from the following: (355 hours (one-time hourly burden for establishing and OMS) + 172 hours (one-time hourly burden for establishing security-based swap reporting mechanisms) + 180 hours (one-time hourly burden for compliance and ongoing support) = 707 hours (one-time total hourly burden). *See* Regulation SBSR Proposing Release, 75 FR 75248–50, notes 186, 194, and 201. (436 hours (annual-ongoing hourly burden for internal order management) + 33.3 hours (revised annual-ongoing hourly burden for security-based swap reporting mechanisms) + 218 hours (annual-ongoing hourly burden for compliance and ongoing support) = 687.3 hours (one-time total hourly burden. *See id.* at 75248–50, notes 187 and 201 (707 one-time hourly burden + 687 revised annual-ongoing hourly burden = 1,394 total first-year hourly burden).

[1075] The Commission derived its estimate from the following: (1,394 hours per reporting side × 300 reporting sides) = 418,200 hours.

[1076] *See* Cross-Border Proposing Release, 78 FR 31112–15.

[1077] The Commission derived its estimate from the following: (687 hours per reporting side × 300 reporting sides) = 206,100 hours.

[1078] The Commission derived its estimate from the following: ($201,000 per reporting side × 300 reporting sides) = $60,300,000. *See* Cross-Border Proposing Release, 78 FR 31113–15. The Commission originally estimated this burden based on discussions with various market participants. *See* Regulation SBSR Proposing Release, 75 FR 75247–50.

[1079] *See* 75 FR 75250–51.

[1080] The Commission has adopted additional rules under the Exchange Act relating to the duties, data collection and maintenance requirements, and automated systems requirements of SDRs. *See* SDR Adopting Release.

[1081] *See* Regulation SBSR Proposing Release, 75 FR 75250. This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer at 80 hours) + (Sr. Systems Analyst at 20 hours) + (Compliance Manager at 8 hours) + (Director of Compliance at 4 hours) + (Compliance Attorney at 8 hours)) × (10 registered SDRs)] = 1,200 burden hours, which is 120 hours per registered SDR.

an annual aggregate burden of 1,520 burden hours, which corresponds to 152 burden hours per registered SDR.[1082] This figure represents an estimate of the burden for a registered SDR for support and maintenance costs for the registered SDR's systems to time stamp incoming submissions and assign transaction IDs.

Thus, the Commission estimates that the first-year aggregate annualized burden on registered SDRs associated with Rules 901(f) and 901(g) will be 2,720 burden hours, which corresponds to 272 burden hours per registered SDR.[1083] Correspondingly, the Commission estimates that the ongoing aggregate annualized burden associated with Rules 901(f) and 901(g) will be 1,520 burden hours, which corresponds to 152 burden hours per registered SDR.[1084] The above burden estimates pertaining to Rules 901(f) and 901(g) are identical to those set forth in the Regulation SBSR Proposing Release.[1085]

Since Regulation SBSR, as adopted, requires reporting for only covered transactions, registered SDRs will be required to receive, process, and potentially disseminate a smaller number of security-based swaps than originally envisioned. Because the bulk of an SDR's burdens and costs under Regulation SBSR are not transaction-based, however, the Commission has determined that the burden and cost estimates set forth in the Cross-Border Proposing Release remain valid for the purposes of the PRA.

In addition, the Commission recognizes that, since the publication of the Regulation SBSR Proposing Release, many entities already have spent considerable time and resources building the infrastructure that will support reporting of security-based swaps. Indeed, some reporting is already occurring voluntarily.[1086] As a result, the Commission notes that the burdens and costs calculated herein could be greater than those actually incurred by affected parties as a result of the adoption of Regulation SBSR. Nonetheless, the Commission believes that its estimates represent a reasonable upper bound of the actual burdens and costs required to comply with Regulation SBSR.

5. Recordkeeping Requirements

Rule 13n–5(b)(4) under the Exchange Act requires an SDR to maintain the transaction data and related identifying information that it collects for not less than five years after the applicable security-based swap expires, and historical positions for not less than five years.[1087] Accordingly, security-based swap transaction reports received by a registered SDR pursuant to Rule 901 will be required to be retained by the registered SDR for not less than five years.

6. Collection of Information Is Mandatory

Each collection of information discussed above is mandatory.

7. Confidentiality of Responses to Collection of Information

For the majority of security-based swap transactions, all of the information collected pursuant to Rule 901(c) will be widely available to the public because these transactions will be publicly disseminated by a registered SDR pursuant to Rule 902. However, certain security-based swaps are not subject to Rule 902's public dissemination requirement; [1088] therefore, information about these transactions will not be publicly available. In addition, reporting sides must provide certain information about security-based swap transactions pursuant to Rule 901(d). Rule 901(d) information is for regulatory purposes and will not be publicly disseminated.

An SDR, pursuant to Section 13(n)(5) of the Exchange Act and Rules 13n–4(b)(8) and 13n–9 thereunder, must maintain the privacy of security-based swap information,[1089] including information reported pursuant to Rule 901(d) of Regulation SBSR, as well as information about a security-based swap transaction reported pursuant to Rule 901(c) where the transaction falls into a category enumerated in Rule 902(c). To the extent that the Commission receives these kinds of information under Regulation SBSR, such information will be kept confidential, subject to the provisions of applicable law.

C. Public Dissemination of Transaction Reports—Rule 902

Rule 902(a), as adopted, requires a registered SDR to publicly disseminate a transaction report immediately upon receipt of information about a security-based swap, or a life cycle event or adjustment due to a life cycle event (or upon re-opening following a period when the registered SDR was closed), except in certain limited circumstances described in Rule 902(c). A published transaction report must consist of all the information reported pursuant to Rule 901(c), plus any condition flags required by the policies and procedures of the registered SDR to which the transaction is reported. Certain provisions of Rule 902 of Regulation SBSR contain ''collection of information requirements'' within the meaning of the PRA. The title of this collection is ''Rule 902—Public Dissemination of Transaction Reports.''

1. Summary of Collection of Information

As adopted, Rule 902(a) generally requires that a registered SDR publicly disseminate a transaction report for each security-based swap transaction, or a life cycle event or adjustment due to a life cycle, immediately upon receipt of information about the security-based swap submitted by a reporting side pursuant to Rule 901(c). The transaction report must contain all of the information reported pursuant to Rule 901(c) along with any condition flags required by the policies and procedures of the registered SDR to which the transaction is reported.[1090] If its systems are unavailable to publicly disseminate these transaction data immediately upon receipt, the registered SDR is required to disseminate the transaction data immediately upon re-opening. Rule 902(a), as adopted, provides registered SDRs with the authority and discretion to establish the content, format, and mode of dissemination through its policies and procedures, as long as it does so in compliance with the information required to be disseminated by Rule 901(c).

Rule 902(b), as proposed and re-proposed, addressed how a registered SDR would be required to publicly disseminate transaction reports of block trades. As discussed in more detail above, the Commission is not adopting Rule 902(b).

Rule 902(c), as adopted, prohibits a registered SDR from disseminating: (1) The identity of any counterparty to a security-based swap; (2) with respect to a security-based swap that is not cleared

[1082] *See* Regulation SBSR Proposing Release, 75 FR 75250. This figure is based on discussions with various market participants as follows: [((Sr. Programmer at 60 hours) + (Sr. Systems Analyst at 48 hours) + (Compliance Manager at 24 hours) + (Director of Compliance at 12 hours) + (Compliance Attorney at 8 hours)) × (10 SDRs)] = 1,520 burden hours, which is 152 hours per registered SDR.

[1083] *See* Regulation SBSR Proposing Release, 75 FR 75250. This figure is based on the following: [(1,200) + (1,520)] = 2,720 burden hours, which corresponds to 272 burden hours per registered SDR.

[1084] *See supra* note 1083.

[1085] *See* Regulation SBSR Proposing Release, 75 FR 75250.

[1086] DTCC currently compiles information on the credit default swap market. *See http://www.dtcc.com/about/businesses-and-subsidiaries/ddr-us.aspx* (last visited September 22, 2014).

[1087] *See* SDR Adopting Release, Section VI(E)(4).

[1088] *See supra* Section VI(D).

[1089] *See* SDR Adopting Release, Sections VI(D)(2) and VI(I)(1).

[1090] *See* Rule 907(a)(4).

at a registered clearing agency and that is reported to a registered SDR, any information disclosing the business transactions and market positions of any person; (3) any information regarding a security-based swap reported pursuant to Rule 901(i); (4) any non-mandatory report; (5) any information regarding a security-based swap that is required to be reported pursuant to Rule 901 and Rule 908(a)(1) but is not required to be publicly disseminated pursuant to Rule 908(a)(2); (6) any information regarding certain clearing transactions; and (7) any information regarding the allocation of a security-based swap.

Rule 902(d) provides that no person shall make available to one or more persons (other than a counterparty or a post-trade processor) transaction information relating to a security-based swap before the reporting side transmits the primary trade information about the security-based swap to a registered SDR.

2. Use of Information

The public dissemination requirements contained in Rule 902 are designed to promote post-trade transparency of security-based swap transactions.

3. Respondents

The collection of information associated with the Rule 902 will apply to registered SDRs. As noted above, the Commission believes that an estimate of ten registered SDRs is reasonable for purposes of its analysis of burdens under the PRA.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

Rule 13n–5(b) sets forth requirements for collecting and maintaining transaction data that each SDR will be required to follow.[1091] The SDR Adopting Release describes the relevant burdens and costs that complying with Rule 13n–5(b) will entail.[1092]

In the Regulation SBSR Proposing Release, the Commission stated its preliminary belief that a registered SDR would be able to integrate the capability to publicly disseminate security-based swap transaction reports required under Rule 902 as part of its overall system development for transaction data.[1093] Based on discussions with industry participants, the Commission estimates that, to implement and comply with the public dissemination requirement of Rule 902, each registered SDR will incur a burden equal to an additional 20% of the first-year and ongoing burdens discussed in the SDR Registration Proposing Release.[1094] This estimate was first proposed in the Regulation SBSR Proposing Release and reiterated in the Cross-Border Proposing Release, and the Commission believes that it remains valid.[1095]

Based on the above, the Commission estimates that the initial one-time aggregate burden imposed by Rule 902 for development and implementation of the systems needed to disseminate the required transaction information, including the necessary software and hardware, will be approximately 8,400 hours and a dollar cost of $2 million for each registered SDR, which aggregates to 84,000 hours and a dollar cost of $20 million for all SDR respondents.[1096] In addition, the Commission estimates that annual aggregate burden (initial and ongoing) imposed by the Rule 902 will constitute approximately 5,040 hours and a dollar cost of $1.2 million for each registered SDR, which aggregates to 50,400 hours and a dollar cost of $12 million for all SDR respondents.[1097] Thus, the Commission estimates that the total first-year (initial) aggregate annualized burden on registered SDRs associated with public dissemination requirement under Rule 902 will be approximately 134,400 hours and a dollar cost of $32 million, which corresponds to a burden of 13,440 hours and a dollar cost of $3.2 million for each registered SDR.[1098]

5. Recordkeeping Requirements

Pursuant to Rule 13n–7(b) under the Exchange Act, a registered SDR is required to keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Exchange Act and the rules or regulations thereunder, for a period of not less than five years, the first two years in a place that is immediately available to representatives of the Commission for inspection and examination.[1099] This requirement encompasses all security-based swap transaction reports disseminated by a registered SDR pursuant to Rule 902 and are required to be retained for not less than five years.

6. Collection of Information Is Mandatory

Each collection of information discussed above Is mandatory.

7. Confidentiality of Responses to Collection of Information

Most of the information required under Rule 902 will be widely available to the public to the extent it is incorporated into security-based swap transaction reports that are publicly disseminated by a registered SDR pursuant to Rule 902. However, Rule 902(c) prohibits public dissemination of certain kinds of transactions and certain kinds of transaction information. An SDR, pursuant to Sections 13(n)(5) of the Exchange Act and Rules 13n–4(b)(8) and 13n–9 thereunder will be under an obligation to maintain the privacy of this security-based swap information.[1100] To the extent that the Commission receives confidential information pursuant to this collection of information, such information must be kept confidential, subject to the provisions of applicable law.

D. Coded Information—Rule 903

Regulation SBSR, as adopted, permits or, in some instances, requires security-based swap counterparties to report coded information to registered SDRs using UICs. These UICs will be used to identify products, transactions, and persons, as well as certain business units and employees of legal persons.[1101] Rule 903 establishes standards for assigning and using coded information in security-based swap

[1091] *See* SDR Adopting Release, Section VI(E)(1).

[1092] *See* SDR Adopting Release, Section VII(D)(2).

[1093] *See* Regulation SBSR Proposing Release, 75 FR 75252.

[1094] *See* Regulation SBSR Proposing Release, 75 FR 75252. *See also* SDR Adopting Release, Section VII(D)(2). This estimate was based on discussions with industry members and market participants, including entities that may register as SDRs under Title VII, and includes time necessary to design and program a registered SDR's system to calculate and disseminate initial and subsequent trade reports.

[1095] *See* Regulation SBSR Proposing Release, 75 FR 75252. *See also* Cross-Border Proposing Release, 78 FR 31198.

[1096] *See* SDR Adopting Release, Section VII(D)(2) for the total burden associated with establishing SDR technology systems. The Commission derived this estimated burden from the following: [((Attorney at 1,400 hours) + (Compliance Manager at 1,600 hours) + (Programmer Analyst at 4,000 hours) + (Senior Business Analyst at 1,400 hours)) × (10 registered SDRs)] = 84,000 burden hours, which corresponds to 8,400 hours per registered SDR.

[1097] *See* SDR Adopting Release, Section VII(D)(2) for the total ongoing annual burdens associated with operating and maintaining SDR technology systems. The Commission derived this estimated burden from the following: [((Attorney at 840 hours) + (Compliance Manager at 960 hours) + (Programmer Analyst at 2,400 hours) + (Senior Business Analyst at 840 hours)) × (10 registered SDRs)] = 50,400 burden hours, which corresponds to 5,040 hours per registered SDR.

[1098] These estimates are based on the following: [(84,000 one-time burden hours) + (50,400 annual burden hours)] = 134,400 burden hours, which corresponds to 13,440 hours per registered SDR; [($20 million one-time dollar cost burden) + ($12 million annual dollar cost burden)] = $32 million cost burden, which corresponds to $3.2 million per registered SDR.

[1099] *See* SDR Adopting Release, Section VI(G)(2).

[1100] *See* SDR Adopting Release, Sections VI(D)(2) and VI(I)(1).

[1101] *See supra* Section II (describing UICs that must be reported to registered SDRs pursuant to Regulation SBSR).

reporting and dissemination to help ensure that codes are assigned in an orderly manner and that relevant authorities, market participants, and the public are able to interpret coded information stored and disseminated by registered SDRs.

In the Regulation SBSR Proposing Release, the Commission stated its belief that Rule 903 would not be a ''collection of information'' within the meaning of the PRA because the rule would merely permit reporting parties and registered SDRs to use codes in place of certain data elements, subject to certain conditions.[1102] In re-proposing Rule 903 in the Cross-Border Proposing Release, the Commission made only technical and conforming changes to Rule 903 to incorporate the use of the term ''side.'' [1103] Rule 903, as adopted, includes a requirement that, if the Commission has recognized an IRSS that assigns UICs to persons, each participant of a registered SDR shall obtain a UIC from or through that IRSS.[1104] Because the Commission also is recognizing the GLEIS—which issues LEIs—as an IRSS, any person who is a participant of one or more registered SDRs will have to obtain an LEI from or through the GLEIS. Therefore, the Commission now believes that Rule 903 constitutes a ''collection of information'' within the meaning of the PRA. The title of this collection is ''Rule 903—Coded Information.''

1. Summary of Collection of Information

Rule 903(a) provides that, if an IRSS that meets certain criteria is recognized by the Commission and has assigned a UIC to a person, unit of a person, or product (or has endorsed a methodology for assigning transaction IDs), all registered SDRs must use that UIC in carrying out their responsibilities under Regulation SBSR. If no such system has been recognized by the Commission, or if such a system 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), the registered SDR must assign a UIC to that person, unit of a person, or product using its own methodology (or endorse a methodology for assigning transaction IDs). The following UICs are contemplated by Regulation SBSR: Branch ID, broker ID, counterparty ID, execution agent ID, platform ID, product ID, trader ID, trading desk ID, transaction ID, and ultimate parent ID. UICs are intended to allow registered SDRs and the Commission and other relevant authorities to aggregate transaction information across a variety of vectors. For example, the trader ID will allow the Commission and other relevant authorities to identify all trades carried out by an individual trader. The product ID will allow the Commission and other relevant authorities to identify all transactions in a particular security-based swap product. The transaction ID will allow counterparties and the registered SDR to link a series of life cycle events to each other and to the original transaction. As discussed in Section X(B)(2), *supra,* the Commission has recognized the GLEIS as an IRSS that meets the criteria of Rule 903. Therefore, if an entity has an LEI issued by or through the GLEIS, that LEI must be used for all purposes under Regulation SBSR. Furthermore, each participant that acts as a guarantor of a direct counterparty's performance of any obligation under a security-based swap that is subject to § 242.908(a) shall, if the direct counterparty has not already done so, obtain a UIC for identifying the direct counterparty from or through that system, if that system permits third-party registration without a requirement to obtain prior permission of the direct counterparty.

2. Use of Information

The information provided pursuant to Rule 903 is necessary to for any person who is a participant of at least one registered SDR to be identified by an LEI for reporting purposes under Regulation SBSR.

3. Respondents

Rule 903 applies to any person who is a participant of at least one registered SDR. The Commission estimates that there may be up to 4,800 security-based swap counterparties that are participants of one or more registered SDRs.[1105] The Commission recognizes that, since the publication of the Regulation SBSR Proposing Release, many persons who are likely to become participants of one or more registered SDRs already have LEIs issued by or through the GLEIS. As a result, the burdens and costs actually incurred by participants as a result of the adoption of Regulation SBSR are likely to be less than the burdens and costs calculated herein. Specifically, as discussed in further detail in Section XXII(C)(4)(b), *infra,* based on transaction data from DTCC–TIW, the Commission believes that no fewer than 3,500 of approximately 4,800 accounts that participated in the market for single-name CDS in 2013 currently have LEIs.[1106] The Commission assumes that no market participants that currently have LEIs would continue to maintain their LEIs in the absence of Rule 903(a) in order to arrive at an upper bound on the ongoing costs associated with Rule 903(a). The Commission believes that this is a conservative approach, since regulators in certain other jurisdictions mandate the use of an LEI.[1107] Consequently, the Commission estimates, for purposes of the PRA, that there may be as many as 1,300 participant respondents who will need to obtain an LEI and as many as 4,800 participants who will need to maintain an LEI.[1108]

4. Total Initial and Annual Reporting and Recordkeeping Burdens

The Commission estimates that first-year aggregate burden imposed by Rule 903 will be 1,300 hours, which corresponds to 1 hour per participant, to account for the initial burdens of obtaining an LEI.[1109] The Commission estimates that the ongoing burden imposed by Rule 903 will be 4,800 hours, which corresponds to 1 hour per participant, to account for ongoing

[1102] *See* Regulation SBSR Proposing Release, 75 FR 75252–53.

[1103] *See* Cross-Border Proposing Release, 78 FR 31117.

[1104] *See supra* Section X(B)(2).

[1105] As noted in Section XXII(B)(1), *infra,* the available data do not include transactions between two foreign security-based swap market participants on foreign underlying reference entities. As a result, this estimate may not include certain foreign counterparties to security-based swaps.

[1106] Some counterparties reported in the transaction data may be guarantors of other non-U.S.-person-direct counterparties and, if so, may be responsible for obtaining and maintaining more than one LEI. As such, precisely quantifying the number of LEIs required by Rule 903(a) is not possible at this time. However, because many of these direct non-U.S.-person counterparties are likely from jurisdictions where regulators mandate the use of LEIs, the Commission believes that these counterparties will already have registered LEIs and will continue to maintain them.

[1107] The European Market Infrastructure Regulation requires use of codes to identify counterparties. *See* ''Trade Reporting'' (available at: *http://www.esma.europa.eu/page/Trade-reporting*) (last visited January 10, 2015).

[1108] In the Regulation SBSR Proposing Release, the Commission used an estimate of 5,000 participant respondents that might incur reporting duties under Regulation SBSR. This estimate included an estimated 1,000 entities regularly engaged in the CDS marketplace as well as 4,000 potential security-based swap counterparties that were expected to transact security-based swaps less frequently but that nonetheless would be considered ''participants.'' *See* Regulation SBSR Proposing Release, 75 FR 75254. Based on more recent data, the Commission has revised the estimated number of participant respondents to 4,800. The Commission notes that registered security-based swap dealers and major security-based swap participants will, for some transactions, be the non-reporting side and are therefore included in this estimate.

[1109] This figure is based on the following: [Compliance Attorney at 1 hour/year) × (1,300 participants)] = 1,300 burden hours.

administration of the LEI.[1110] In addition, for these participants, the assignment of an LEI will entail both one-time and ongoing costs assessed by local operation units (''LOUs'') of the GLEIS. The current cost for registering a new LEI is approximately $220, with an additional cost of $120 per year for maintaining an LEI.[1111] For those participants that do not already have an LEI, the initial one-time cost would be $286,000, or $220 per participant.[1112] All participants would be required to maintain their LEI resulting in an annual cost of $576,000, or $120 per participant.[1113]

5. Recordkeeping Requirements

The applications that participants must complete in order to obtain an LEI issued by or through the GLEIS are not subject to any specific recordkeeping requirements for participants, to the extent that these participants are non-registered persons.[1114] The Commission expects, however, that in the normal course of their business a participant of a registered SDR would keep records of the information entered in connection with its LEI application, such as the participant's legal name, registered address, headquarters address, and the entity's legal form.

6. Collection of Information Is Mandatory

Each collection of information discussed above is mandatory.

7. Confidentiality of Responses to Collection of Information

The Commission believes that information submitted by participants in order to obtain an LEI issued by or through the GLEIS generally will be public.

[1110] This figure is based on the following: [(Compliance Attorney at 1 hour/year) × (4,800 participants)] = 4,800 burden hours.

[1111] *See* ''GMEI Utility: Frequently Asked Questions'' (available at: *https://www.gmeiutility.org/frequentlyAskedQuestions.jsp*, detailing registration and maintenance costs for LEIs issued by GMEI, an endorsed pre-LOU of the interim GLEIS) (last visited January 4, 2015).

[1112] This figure is based on the following: [($220 registration cost) × (1,300 participants not currently registered)] = $286,000.

[1113] This figure is based on the following: [($120 annual maintenance cost) × (4,800 participants not currently registered)] = $576,000. The Commission notes that, for those participants obtaining an LEI in the first year, the annual maintenance cost will be incurred beginning in the year following registration.

[1114] *See* Securities Exchange Act Release No. 71958 (April 17, 2014), 79 FR 25193 (May 2, 2014) (''SD/MSP Recordkeeping Proposing Release'') (proposing recordkeeping and reporting requirements for security-based swap dealers, major security-based swap participants, and broker-dealers).

E. Operating Hours of Registered SDRs—Rule 904

Rule 904, as adopted, requires a registered SDR to have systems in place to continuously receive and disseminate information regarding security-based swap data with certain exceptions. Certain provisions of Rule 904 contain ''collection of information requirements'' within the meaning of the PRA. The title of this collection is ''Rule 904—Operating Hours of Registered SDRs.''

1. Summary of Collection of Information

Rule 904 requires a registered SDR to operate continuously, subject to two exceptions. First, under Rule 904(a) a registered SDR may establish normal closing hours during periods when, in its estimation, the U.S. market and major foreign markets are inactive. A registered SDR is required to provide reasonable advance notice to participants and to the public of its normal closing hours. Second, under Rule 904(b) a registered SDR may declare, on an *ad hoc* basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. A registered SDR is required, to the extent reasonably possible under the circumstances, to avoid scheduling special closing hours during when, in its estimation, the U.S. market and major foreign markets are most active; and provide reasonable advance notice of its special closing hours to participants and to the public.

Rule 904(c) specifies requirements for handling and disseminating reported data during a registered SDR's normal and special closing hours. During normal closing hours and, to the extent reasonably practicable, during special closing hours, a registered SDR is required to have the capability to receive and hold in queue transaction data it receives.[1115] Pursuant to Rule 904(d), immediately upon system re-opening, the registered SDR is required to publicly disseminate any transaction data required to be reported under Rule 901(c) that it received and held in queue, in accordance with the requirements of Rule 902. Pursuant to Rule 904(e), if a registered SDR cannot hold in queue transaction data to be reported, immediately upon re-opening the SDR is required to send a message to all participants that it has resumed normal operations. Thereafter, any participant that had an obligation to report transaction information to the registered SDR, but could not due to the registered SDR's inability to receive and hold in queue such transaction information, must promptly report the information to the registered SDR.[1116]

The Commission originally stated its belief that there were not any costs or burdens applicable to participants as a result of Rule 904(e).[1117] The Commission continues to believe that this conclusion is appropriate. Specifically, the Commission believes that the process by which the registered SDR will notify participants that it has resumed operations would be automated. As a result, the Commission believes that the costs associated with building out the systems necessary for such notifications have already been accounted for in the costs of developing the registered SDRs systems associated with the receipt of security-based swap information under Rule 901.[1118] As a result, the Commission continues to believe that Rule 904(e) is not a collection of information for participants.

2. Use of Information

The information provided pursuant to Rule 904 is necessary to allow participants and the public to know the normal and special closing hours of the registered SDR, and to allow participants to take appropriate action in the event that the registered SDR cannot accept security-based swap transaction reports from participants.[1119]

3. Respondents

Rule 904 applies to all registered SDRs. As noted above, the Commission estimates that there will be ten registered SDRs.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

The Commission continues to estimate that that the one-time, initial burden, as well as ongoing annualized burden for each registered SDR associated with Rule 904 will be only minor additional burden beyond that necessary to ensure its basic operating capability under both Regulation SBSR and the SDR Registration Rules. The Commission estimates that the annual aggregate burden (first-year and ongoing) imposed by Rule 904 will be

[1115] *See* Rule 904(c).

[1116] *See* Rule 904(e).

[1117] *See* Regulation SBSR Proposing Release, 75 FR 75253.

[1118] *See id.*

[1119] The Commission does not believe that Rule 904(c) will result in any burden within the meaning of the PRA. Rule 904(c) does not create new or additional duties to report security-based swap transactions.

360 hours, which corresponds to 36 hours per registered SDR.[1120]

One commenter asserted that the proposed requirement for a registered SDR to receive and hold in the queue the data required to be reported during its closing hours ''exceeds the capabilities of currently-existing reporting infrastructures.'' [1121] However, the Commission notes that this comment was submitted in January 2011; since the receipt of this comment, provisionally registered CFTC SDRs that are likely also to register as SDRs with the Commission appear to have developed the capability of receiving and holding data in queue during their closing hours.[1122] Thus, the Commission continues to believe that requiring registered SDRs to hold data in queue during their closing hours would not create a significant burden for registered SDRs.

The Commission does not believe Rule 904 imposes any separate collection of information on participants of registered SDRs not already accounted for under Rule 901.[1123] Any respondent unable to report to a registered SDR, because such registered SDR was unable to receive the transaction report, would have to delay the submission of the transaction report. The Commission does not believe that the number of transaction reports impacted by this requirement would impact the burdens contained in this PRA.

5. Recordkeeping Requirements

Rule 13n–7(b) under the Exchange Act requires an SDR to keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Exchange Act and the rules or regulations thereunder, for a period of not less than five years, the first two years in a place that is immediately available to representatives of the Commission for inspection and examination.[1124] This requirement encompasses notices issued by a registered SDR to its participants under Rule 904.

6. Collection of Information Is Mandatory

Each collection of information discussed above is mandatory.

7. Confidentiality of Responses to Collection of Information

Any notices issued by a registered SDR to its participants, such as the notices required under Rule 904, would be publicly available.

F. Correction of Errors in Security-Based Swap Information—Rule 905

Rule 905, as adopted, establishes procedures for correcting errors in reported and disseminated security-based swap information.

Certain provisions of Rule 905 of Regulation SBSR contain ''collection of information requirements'' within the meaning of the PRA. The title of this collection is ''Rule 905—Correction of Errors in Security-Based Swap Information.''

1. Summary of Collection of Information

Rule 905 establishes duties for security-based swap counterparties and registered SDRs to correct errors in information that previously has been reported.

Counterparty Reporting Error. Under Rule 905(a)(1), where a side that was not the reporting side for a security-based swap transaction discovers an error in the information reported with respect to such security-based swap, the counterparty must promptly notify the reporting side of the error. Under Rule 905(a)(2), where a reporting side for a security-based swap transaction discovers an error in the information reported with respect to a security-based swap, or receives notification from its counterparty of an error, the reporting side must promptly submit to the entity to which the security-based swap was originally reported an amended report pertaining to the original transaction. The amended report must be submitted to the registered SDR in a manner consistent with the policies and procedures of the registered SDR required pursuant to Rule 907(a)(3).

Duty of Registered SDR to Correct. Rule 905(b) sets forth the duties of a registered SDR relating to corrections. If the registered SDR either discovers an error in a transaction on its system or receives notice of an error from a reporting side, Rule 905(b)(1) requires the registered SDR to verify the accuracy of the terms of the security-based swap and, following such verification, promptly correct the erroneous information contained in its system. Rule 905(b)(2) further requires that, if such erroneous information relates to a security-based swap that the registered SDR previously disseminated and falls into any of the categories of information enumerated in Rule 901(c), the registered SDR must publicly disseminate a corrected transaction report of the security-based swap promptly following verification of the trade by the counterparties to the security-based swap, with an indication that the report relates to a previously disseminated transaction.

2. Use of Information

The security-based swap transaction information required to be reported pursuant to Rule 905 will be used by registered SDRs, participants, the Commission, and other relevant authorities. Participants will be able to use such information to evaluate and manage their own risk positions and satisfy their duties to report corrected information to a registered SDR. A registered SDR will need the required information to correct security-based swap transaction records, in order to maintain an accurate record of a participant's positions as well as to disseminate corrected information. The Commission and other relevant authorities will need the corrected information to have an accurate understanding of the market for surveillance and oversight purposes.

3. Respondents

Rule 905 applies to all participants of registered SDRs. As noted above, the Commission estimates that there will be approximately 300 reporting sides that incur the duty to report security-based swap transactions pursuant to Rule 901. In addition, the Commission estimates that there may be up to 4,800 security-based swap counterparties that are participants of one or more registered SDRs. Because any of these counterparties who are participants could become aware of errors in their reported transaction data, the Commission estimates that there may be as many as 4,800 respondents for purposes of the PRA.

Rule 905 also applies to registered SDRs. As noted above, the Commission estimates there will be ten registered SDRs.

[1120] *See* Regulation SBSR Proposing Release, 75 FR 75253. This figure is based on the following: [(Operations Specialist at 3 hours/month) × (12 months/year) × (10 registered SDRs)] = 360 burden hours.

[1121] Markit I at 4.

[1122] *See, e.g.,* DDR Rulebook, Section 7.1 (DDR System Accessibility) (''Data submitted during DDR System down time is stored and processed once the service has resumed''), available at *http://www.dtcc.com/~/media/Files/Downloads/legal/rules/DDR_Rulebook.pdf* (last visited October 7, 2014).

[1123] The requirement in Rule 904(e) for participants to report information to the registered SDR upon receiving a notice that the registered SDR resumed its normal operations is already considered as part of the participant's reporting obligations under Rule 901 and thus is already included in the burden estimate for Rule 901.

[1124] *See* SDR Adopting Release, Section VI(G)(2)

4. Total Initial and Annual Reporting and Recordkeeping Burdens

The duty to promptly submit amended transaction reports to the appropriate registered SDR after discovery of an error, as required under Rule 905(a)(2), will impose burdens on reporting sides. The duty to promptly notify the relevant reporting side after discovery of an error, as required under Rule 905(a)(1), will impose burdens on non-reporting-side participants.

With respect to reporting sides, the Commission believes that Rule 905(a) will impose an initial, one-time burden associated with designing and building the reporting side's reporting system to be capable of submitting amended security-based swap transactions to a registered SDR. The Commission believes that designing and building appropriate reporting system functionality to comply with Rule 905(a)(2) will be a component of, and represent an incremental ''add-on'' to, the cost to build a reporting system and develop a compliance function as required under Rule 901. Based on discussions with industry participants, the Commission estimates this incremental burden to be equal to 5% of the one-time and annual burdens associated with designing and building a reporting system that is in compliance with Rule 901, plus 10% of the corresponding one-time and annual burdens associated with developing the reporting side's overall compliance program required under Rule 901. This estimate is based on similar calculations contained in the Regulation SBSR Proposing Release,[1125] updated to reflect new estimates relating to the number of reportable events and the number of reporting sides. Thus, for reporting sides, the Commission estimates that Rule 905(a) will impose an initial (first-year) aggregate burden of 15,015 hours, which is 50.0 burden hours per reporting side,[1126] and an ongoing aggregate annualized burden of 7,035 hours, which is 23.5 burden hours per reporting side.[1127]

The Commission believes that the actual submission of amended transaction reports required under Rule 905(a)(2) will not result in a material burden because this will be done electronically though the reporting system that the reporting side must develop and maintain to comply with Rule 901. The overall burdens associated with such a reporting system are addressed in the Commission's analysis of Rule 901.

With regard to non-reporting-side participants, the Commission believes that Rule 905(a) will impose an initial and ongoing burden associated with promptly notifying the relevant reporting party after discovery of an error as required under Rule 905(a)(1). The Commission estimates that the annual burden will be 998,640 hours, which corresponds to 208.05 burden hours per non-reporting-side participant.[1128] This figure is based on the Commission's estimate of (1) 4,800 participants; and (2) 1 transaction per day per non-reporting-side participant.[1129] The burdens of Rule 905 on reporting sides and non-reporting-side participants will be reduced to the extent that complete and accurate information is reported to registered SDRs in the first instance pursuant to Rule 901.

Rule 905(b) requires a registered SDR to develop protocols regarding the reporting and correction of erroneous information. The Commission believes, however, that this duty would represent only a minor extension of other duties for which the Commission is estimating burdens, and consequently, will not impose substantial additional burdens on a registered SDR. A registered SDR will be required to have the ability to collect and maintain security-based swap transaction reports and update relevant records under the rules adopted in the SDR Adopting Release. Likewise, a registered SDR must have the capacity to disseminate additional, corrected security-based swap transaction reports under Rule 902. The burdens associated with Rule 905—including systems development, support, and maintenance—are addressed in the Commission's analysis of those other rules. Thus, the Commission believes that Rule 905(b) will impose only an incremental additional burden on registered SDRs. The Commission estimates that developing and publicly providing the necessary procedures will impose on each registered SDR an initial one-time burden on each registered SDR of approximately 730 burden hours.[1130] The Commission estimates that to review and update such procedures on an ongoing basis will impose an annual burden on each SDR of approximately 1,460 burden hours.[1131]

Accordingly, the Commission estimates that the initial (first-year) aggregate annualized burden on registered SDRs under Rule 905 will be 21,900 burden hours, which corresponds to 2,190 burden hours for each registered SDR.[1132] The Commission further estimates that the ongoing aggregate annualized burden on registered SDRs under Rule 905 will be 14,600 burden hours, which corresponds to 1,460 burden hours for each registered SDR.[1133] This estimated burden is consistent with what the Commission proposed in the Regulation SBSR Proposing Release.

5. Recordkeeping Requirements

Security-based swap transaction reports received pursuant to Rule 905 are subject to Rule 13n–5(b)(4) under the Exchange Act. This rule requires an SDR to maintain the transaction data and related identifying information for not less than five years after the

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[1125] *See* Regulation SBSR Proposing Release, 75 FR 75254.

[1126] *See* Regulation SBSR Proposing Release, 75 FR 75254–55. This figure is calculated as follows: [(((172 burden hours for one-time development of reporting system) × (0.05)) + ((33 burden hours annual maintenance of reporting system) × (0.05)) + ((180 burden hours one-time compliance program development) × (0.1)) + ((218 burden hours annual support of compliance program) × (0.1))) × (300 reporting sides)] = 15,015 burden hours, which is 50 burden hours per reporting side. The burden hours for annual maintenance of the reporting system has been updated to reflect new information on the number of reportable events. *See supra* note 1075.

[1127] *See* Regulation SBSR Proposing Release, 75 FR 75254–55. This figure is calculated as follows: [(((33 burden hours annual maintenance of reporting system) × (0.05)) + ((218 burden hours annual support of compliance program) × (0.1))) × (300 reporting sides)] = 7,035 burden hours, which is 23.5 burden hours per reporting side. The burden hours for annual maintenance of the reporting system has been updated to reflect new information on the number of reportable events. *See supra* note 1075.

[1128] This burden was calculated using the same methodology as was used in the Regulation SBSR Proposing Release, updated to account for new estimates of the number of error notifications resulting from updates in the number of reportable events. *See* Regulation SBSR Proposing Release, 75 FR 75255. This figure is based on the following: [(1.14 error notifications per non-reporting-side participant per day) × (365 days/year) × (Compliance Clerk at 0.5 hours/report) × (4,800 participants)] = 998,640 burden hours, which corresponds to 208.05 burden hours per non-reporting-side participant.

[1129] This figure is based on the following: [((2,000,000 estimated annual security-based swap transactions) / (4,800 participants)) / (365 days/year)] = 1.14 transactions per day, on average.

[1130] *See* Regulation SBSR Proposing Release, 75 FR 75255. This figure is based on the following: [(Sr. Programmer at 80 hours) + (Compliance Manager at 160 hours) + (Compliance Attorney at 250 hours) + (Compliance Clerk at 120 hours) + (Sr. System Analyst at 80 hours) + (Director of Compliance at 40 hours)] = 730 burden hours.

[1131] *See* Regulation SBSR Proposing Release, 75 FR 75255. This figure is based on the following: [(Sr. Programmer at 160 hours) + (Compliance Manager at 320 hours) + (Compliance Attorney at 500 hours) + (Compliance Clerk at 240 hours) + (Sr. System Analyst at 160 hours) + (Director of Compliance at 80 hours)] = 1,460 burden hours.

[1132] This figure is based on the following: [(730 burden hours to develop protocols) + (1,460 burden hours annual support)) × (10 registered SDRs)] = 21,900 burden hours, which corresponds to 2,190 burden hours per registered SDR.

[1133] This figure is based on the following: [(1,460 burden hours annual support) × (10 registered SDRs)] = 14,600 burden hours, which corresponds to 1,460 burden hours per registered SDR.

applicable security-based swap expires and historical positions for not less than five years.[1134]

With respect to information disseminated by a registered SDR in compliance with Rule 905(b)(2), Rule 13n–7(b) under the Exchange Act requires an SDR to keep and preserve at least one copy of all documents, including all policies and procedures required by the Exchange Act and the rules or regulations thereunder, for a period of not less than five years, the first two years in a place that is immediately available to representatives of the Commission for inspection and examination.[1135] This requirement encompasses amended security-based swap transaction reports disseminated by the registered SDR.

6. Collection of Information Is Mandatory

Each collection of information discussed above is mandatory.

7. Confidentiality of Responses to Collection of Information

Information collected pursuant to Rule 905 will be widely available to the extent that it corrects information previously reported pursuant to Rule 901(c) and incorporated into security-based swap transaction reports that are publicly disseminated by a registered SDR pursuant to Rule 902. Most of the information required under Rule 902 will be widely available to the public to the extent it is incorporated into security-based swap transaction reports that are publicly disseminated by a registered SDR pursuant to Rule 902. However, Rule 902(c) prohibits public dissemination of certain kinds of transactions and certain kinds of transaction information. An SDR, pursuant to Sections 13(n)(5) of the Exchange Act and Rules 13n–4(b)(8) and 13n–9 thereunder is required to maintain the privacy of this security-based swap information. To the extent that the Commission receives confidential information pursuant to this collection of information, such information will be kept confidential, subject to the provisions of applicable law.

G. Other Duties of Participants—Rule 906

Rule 906(a), as adopted, establishes procedures designed to ensure that a registered SDR obtains UICs for both counterparties to a security-based swap. Rule 906(b) requires each participant of a registered SDR to provide to the registered SDR information sufficient to identify its ultimate parent(s) and any affiliate(s) of the participant that also are participants of the registered SDR. Rule 906(c) requires each participant that is a registered security-based swap dealer or registered major security-based swap participant to establish, maintain, and enforce written policies and procedures (updated at least annually) that are reasonably designed to ensure compliance with any security-based swap transaction reporting obligations in a manner consistent with Regulation SBSR.

Certain provisions of Rule 906 of Regulation SBSR contain ''collection of information requirements'' within the meaning of the PRA. The title of this collection is ''Rule 906—Duties of All Participants.''

Although the Commission is adopting Rule 906 with certain minor changes from the version re-proposed in the Cross-Border Proposing Release, these changes do not increase the number of respondents to Rule 906 or affect the estimated burdens on respondents to Rule 906. Therefore, the Commission is not revising its estimate of the burdens associated with Rule 906.

1. Summary of Collection of Information

Rule 906(a) sets forth a procedure designed to ensure that a registered SDR obtains relevant UICs for both sides of a security-based swap, not just of the reporting side. Rule 906(a) requires a registered SDR to identify any security-based swap reported to it for which the registered SDR does not have a counterparty ID and (if applicable) broker ID, trading desk ID, and trader ID of each counterparty. Rule 906(a) further requires the registered SDR, once a day, to send a report to each participant identifying, for each security-based swap to which that participant is a counterparty, the security-based swap(s) for which the registered SDR lacks counterparty ID and (if applicable) broker ID, trading desk ID, and trader ID. A participant that receives such a report must provide the missing ID information to the registered SDR within 24 hours.

Rule 906(b) requires each participant of a registered SDR to provide the registered SDR with information sufficient to identify the participant's ultimate parent(s) and any affiliate(s) of the participant that are also participants of the registered SDR.

Rule 906(c) requires each participant that is a registered security-based swap dealer or registered major security-based swap participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any security-based swap transaction reporting obligations in a manner consistent with Regulation SBSR. In addition, Rule 906(c) requires each such participant to review and update its policies and procedures at least annually.

2. Use of Information

The information required to be provided by participants pursuant to Rule 906(a) will complete missing elements of security-based swap transaction reports so that the registered SDR has, and can make available to the Commission and other relevant authorities, accurate and complete records for reported security-based swaps.

Rule 906(b) will be used to ensure that the registered SDR has, and can make available to the Commission and other relevant authorities, group-wide security-based swap position information. This information will assist the Commission and other relevant authorities with monitoring systemic risks in the security-based swap market.

The policies and procedures required under Rule 906(c) will be used by participants to aid in their compliance with Regulation SBSR, and also used by the Commission as part of its ongoing efforts to monitor and enforce compliance with the federal securities laws, including Regulation SBSR.

3. Respondents

Rules 906(a) and 906(b) apply to all participants of registered SDRs. Based on the information currently available to the Commission, the Commission now believes that there may be up to 4,800 participants.[1136] Rule 906(c) applies to participants that are registered security-based swap dealers or registered major security-based swap participants. The Commission estimates that there will be 55 registered security-based swap dealers and registered major security-based swap dealers.

Rule 906 also imposes certain duties on registered SDRs. As noted above, the Commission estimates that there will be ten registered SDRs.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

a. For Registered SDRs

Rule 906(a) requires a registered SDR, once a day, to send a report to each participant identifying, for each security-based swap to which that

[1134] *See* SDR Adopting Release, Section VI(E)(4).

[1135] *See* SDR Adopting Release, Section VI(G)(2).

[1136] The Commission originally estimated that there would be up to 5,000 participants. As discussed above, based on more updated and granular information available to the Commission, this estimate has been revised. *See* Regulation SBSR Proposing Release, 75 FR 75256.

participant is a counterparty, any security-based swap(s) for which the registered SDR lacks counterparty ID and (if applicable) broker ID, trading desk ID, and trader ID. The Commission estimates that there will be a one-time, initial burden of 112 burden hours for a registered SDR to create a report template and develop the necessary systems and processes to produce a daily report required by Rule 906(a).[1137] Further, the Commission estimates that there will be an ongoing annualized burden of 308 burden hours for a registered SDR to generate and issue the daily reports, and to enter into its systems the ID information supplied by participants in response to the daily reports.[1138]

Accordingly, the Commission estimates that the initial aggregate annualized burden for registered SDRs under Rule 906(a) will be 4,200 burden hours for all SDR respondents, which corresponds to 420 burden hours per registered SDR.[1139] The Commission estimates that the ongoing aggregate annualized burden for registered SDRs under Rule 906(a) will be 3,080 burden hours, which corresponds to 308 burden hours per registered SDR.[1140]

b. For Participants

i. Rule 906(a)

Rule 906(a) requires any participant of a registered SDR that receives a report from that registered SDR to provide the missing UICs to the registered SDR within 24 hours. Because all SDR participants will likely be the non-reporting side for at least some transactions to which they are a counterparty, the Commission believes that all participants will be impacted by Rule 906(a). The Commission estimates that the initial and ongoing annualized burden under Rule 906(a) for all participants will be 199,728 burden hours, which corresponds to 41.6 burden hours per participant.[1141] This figure is based on the Commission's estimates of (1) 4,800 participants; and (2) approximately 1.14 transactions per day per participant.[1142]

ii. Rule 906(b)

Rule 906(b) requires every participant to provide the registered SDR an initial parent/affiliate report and subsequent reports, as needed. The Commission estimates that there will be 4,800 participants, that each participant will connect to two registered SDRs on average, and that each participant will submit two reports each year.[1143] Accordingly, the Commission estimates that the initial and ongoing aggregate annualized burden associated with Rule 906(b) will be 9,600 burden hours, which corresponds to 2 burden hours per participant.[1144] The aggregate burden represents an upper estimate for all participants; the actual burden will likely decrease because certain larger participants are likely to have multiple affiliates, and one member of the group could report ultimate parent and affiliate information on behalf of all of its affiliates at the same time.

b. For Covered Participants

Rule 906(c) requires each participant that is a registered security-based swap dealer or registered major security-based swap participant (each, a ''covered participant'') to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any security-based swap transaction reporting obligations in a manner consistent with Regulation. Rule 906(c) also requires the review and updating of such policies and procedures at least annually. The Commission estimates that the one-time, initial burden for each covered participant to adopt written policies and procedures as required under Rule 906(c) will be approximately 216 burden hours.[1145] As discussed in the Regulation SBSR Proposing Release,[1146] this figure is based on the estimated number of hours to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing. In addition, the Commission estimates the burden of maintaining such policies and procedures, including a full review at least annually, as required by Rule 906(c), will be approximately 120 burden hours for each covered participant.[1147] This figure includes an estimate of hours related to reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining internal controls systems, and performing necessary testing. Accordingly, the Commission estimates that the initial aggregate annualized burden associated with Rule 906(c) will be 18,480 burden hours, which corresponds to 336 burden hours per covered participant.[1148] The Commission estimates that the ongoing aggregate annualized burden associated with Rule 906(c) will be 6,600 burden hours, which corresponds to 120 burden hours per covered participant.[1149]

Therefore, the Commission estimates that the total initial aggregate annualized burden associated with Rule 906 will be 232,008 burden hours,[1150]

[1137] *See* Regulation SBSR Proposing Release, 75 FR 75256. The Commission has derived the total estimated burdens based on the following estimates, which are based on the information provided to the Commission: (Senior Systems Analyst at 40 hours) + (Sr. Programmer at 40 hours) + (Compliance Manager at 16 hours) + (Director of Compliance at 8 hours) + (Compliance Attorney at 8 hours) = 112 burden hours.

[1138] *See* Regulation SBSR Proposing Release, 75 FR 75256–57. The Commission has derived the total estimated burdens based on the following estimates, which are based on the information provided to the Commission: (Senior Systems Analyst at 24 hours) + (Sr. Programmer at 24 hours) + (Compliance Clerk at 260 hours) = 308 burden hours.

[1139] *See* Regulation SBSR Proposing Release, 75 FR 75256–57. The Commission derived its estimate from the following: [(112 + 308 burden hours) × (10 registered SDRs)] = 4,200 burden hours, which corresponds to 420 burden hours per registered SDR.

[1140] *See* Regulation SBSR Proposing Release, 75 FR 75256–57. The Commission derived its estimate from the following: [(308 burden hours) × (10 registered SDRs)] = 3,080 burden hours, which corresponds to 308 burden hours per registered SDR.

[1141] This burden was calculated using the same methodology as was used in the Regulation SBSR Proposing Release, updated to account for new estimates of the number of missing information reports resulting from updates in the number of reportable events. *See* Regulation SBSR Proposing Release, 75 FR 75256–57. This figure is based on the following: [(1.14 missing information reports per participant per day) × (365 days/year) × (Compliance Clerk at 0.1 hours/report) × (4,800 participants) = 199,728 burden hours, which corresponds to 41.6 burden hours per participant.

[1142] This figure is based on the following: [((2,000,000 estimated annual security-based swap transactions) / 4,800 participants)) / (365 days/year)] = 1.14 transactions per day, or approximately 1 transaction per day.

[1143] The Commission estimates that, during the first year, each participant will submit an initial report and one update report and, in subsequent years, will submit two update reports.

[1144] *See* Regulation SBSR Proposing Release, 75 FR 75257. This figure is based on the following: [(Compliance Clerk at 0.5 hours per report) × (2 reports/year/SDR connection) × (2 SDR connections/participant) × (4,800 participants)] = 9,600 burden hours, which corresponds to 2 burden hours per participant.

[1145] *See* Regulation SBSR Proposing Release, 75 FR 75257. This figure is based on the following: [(Sr. Programmer at 40 hours) + (Compliance Manager at 40 hours) + (Compliance Attorney at 40 hours) + (Compliance Clerk at 40 hours) + (Sr. Systems Analyst at 32 hours) + (Director of Compliance at 24 hours)] = 216 burden hours per covered participant.

[1146] *See* Regulation SBSR Proposing Release, 75 FR 75257.

[1147] *See* Regulation SBSR Proposing Release, 75 FR 75257. This figure is based on the following: [(Sr. Programmer at 8 hours) + (Compliance Manager at 24 hours) + (Compliance Attorney at 24 hours) + (Compliance Clerk at 24 hours) + (Sr. Systems Analyst at 16 hours) + (Director of Compliance at 24 hours)] = 120 burden hours per covered participant.

[1148] This figure is based on the following: [(216 + 120 burden hours) × (55 covered participants)] = 18,480 burden hours.

[1149] This figure is based on the following: [(120 burden hours) × (55 covered participants)] = 6,600 burden hours.

[1150] This figure is based on the following: [(4,200 burden hours for registered SDRs under Rule 906(a)) + (199,728 burden hours for participants

and the total ongoing aggregate annualized burden will be 219,008 burden hours for all participants.[1151]

5. Recordkeeping Requirements

The daily reports that participants complete in order to provide missing UICs to a registered SDR pursuant to Rule 906(a) and the initial parent/affiliate reports and subsequent reports required by Rule 906(b) are not subject to any specific recordkeeping requirements for participants to the extent that these participants are non-registered persons.[1152] With regard to these reports, as well as any other information that a registered SDR may receive from participants pursuant to Rule 906, Rule 13n–5(b)(4) requires an SDR to maintain this information for not less than five years after the applicable security-based swap expires.[1153]

The Commission has proposed but not yet adopted recordkeeping requirements for registered security-based swap dealers and registered major security-based swap participants.[1154]

6. Collection of Information Is Mandatory

Each collection of information discussed above is mandatory.

7. Confidentiality of Responses to Collection of Information

The collection of information required by Rule 906 will not be widely available. To the extent that the Commission receives confidential information pursuant this collection of information, such information will be kept confidential, subject to applicable law.

H. Policies and Procedures of Registered SDRs—Rule 907

Rule 907, as adopted, requires each registered SDR to establish and maintain policies and procedures addressing various aspects of Regulation SBSR compliance. Certain provisions of Rule 907 of Regulation SBSR contain ''collection of information requirements'' within the meaning of the PRA. The title of this collection is ''Rule 907—Policies and Procedures of Registered SDRs.''

1. Summary of Collection of Information

Rule 907(a) requires a registered SDR to establish and maintain written policies and procedures that detail how it will receive and publicly disseminate security-based swap transaction information. Rule 907(a)(4) requires policies and procedures for assigning ''special circumstances'' flags to the necessary transaction reports.

Rule 907(c) requires a registered SDR to make its policies and procedures available on its Web site. Rule 907(d) requires a registered SDR to review, and update as necessary, the policies and procedures that it is required to have by Regulation SBSR at least annually. Rule 907(e) requires a registered SDR to provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to Regulation SBSR and the registered SDR's policies and procedures established thereunder.

2. Use of Information

The policies and procedures required under Rules 907(a) and 907(b) will be used by reporting sides to understand the specific data elements of security-based swap transactions that they must report and the specific data formats and other reporting protocols that they will be required to use. These policies and procedures will be used generally by registered SDRs to aid in their compliance with Regulation SBSR, and also by the Commission as part of its ongoing efforts to monitor and enforce compliance with the federal securities laws, including Regulation SBSR. Finally, any information or reports provided to the Commission pursuant to Rule 907(e) will be used by the Commission to assess the timeliness, accuracy, and completeness of reported transaction data and assist the Commission's efforts to enforce applicable security-based swap reporting rules.

3. Respondents

Rule 907 applies to registered SDRs. As noted above, the Commission estimates that there will be ten registered SDRs.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

The Commission estimates that the one-time, initial burden for a registered SDR to adopt written policies and procedures as required under Rule 907 will be approximately 15,000 hours.[1155] As discussed in the Regulation SBSR Proposing Release, this figure is based on the estimated number of hours to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing.[1156] In addition, the Commission estimates the annual burden of maintaining such policies and procedures, including a full review at least annually, making available its policies and procedures on the registered SDR's Web site, and information or reports on non-compliance, as required under Rule 907(e), will be approximately 30,000 hours for each registered SDR.[1157] As discussed in the Regulation SBSR Proposing Release, this figure includes an estimate of hours related to reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining relevant systems and internal controls systems, performing necessary testing, monitoring participants, and compiling data.

The Commission estimates that the initial annualized burden associated with Rule 907 will be approximately 45,000 hours per registered SDR, which corresponds to an initial annualized aggregate burden of approximately 450,000 hours.[1158] The Commission

under Rule 906(a)) + (9,600 burden hours for participants under Rule 906(b)) + (18,480 burden hours for covered participants under Rule 906(c))] = 232,008 burden hours.

[1151] This figure is based on the following: [(3,080 burden hours for registered SDRs under proposed Rule 906(a)) + (199,728 burden hours for participants under proposed Rule 906(a)) + (9,600 burden hours for participants under proposed Rule 906(b)) + (6,600 burden hours for covered participants under proposed Rule 906(c))] = 219,008 burden hours.

[1152] *See* Securities Exchange Act Release No. 71958 (April 17, 2014), 79 FR 25193 (May 2, 2014) (''SD/MSP Recordkeeping Proposing Release'') (proposing recordkeeping and reporting requirements for security-based swap dealers, major security-based swap participants, and broker-dealers).

[1153] *See* SDR Adopting Release, Section VI(E)(4).

[1154] *See* SD/MSP Recordkeeping Proposing Release, 79 FR 25193.

[1155] *See* Regulation SBSR Proposing Release, 75 FR 75259. This figure is based on the following: [(Sr. Programmer at 1,667 hours) + (Compliance Manager at 3,333 hours) + (Compliance Attorney at 5,000 hours) + (Compliance Clerk at 2,500 hours) + (Sr. System Analyst at 1,667 hours) + (Director of Compliance at 833 hours)] = 15,000 burden hours per registered SDR. These burdens are the result of Rule 907 only and do not account for any burdens that result from the SDR Rules. Such burdens are addressed in a separate release. *See* SDR Adopting Release, Section VII.

[1156] *See* Regulation SBSR Proposing Release, 75 FR 75259. This figure also includes time necessary to design and program systems and implement policies and procedures to assign certain UICs, as required by Rule 907(a)(5).

[1157] *See* Regulation SBSR Proposing Release, 75 FR 75259. This figure is based on the following: [(Sr. Programmer at 3,333 hours) + (Compliance Manager at 6,667 hours) + (Compliance Attorney at 10,000 hours) + (Compliance Clerk at 5,000 hours) + (Sr. System Analyst at 3,333 hours) + (Director of Compliance at 1,667 hours)] = 30,000 burden hours per registered SDR.

[1158] This figure is based on the following: [((15,000 burden hours per registered SDR) + (30,000 burden hours per registered SDR)) × (10 registered SDRs)] = 450,000 initial annualized aggregate burden hours during the first year.

estimates that the ongoing annualized burden associated with Rule 907 will be approximately 30,000 hours per registered SDR,[1159] which corresponds to an ongoing annualized aggregate burden of approximately 300,000 hours.[1160]

5. Recordkeeping Requirements

Rule 13n–7(b) under the Exchange Act requires an SDR to keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Exchange Act and the rules or regulations thereunder, for a period of not less than five years, the first two years in a place that is immediately available to representatives of the Commission for inspection and examination. This requirement will encompass policies and procedures established by a registered SDR pursuant to Rule 907, and any information or reports provided to the Commission pursuant to Rule 907(e).

6. Collection of Information Is Mandatory

Each collection of information discussed is mandatory.

7. Confidentiality of Responses to Collection of Information

All of the policies and procedures required by Rule 907 will have to be made available by a registered SDR on its Web site and will not, therefore, be confidential. Any information obtained by the Commission from a registered SDR pursuant to Rule 907(e) relating to the timeliness, accuracy, and completeness of data reported to the registered SDR will be kept confidential subject to the provisions of applicable law.

I. Cross-Border Matters—Rule 908

Rule 908(a), as adopted, defines when a security-based swap transaction will be subject to regulatory reporting and/or public dissemination. Specifically, Rule 908(a)(1)(i), as adopted, provides that a security-based swap shall be subject to regulatory reporting and public dissemination if ''[t]here is a direct or indirect counterparty that is a U.S. person on either or both sides of the transaction.'' Rule 908(a)(1)(ii), as adopted, provides that a security-based swap shall be subject to regulatory reporting and public dissemination if ''[t]he security-based swap is submitted to a clearing agency having its principal place of business in the United States.'' Rule 908(a)(2), as adopted, provides that a security-based swap not included within the above provisions would be subject to regulatory reporting but not public dissemination ''if there is a direct or indirect counterparty on either or both sides of the transaction that is a registered security-based swap dealer or a registered major security-based swap participant.''

Regulation 908(b), as adopted, defines when a person might incur obligations under Regulation SBSR. Specifically, Rule 908(b) provides that, notwithstanding any other provision of Regulation SBSR, a person shall not incur any obligation under Regulation SBSR unless it is a U.S. person, a registered security-based swap dealer or registered major security-based swap participant.

Rules 908(a) and 908(b) do not impose any collection of information requirements. To the extent that a security-based swap transaction or counterparty is subject to Rule 908(a) or 908(b), respectively, the collection of information burdens are calculated as part of the underlying rule (*e.g.,* Rule 901, which imposes the basic duty to report security-based swap transaction information).

Rule 908(c), as adopted, sets forth the requirements surrounding requests for substituted compliance. As adopted, Rule 908(c)(1) sets forth the general rule that compliance with the regulatory reporting and public dissemination requirements in sections 13(m) and 13A of the Act (15 U.S.C. 78m(m) and 78m–1), and the rules and regulations thereunder, may be satisfied by compliance with the rules of a foreign jurisdiction that is the subject of a Commission order described in Rule 908(c)(2), provided that at least one of the direct counterparties is either a non-U.S. person or a foreign branch.

Rule 908(c) contains ''collection of information requirements'' within the meaning of the PRA. The title of this collection is ''Rule 908(c)—Substituted Compliance.''

1. Summary of Collection of Information

A party that potentially would comply with requirements under Regulation SBSR pursuant to a substituted compliance order or any foreign financial regulatory authority or authorities supervising such a person's security-based swap activities, may file an application requesting that the Commission make a substituted compliance determination pursuant to Rule 0–13 under the Exchange Act.[1161] Such entity will be required to provide the Commission with any supporting documentation as the Commission may request, in addition to information that the entity believes is necessary for the Commission to make a determination, such as information demonstrating that the requirements applied in the foreign jurisdiction are comparable to the Commission's and describing the methods used by relevant foreign financial regulatory authorities to monitor compliance with those requirements.

2. Use of Information

The Commission will use the information collected pursuant to Rule 908(c)(2)(ii) to evaluate requests for substituted compliance with regard to regulatory reporting and public dissemination of security-based swaps.

3. Respondents

In the Cross-Border Proposing Release, the Commission preliminarily estimated that requests for substituted compliance determinations might arise in connection with security-based swap market participants and transactions in up to 30 discrete jurisdictions.[1162] Because only a small number of jurisdictions have substantial OTC derivatives markets and are implementing OTC derivatives reforms, the Commission preliminarily estimated that it would receive approximately ten requests in the first year for substituted compliance determinations with respect to regulatory reporting and public dissemination pursuant to Rule 908(c)(2)(ii), and two requests each subsequent year.[1163] Although the range of entities that are allowed to submit applications for substituted compliance has increased, the Commission does not believe that this warrants a change in its estimate of the number of requests that the Commission will receive. The Commission continues to believe that other considerations will determine the number of applications that it will receive, such as which jurisdictions have regulatory structures similar enough to the Commission's as to merit

[1159] *See* Regulation SBSR Proposing Release, 75 FR 75259. This figure is based on the following: [(Sr. Programmer at 3,333 hours) + (Compliance Manager at 6,667 hours) + (Compliance Attorney at 10,000 hours) + (Compliance Clerk at 5,000 hours) + (Sr. System Analyst at 3,333 hours) + (Director of Compliance at 1,667 hours)] = 30,000 burden hours per registered SDR.

[1160] *See* Regulation SBSR Proposing Release, 75 FR 75259. This figure is based on the following: [(30,000 burden hours per registered SDR) × (10 registered SDRs)] = 300,000 ongoing, annualized aggregate burden hours.

[1161] *See* 17 CFR 200.0–13; Cross-Border Adopting Release, 79 FR 47357–60.

[1162] *See* Cross-Border Proposing Release, 78 FR 31109–10.

[1163] *See id.* at 31110. Rule 908(c)(2)(ii), as adopted, allows ''[a] party that potentially would comply with requirements under [Regulation SBSR] . . . or any foreign financial regulatory authority or authorities supervising such a person's security-based swap activities may file an application.''

a request and the number of entities potentially impacted by Regulation SBSR.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

Rule 908(c)(2)(ii), as adopted, applies to any person that requests a substituted compliance determination with respect to regulatory reporting and public dissemination of security-based swaps. In connection with each request, the requesting party must provide the Commission with any supporting documentation that the entity believes is necessary for the Commission to make a determination, including information demonstrating that the requirements applied in the foreign jurisdiction are comparable to the Commission's and describing the methods used by relevant foreign financial regulatory authorities to monitor compliance with those requirements. The Commission initially estimated, in the Cross-Border Proposing Release, that the total paperwork burden associated with submitting a request for a substituted compliance determination with respect to regulatory reporting and public dissemination will be approximately 1,120 hours, plus $1,120,000 for 14 requests.[1164] This estimate includes all collection burdens associated with the request, including burdens associated with analyzing whether the regulatory requirements of the foreign jurisdiction impose a comparable, comprehensive system for the regulatory reporting and public dissemination of all security-based swaps. Furthermore, this estimate assumes that each request will be prepared *de novo,* without any benefit of prior work on related subjects. The Commission notes, however, that as such requests are developed with respect to certain jurisdictions, the cost of preparing such requests with respect to other foreign jurisdictions could decrease.[1165]

Assuming ten requests in the first year, the Commission staff estimated an aggregated burden for the first year will be 800 hours, plus $800,000 for the services of outside professionals.[1166] The Commission preliminarily estimated that it would receive 2 requests for substituted compliance determinations pursuant to Rule 908(c)(2)(ii) in each subsequent year. Assuming the same approximate time and costs, the aggregate burden for each year following the first year will be up to 160 hours of company time and $160,000 for the services of outside professionals.[1167]

5. Recordkeeping Requirements

Rule 908(c)(2)(ii) does not impose any recordkeeping requirements on entities that submit requests for a substituted compliance determination. The Commission has proposed but not yet adopted recordkeeping requirements for registered security-based swap dealers.

6. Collection of Information Is Mandatory

The collection of information discussed above is mandatory for any entity seeking a substituted compliance determination from the Commission regarding regulatory reporting and public dissemination of security-based swaps.

7. Confidentiality of Responses to Collection of Information

The Commission generally intends to make public the information submitted to it pursuant to any request for a substituted compliance determination under Rule 908(c)(2)(ii), including supporting documentation provided by the requesting party. However, a requesting party may submit a confidential treatment request pursuant to Rule 24b–2 under the Exchange Act to object to public disclosure.

J. Registration of SDRs as Securities Information Processors—Rule 909

Rule 909 requires a registered SDR also to register with the Commission as a SIP on Form SDR. Previously, in the Regulation SBSR Proposing Release, the Commission had proposed the use of a separate form, Form SIP. Based on the use of that form, the Commission stated in the Regulation SBSR Proposing Release that Rule 909 contained ''collection of information requirements'' within the meaning of the PRA and thus, the Commission preliminarily estimated certain burdens on registered SDRs that would result from Rule 909.[1168] As a result of the consolidation of SDR and SIP registration on a single form, the Commission now believes that Rule 909 does not constitute a separate ''collection of information'' within the meaning of the PRA.[1169]

XXII. Economic Analysis

The Commission is sensitive to the economic consequences and effects, including costs and benefits, of its rules. Some of these costs and benefits stem from statutory mandates, while others are affected by the discretion exercised in implementing the mandates. The following economic analysis identifies and considers the costs and benefits—including the effects on efficiency, competition, and capital formation—that may result from the rules, as adopted . These costs and benefits are discussed below and have informed the policy choices described throughout this release.

The Dodd-Frank Act amended the Exchange Act to require the regulatory reporting and public dissemination of all security-based swaps. To implement these requirements, Regulation SBSR requires that all security-based swaps to be reported to a registered SDR, and requires the registered SDR immediately to disseminate a subset of that information to the public. Regulation SBSR specifies the security-based swap information that must be reported, who has the duty to report, and the timeframes for reporting and disseminating information. Regulation SBSR also requires registered SDRs to establish policies and procedures governing the reporting and dissemination process, including procedures for utilizing unique identification codes for legal entities, units of legal entities (such as branches, trading desks, and individual traders), products, and transactions. In the Regulation SBSR Proposing Release, the Commission highlighted certain overarching benefits to the security-based swap markets that it preliminarily believed would result from the adoption of Regulation SBSR. These potential

[1164] The Commission staff estimates that the paperwork burden associated with making a substituted compliance request pursuant to Rule 908(c)(2)(ii) will be approximately 80 of in-house counsel time, plus $80,000 for the services of outside professionals (based on 200 hours of outside counsel time × $400). *See id.,* Cross-Border Proposing Release, 78 FR 31110

[1165] If and when the Commission grants a request for substituted compliance, subsequent applications might be able to leverage work done on the initial application. However, the Commission is unable to estimate the amount by which the cost could decrease without knowing the extent to which different jurisdictions have similar regulatory structures.

[1166] The Commission staff estimates that the paperwork burden associated with making a substituted compliance request pursuant to Rule 242.908(c)(2)(ii) will be up to approximately 800 hours (80 hours of in-house counsel time × 10 respondents), plus $800,000 for the services of outside professionals (based on 200 hours of outside counsel time × $400 × 10 respondents). *See* Cross-Border Proposing Release, 78 FR 31110.

[1167] The Commission staff estimates that the paperwork burden associated with making a substituted compliance request pursuant to Rule 242.908(c)(2)(ii) would be up to approximately 160 hours (80 hours of in-house counsel time × 2 respondents) + plus $160,000 for the services of outside professionals (based on 200 hours of outside counsel time × $400 × 2 respondents). *See* Cross-Border Proposing Release, 78 FR 31110.

[1168] *See* Regulation SBSR Proposing Release, 75 FR 75261.

[1169] *See* SDR Adopting Release, Section VI(A)(1)(c).

benefits include, generally, improved market quality, improved risk management, greater efficiency, and improved Commission oversight.[1170]

In the Cross-Border Proposing Release, the Commission re-proposed Regulation SBSR in its entirety and considered the changes to the initial assessments of costs and benefits associated with the re-proposed rules. In doing so, the Commission explained that Regulation SBSR is intended to further the goals highlighted in the Regulation SBSR Proposing Release, while further limiting, to the extent practicable, the overall costs to the security-based swap market associated with regulatory reporting and public dissemination in cross-border situations.[1171] The adopted rules are designed to limit overall costs by imposing reporting duties and the associated costs on those parties who are most likely to have the necessary infrastructure in place to carry out the reporting function.[1172] As the Commission noted, many of the revisions set forth in the re-proposal were suggested by commenters to the initial proposal and were designed, among other things, to better align reporting duties with larger entities that have greater resources and capability to report and to reduce the potential for duplicative reporting. The Commission stated that the revisions should help to limit, to the extent practicable, the overall costs to the security-based swap market associated with reporting in cross-border situations.[1173]

The Commission is now adopting Regulation SBSR, with certain revisions discussed in Sections I through XVII, *supra.*

In assessing the economic impact of the rules, the Commission refers to the broader costs and benefits associated with the application of the adopted rules as ''programmatic'' costs and benefits. These include the costs and benefits of applying the substantive Title VII requirements to the reporting of transactions by market participants, as well as to the functions performed by infrastructure participants (such as SDRs) in the security-based swap market. In several places the Commission also considers how the programmatic costs and benefits might change when comparing the adopted approach to other alternatives suggested by comment letters. The Commission's analysis also considers ''assessment'' costs—those that arise from current and future market participants expending resources to determine whether they are subject to Regulation SBSR, and could incur expenses in making this determination even if they ultimately are not subject to rules for which they made an assessment.

The Commission's analysis also recognizes that certain market participants are subject to Regulation SBSR while potentially also being subject to requirements imposed by other regulators. Concurrent, and potentially duplicative or conflicting, regulatory requirements could be imposed on persons because of their resident or domicile status or because of the place their security-based swap transactions are conducted. Rule 908(c) establishes a mechanism whereby market participants who would be subject to both Regulation SBSR and a foreign regulatory regime could, subject to certain conditions, ''substitute compliance'' with the foreign regulatory regime for compliance with Regulation SBSR.

A. Broad Economic Considerations

Among the primary economic considerations for promulgating the rules on the regulatory reporting and public dissemination of security-based swap information are the risks to financial stability posed by security-based swap activity and exposures and the effect that the level of transparency in the security-based swap market may have on market participants' ability to efficiently execute trades. For example, on one hand, an increased level of transparency may make trading more efficient since market participants have additional information on which to base their trading decisions. On the other hand, if post-trade transparency makes hedging of large trades or trades in illiquid securities more difficult, it may make execution of these trades less efficient.[1174]

As the Commission has noted previously,[1175] the security-based swap market allows participants opportunities for efficient risk sharing. By transacting in security-based swaps, firms can lay off financial and commercial risks that they are unwilling to bear to counterparties who may be better-equipped to bear them. Risk transfer is accomplished through contractual obligations to exchange cash flows with different risk characteristics. These opportunities for risk sharing, however, also represent opportunities for risk transmission through a variety of channels. For instance, a credit event that triggers a large payout to one counterparty by a seller of credit protection, may render that protection seller unable to meet other payment obligations, placing its other counterparties under financial strain. In addition to the risk of sequential counterparty default, security-based swap relationships can transmit risks across asset classes and jurisdictional boundaries through liquidity and asset price channels.

Unlike most other securities transactions, security-based swaps entail ongoing financial obligations between counterparties during the life of a transaction that could span several years. As a result of these ongoing obligations, market participants are exposed not only to the market risk of assets that underlie a security-based swap contract, but also to the credit risk of their counterparties until the transaction is terminated. These exposures create a web of financial relationships in which the failure of a single large firm active in the security-based swap market can have consequences beyond the firm itself. A default by such a firm, or even the perceived lack of creditworthiness of that firm, could produce contagion through sequential counterparty default or reductions in liquidity, willingness to extend credit, and valuations for financial instruments.[1176]

Currently, the security-based swap market is an OTC market without standardized reporting or public

[1170] *See* Regulation SBSR Proposing Release, 75 FR 75261–62.

[1171] *See* Cross-Border Proposing Release, 78 FR 31196–97.

[1172] While certain parties that generally will have the heaviest duties to report transactions (*e.g.,* registered security-based swap dealers and registered major security-based swap participants) will incur costs, the costs of those parties generally will be lower than they would be for other parties (*e.g.,* non-dealers) because those parties may already have the necessary infrastructure in place to report transactions and they will benefit from economies of scale due to the high volume of transactions that flows through them compared to other parties. Although security-based swap dealers and major security-based swap participants might pass on these costs, at least in part, to their non-reporting counterparties, the costs that are passed on to non-reporting parties are likely to be lower than the costs that the non-reporting parties would face if they had direct responsibility to report these transactions.

[1173] *See* Cross-Border Proposing Release, 78 FR 31192.

[1174] *See* Analysis of Post-Trade Transparency, in which Commission staff describes the effects of post-trade transparency on relatively illiquid swaps.

[1175] *See* Cross-Border Adopting Release, 79 FR 47283–85.

[1176] *See, e.g.,* Markus K. Brunnermeier and Lasse Heje Pedersen, ''Market Liquidity and Funding Liquidity,'' Review of Financial Studies (2009); Denis Gromb and Dimitri Vayanos, ''A Model of Financial Market Liquidity,'' Journal of the European Economic Association (2010).

dissemination requirements.[1177] Market participants observe only the details of transactions for which they are a counterparty, and there is no comprehensive and widely available source of information about transactions after they occur (post-trade transparency). As a result, the ability of a market participant to evaluate a potential transaction depends on its own transaction history and indicative (non-binding) quotes that it may obtain through fee-based services, and OTC market participants with the largest order flow have an informational advantage over other market participants. The value of private information to large dealers may, in part, explain why security-based swap market participants do not have sufficient incentive to voluntarily implement post-trade transparency.[1178] Additionally, unless all market participants are subject to reporting rules, market participants who may prefer a more transparent market structure may not believe that the benefits of disseminating data about their own limited order flow justifies the costs associated with building and paying for the necessary infrastructure to support public dissemination of transaction information.

The discussion below presents an overview of the OTC derivatives markets, a consideration of the general costs and benefits of the regulatory reporting and public dissemination requirements, and a discussion of the costs and benefits of each rule within Regulation SBSR. The economic analysis concludes with a discussion of the potential effects of Regulation SBSR, as adopted, on efficiency, competition, and capital formation.

B. Baseline

To assess the economic impact of the final rules described in this release, the Commission is using as a baseline the security-based swap market as it exists at the time of this release, including applicable rules adopted by the Commission but excluding rules that have been proposed but not yet finalized. The analysis includes the statutory and regulatory provisions that currently govern the security-based swap market pursuant to the Dodd-Frank Act. The Commission also has considered, where appropriate, the impacts on market practice of other regulatory regimes.

1. Current Security-Based Swap Market

The Commission's analysis of the state of the current security-based swap market is based on data obtained from DTCC–TIW, particularly data regarding the activity of market participants in the single-name credit default swap (CDS) market during the period from 2008 to 2013. Some of the Commission staff's analysis regarding the impact of CFTC trade reporting rules entails the use of open positions and transaction activity data for index credit default swap (index CDS) and single-name CDS during the period from July 1, 2011 to June 30, 2013, obtained from the DTCC–TIW and through the DTCC public Web site of weekly stock and volume reports.[1179] The data for index CDS encompasses CDS on both broad-based security indices and narrow-based security indices, and ''security-based swap'' in relevant part encompasses swaps based on single securities or on narrow-based security indices.[1180]

While other trade repositories may collect data on transactions in total return swaps on equity and debt, the Commission does not currently have access to such data for these products (or other products that are security-based swaps). As such, the Commission is unable to analyze security-based swaps other than those described above. However, the Commission believes that the single-name CDS data are representative of the market and therefore can directly inform the analysis of the state of the current security-based swap market.[1181]

The Commission believes that the data underlying its analysis provides reasonably comprehensive information regarding the single-name CDS transactions and composition of the single-name CDS market participants. The Commission notes that the data available from DTCC–TIW do not encompass those CDS transactions that both: (1) Do not involve U.S. counterparties[1182]; and (2) are based on reference entities domiciled outside the United States (non-U.S. reference entities). Notwithstanding this limitation, the Commission believes that the DTCC–TIW data provide information that is sufficient for the purpose of identifying the types of market participants active in the security-based swap market and the general characteristics of transactions within that market.[1183]

a. Security-Based Swap Market Participants

The available data supports the characterization of the security-based swap market as one that relies on intermediation by a small number of entities that engage in dealing activities. In addition to this small number of dealing entities, thousands of other participants appear as counterparties to security-based swap contracts in the sample, and include, but are not limited to, investment companies, pension funds, private (hedge) funds, sovereign entities, and industrial companies. Most non-dealer users of security-based swaps do not directly engage in the trading of swaps with other non-dealers, but use dealers, banks, or investment advisers as intermediaries or agents to establish their positions. Based on an analysis of the counterparties to trades reported to the DTCC–TIW, there are 1,800 entities that engaged directly in trading between November 2006 and December 2013.

Table 1, below, highlights that close to three-quarters of these entities (DTCC-defined ''firms'' shown in DTCC–TIW, which are referred to here as ''transacting agents'') were identified as investment advisers, of which approximately 40% (about 30% of all transacting agents) were registered investment advisers under the Investment Advisers Act of 1940.[1184] Although investment advisers comprise the vast majority of transacting agents, the transactions that they executed account for only 9.7% of all single-name CDS trading activity reported to the DTCC–TIW, measured by number of

[1177] There is voluntary reporting as well as voluntary clearing, as discussed in Section XXII(B). However, transaction level information is not made public through these channels. Only limited information (*e.g.,* trading volume and notional outstanding) is available publicly on an aggregate basis, and often with a delay.

[1178] Throughout Section XXII, the term ''dealers'' refers to security-based swap market participant that engage in dealing activities while the term ''registered dealers'' are those required to register with the Commission. See Intermediary Definitions Adopting Release, 77 FR 30596; Cross-Border Adopting Release, 79 FR 47277.

[1179] The DTCC public Web site can be found at *http://www.dtcc.com/repository-otc-data.aspx*, last visited September 22, 2014. *See also* Analysis of Post-Trade Transparency.

[1180] *See* Section 3(a)(68) of the Exchange Act. *See also* Product Definitions Adopting Release, 77 FR 48208.

[1181] *See* Cross-Border Proposing Release, 78 FR 31120.

[1182] The Commission notes that DTCC–TIW's entity domicile determinations may not reflect the definition of ''U.S. person'' in Rule 900(ss).

[1183] Commission staff estimates, using data from 2013, that the transaction data include 77% of all single-name CDS transactions reported to DTCC–TIW.

[1184] *See* 15 U.S.C. 80b1–80b21. Transacting agents engage in the security-based swap market, without relying on an intermediary, on behalf of principals. For example, a university endowment may hold a position in a security-based swap that is built up by an investment adviser that transacts on the endowment's behalf. In this case, the university endowment is a principal that uses the investment adviser as a transacting agent.

transaction-sides.[1185] The vast majority of transactions (84.1%) measured by number of transaction-sides were executed by ISDA-recognized dealers.[1186]

TABLE 1—THE NUMBER OF TRANSACTING AGENTS BY COUNTERPARTY TYPE AND THE FRACTION OF TOTAL TRADING ACTIVITY, FROM NOVEMBER 2006 THROUGH DECEMBER 2013, REPRESENTED BY EACH COUNTERPARTY TYPE

Transacting agents	Number	Percent	Transaction share (%)
Investment Advisers	1,347	74.8	9.7
—SEC registered	*529*	*29.4*	*5.9*
Banks	256	14.2	5.0
Pension Funds	29	1.6	0.1
Insurance Companies	36	2.0	0.2
ISDA-Recognized Dealers [1187]	17	0.9	84.1
Other	115	6.4	1.0
Total	1,800	100	100

Principal holders of CDS risk exposure are represented by ''accounts'' in the DTCC–TIW.[1188] The staff's analysis of these accounts in DTCC–TIW shows that the 1,800 transacting agents classified in Table 1 represent over 10,054 principal risk holders. Table 2, below, classifies these principal risk holders by their counterparty type and whether they are represented by a registered or unregistered investment adviser.[1189] For instance, 256 banks in Table 1 allocated transactions across 369 accounts, of which 30 were represented by investment advisers. In the remaining 339 instances, banks traded for their own accounts. Meanwhile, 17 ISDA-recognized dealers in Table 1 allocated transactions across 69 accounts.

Among the accounts, there are 1,086 special entities [1190] and 636 investment companies registered under the Investment Company Act.[1191] Private funds comprise the largest type of account holders that the Commission was able to classify, and although not verified through a recognized database, most of the funds that could not be classified appear to be private funds.[1192]

[1185] Each transaction has two transaction sides, *i.e.,* two transaction counterparties.

[1186] The 1,800 entities included all DTCC-defined ''firms'' shown in DTCC–TIW as transaction counterparties that report at least one transaction to DTCC–TIW as of December 2013. The staff in the Division of Economic and Risk Analysis classified these firms, which are shown as transaction counterparties, by machine matching names to known third-party databases and by manual classification. This is consistent with the methodology used in the re-proposal. *See* Cross-Border Proposing Release, 78 FR 31120 note 1304. Manual classification was based in part on searches of the EDGAR and Bloomberg databases, the Commission's Investment Adviser Public Disclosure database, and a firm's public Web site or the public Web site of the account represented by a firm. The staff also referred to ISDA protocol adherence letters available on the ISDA Web site.

[1187] For the purpose of this analysis, the ISDA-recognized dealers are those identified by ISDA as belonging to the G14 or G16 dealer group during the period: JP Morgan Chase NA (and Bear Stearns), Morgan Stanley, Bank of America NA (and Merrill Lynch), Goldman Sachs, Deutsche Bank AG, Barclays Capital, Citigroup, UBS, Credit Suisse AG, RBS Group, BNP Paribas, HSBC Bank, Lehman Brothers, Société Générale, Credit Agricole, Wells Fargo, and Nomura. *See, e.g., http://www.isda.org/c_and_a/pdf/ISDA-Operations-Survey-2010.pdf* (last visited September 22, 2014).

[1188] ''Accounts'' as defined in the DTCC–TIW context are not equivalent to ''accounts'' in the definition of ''U.S. person'' provided by Rule 3a71–3(a)(4)(i)(C) under the Exchange Act. They also do not necessarily represent separate legal persons. One entity or legal person may have multiple accounts. For example, a bank may have one DTCC account for its U.S. headquarters and one DTCC account for one of its foreign branches.

[1189] Unregistered investment advisers include all investment advisers not registered under the Investment Advisers Act and may include investment advisers registered with a state or a foreign authority.

[1190] *See* Section 15F(h)(2)(C) of the Exchange Act, 15 U.S.C. 78o–10(h)(2)(C) (defining ''special entity'' to include a federal agency; a state, state agency, city, county, municipality, or other political subdivision of a state; any employee benefit plan; any governmental plan; or any endowment).

[1191] There remain over 4,000 DTCC ''accounts'' unclassified by type. Although unclassified, each was manually reviewed to verify that it was not likely to be a special entity and instead was likely to be an entity such as a corporation, an insurance company, or a bank.

[1192] Private funds for the purpose of this analysis encompass various unregistered pooled investment vehicles, including hedge funds, private equity funds, and venture capital funds.

TABLE 2—THE NUMBER AND PERCENTAGE OF ACCOUNT HOLDERS—BY TYPE—WHO PARTICIPATE IN THE SECURITY-BASED SWAP MARKET THROUGH A REGISTERED INVESTMENT ADVISER, AN UNREGISTERED INVESTMENT ADVISER, OR DIRECTLY AS A TRANSACTING AGENT, FROM NOVEMBER 2006 THROUGH DECEMBER 2013

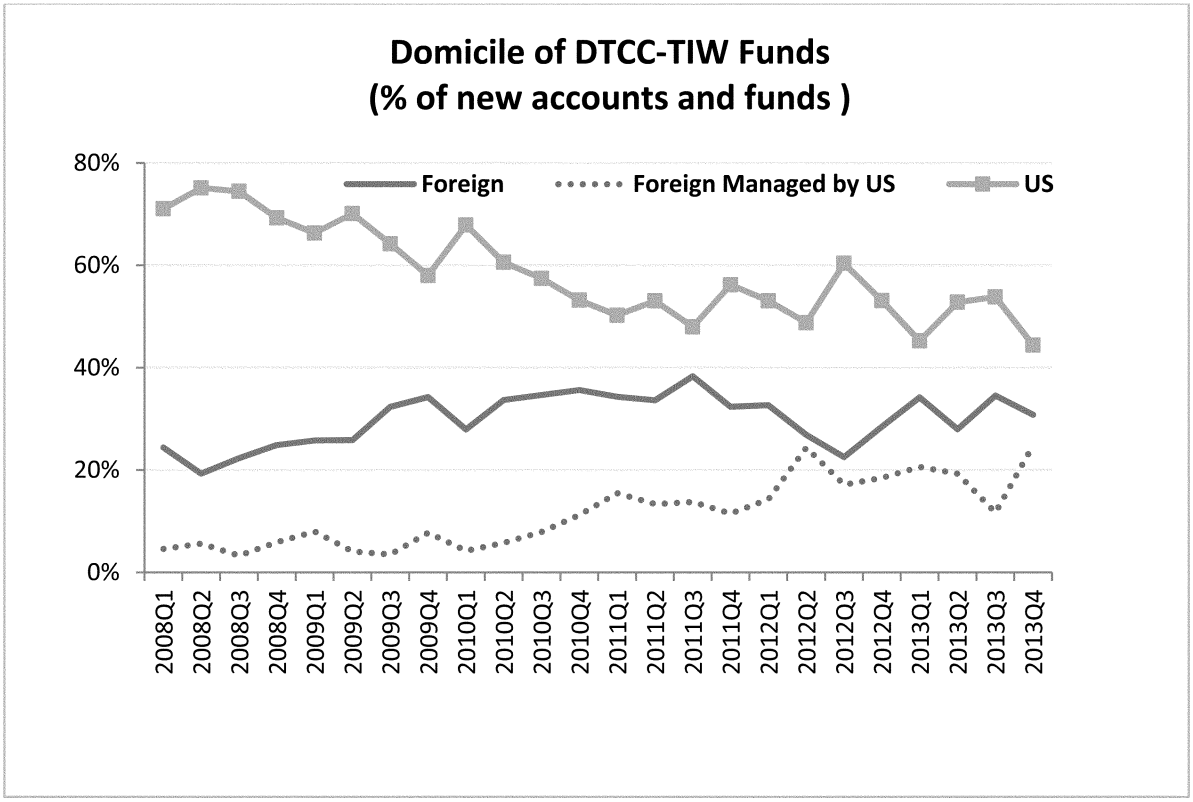
Account holders by type	Number	Represented by a registered investment adviser		Represented by an unregistered investment adviser		Participant is transacting agent [1193]	
Private Funds	2,914	1,395	48%	1,496	51%	23	1%
DFA Special Entities	1,086	1,050	97%	12	1%	24	2%
Registered Investment Companies	636	620	97%	14	2%	2	0%
Banks (non-ISDA-recognized dealers)	369	25	7%	5	1%	339	92%
Insurance Companies	224	144	64%	21	9%	59	26%
ISDA-Recognized Dealers	69	0	0%	0	0%	69	100%
Foreign Sovereigns	63	45	71%	2	3%	16	25%
Non-Financial Corporations	57	39	68%	3	5%	15	26%
Finance Companies	10	5	50%	0	0%	5	50%
Other/Unclassified	4,626	3,130	68%	1,294	28%	200	4%
All	10,054	6,453	64%	2,847	28%	752	7%

i. Participant Domiciles

The security-based swap market is global in scope, with counterparties located across multiple jurisdictions. A U.S.-based holding company may conduct dealing activity through a foreign subsidiary that faces both U.S. and foreign counterparties, and the foreign subsidiary may be guaranteed by its parent, making the parent responsible for performance under these security-based swaps.

[1193] This column reflects the number of participants who are also trading for their own accounts.

Figure 1: The percentage of (1) new accounts with a domicile in the United States (referred to as "US"), (2) new accounts with domicile outside the United States (referred to below as "Foreign"), and (3) new accounts outside the United States but managed by a U.S. person, account of a foreign branch of a U.S. person, and account of a foreign subsidiary of a U.S. person (collectively referred to below as "Foreign Managed by US").[1194] Unique, new accounts are aggregated each quarter and shares are computed on a quarterly basis, from January 2008 through December 2013.



As depicted in Figure 1, over time a greater share of accounts entering the market either have a foreign domicile, or have a foreign domicile while being managed by a U.S. person. The increase in foreign accounts may reflect an increase in participation by foreign accountholders while the increase in foreign accounts managed by U.S. persons may reflect the flexibility with which market participants can restructure their market participation in response to regulatory intervention, competitive pressures, and other stimuli. There are, however, alternative explanations for the shifts in new account domicile that can be observed in Figure 1. Changes in the domicile of new accounts through time may reflect improvements in reporting by market participants to DTCC–TIW.[1195] Additionally, because the data include only accounts that are domiciled in the United States, transact with U.S.-domiciled counterparties, or transact in single-name CDS with U.S. reference entities, changes in the domicile of new accounts may reflect increased transaction activity between U.S. and non-U.S. counterparties.

ii. Current Estimates of Dealers and Major Participants

In its economic analysis of rules defining ''security-based swap dealer'' and ''major security-based swap participant,'' the Commission noted, using DTCC–TIW data for the year ending in December 2012, that it expected 202 entities to engage in dealer *de minimis* analysis.[1196] Further, the Commission's analysis of single-name CDS transactions data suggested that only a subset of these entities engage in dealing activity and estimated 50 registered dealers as an upper bound based on the threshold for the *de minimis* exception adopted in that release.[1197] The Commission also undertook an analysis of the number of security-based swap market participants likely to register as major security-based swap participants, and estimated a range of between zero and five such participants.[1198] Based on data for the

[1194] Following publication of the Warehouse Trust Guidance on CDS data access, DTCC–TIW surveyed market participants, asking for the physical address associated with each of their accounts (*i.e.,* where the account is organized as a legal entity). This is designated the registered office location by the DTCC–TIW. When an account does not report a registered office location, the Commission has assumed that the settlement country reported by the investment adviser or parent entity to the fund or account is the place of domicile. This treatment assumes that the registered office location reflects the place of domicile for the fund or account.

[1195] *See supra* note 3.

[1196] *See* Cross-Border Adopting Release, 79 FR 47331.

[1197] *Id.* at 47296, note 150 (describing the methodology employed by the Commission to estimate the number of potential security-based swap dealers).

[1198] *Id.* at 47297, note 153 (describing the methodology employed by the Commission to estimate the number of potential major security-based swap participants).

year ending in December 2013, the Commission continues to believe that 50 represents an upper bound on the number of dealers expected to register and between zero and five major participants will register. As a result of further experience with the DTCC–TIW data, the Commission now estimates, based on data for the year ending in December 2013, that the number of participants likely to engage in dealer *de minimis* analysis is approximately 170. Forty-eight of these participants are domiciled outside of the United States and have $2 billion in transactions with U.S. counterparties or that otherwise may have to be counted for purposes of the *de minimis* analysis.

iii. Security-Based Swap Data Repositories

There are currently no SDRs registered with the Commission. However, the CFTC has provisionally registered four swap data repositories to accept credit derivatives. The Commission believes that these entities may register with the Commission as SDRs. Because most participants in the security-based swap market also participate in the swap market,[1199] other persons might, in the future, seek to register with both the CFTC and the Commission as SDRs. In addition, once a swap data repository has established infrastructure sufficient to allow it to register with the CFTC, the costs for it to also register with the Commission as an SDR and adapt its business for security-based swap activity will likely be low relative to the costs for a wholly new entrant.

b. Security-Based Swap Transaction Activity

Single-name CDS contracts make up the vast majority of security-based swap products and most are written on corporate issuers, corporate debt securities, sovereign countries, or sovereign debt securities (reference entities and reference securities). Figure 2, below, describes the percentage of global, notional transaction volume in U.S. single-name CDS reported to the DTCC–TIW between January 2008 and December 2013, separated by whether transactions are between two ISDA-recognized dealers (interdealer transactions) or whether a transaction has at least one non-dealer counterparty.

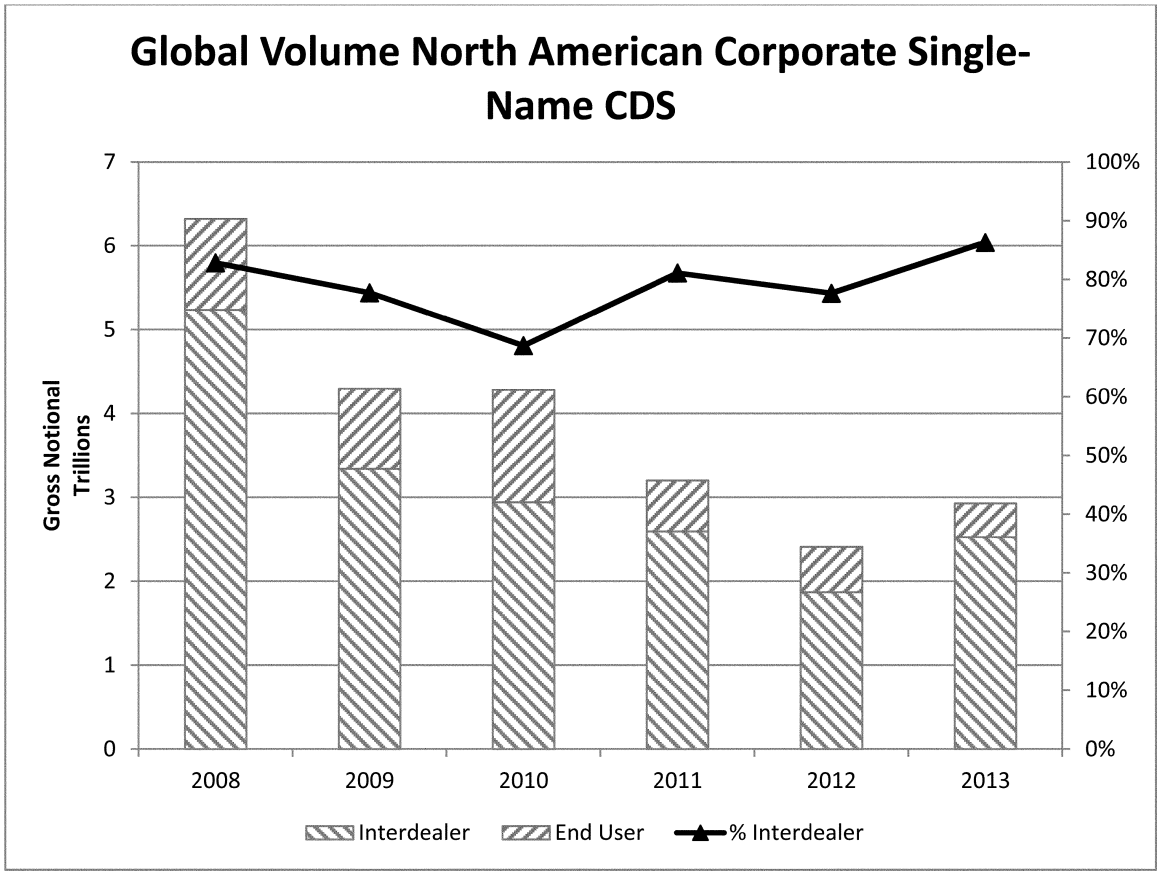
The level of trading activity with respect to U.S. single-name CDS in terms of notional volume has declined from more than $6 trillion in 2008 to less than $3 trillion in 2013.[1200] While notional volume has declined over the past six years, the share of interdealer transactions has remained fairly constant and interdealer transactions continue to represent the bulk of trading activity, whether measured in terms of notional value or number of transactions (see Figure 2).

The high level of interdealer trading activity reflects the central position of a small number of dealers who each intermediate trades among many hundreds of counterparties. While the Commission is unable to quantify the current level of trading costs for single-name CDS, it appears that the market power enjoyed by dealers as a result of their small number and the large proportion of order flow they privately observe is a key determinant of trading costs in this market.

[1199] *See infra* Section XXII(B)(3).

[1200] The start of this decline predates the enactment of the Dodd-Frank Act and the proposal of rules thereunder. For the purpose of establishing an economic baseline, this seems to indicate that CDS market demand shrank prior to the enactment of the Dodd-Frank Act, and therefore the causes of trading volume declines may be independent of those related to the development of security-based swap market regulation. If the security-based swap market experiences further declines in trading activity, it would be difficult to identify the effects of the newly-developed security-based swap market regulation apart from changes in trading activity that may be due to natural market forces or the anticipation of (or reaction to) proposed (or adopted) Title VII requirements. These estimates differ from previous estimates as a result of staff experience with transaction-level data provided by DTCC–TIW. First, the aggregate level of transaction activity presented in Figure 2 more accurately reflects the notional amounts associated with partial assignments and terminations of existing security-based swap contracts. Second, the treatment of assignments in Figure 2 includes the counterparty type (dealer or non-dealer) of counterparties vacating trades in assignments as well as those entering.

Figure 2: Global, notional trading volume in North American corporate single-name CDS by calendar year and the fraction of volume that is interdealer.



Against this backdrop of declining North American corporate single-name CDS activity, about half of the trading activity in North American corporate single-name CDS reflected in the set of data that the Commission analyzed was between counterparties domiciled in the United States and counterparties domiciled abroad. Basing counterparty domicile on the self-reported registered office location of the DTCC–TIW accounts, the Commission estimates that only 13% of the global transaction volume by notional volume between 2008 and 2013 was between two U.S.-domiciled counterparties, compared to 48% entered into between one U.S.-domiciled counterparty and a foreign-domiciled counterparty and 39% entered into between two foreign-domiciled counterparties (see Figure 3).[1201]

When the domicile of DTCC–TIW accounts are instead defined according to the domicile of their ultimate parents, headquarters, or home offices (*e.g.,* classifying a foreign branch or foreign subsidiary of a U.S. entity as domiciled in the United States), the fraction of transactions entered into between two U.S.-domiciled counterparties increases to 29%, and to 53% for transactions entered into between a U.S.-domiciled counterparty and a foreign-domiciled counterparty.

Differences in classifications across different definitions of domicile illustrate the effect of participant structures that operate across jurisdictions. Notably, the proportion of activity between two foreign-domiciled counterparties drops from 39% to 18% when domicile is defined as the ultimate parent's domicile. As noted earlier, foreign subsidiaries of U.S. persons, foreign branches of U.S. persons, and U.S. subsidiaries of foreign persons, and U.S. branches of foreign persons may transact with U.S. and foreign counterparties. However, this decrease in share suggests that the activity of foreign subsidiaries of U.S. persons and foreign branches of U.S. persons is generally higher than the activity of U.S. subsidiaries of foreign persons and U.S. branches of foreign persons.

By either of those definitions of domicile, the data indicate that a large fraction of North American corporate single-name CDS transaction volume is entered into between counterparties domiciled in two different jurisdictions or between counterparties domiciled outside the United States. For the purpose of establishing an economic baseline, this observation indicates that a large fraction of security-based swap activity would be affected by the scope of any cross-border approach we take in applying the Title VII requirements. Further, the large fraction of North American corporate single-name CDS transactions between U.S.-domiciled and foreign-domiciled counterparties also highlights the extent to which security-based swap activity transfers risk across geographical boundaries, both facilitating risk sharing among market participants and allowing for risk transmission between jurisdictions.

[1201] *See supra* notes 788 and 1183.

Figure 3: The fraction of notional volume in North American corporate single-name CDS between (1) two U.S.-domiciled accounts, (2) one U.S.-domiciled account and one non-U.S.-domiciled account, and (3) two non-U.S.-domiciled accounts, computed from January 2008 through December 2013.

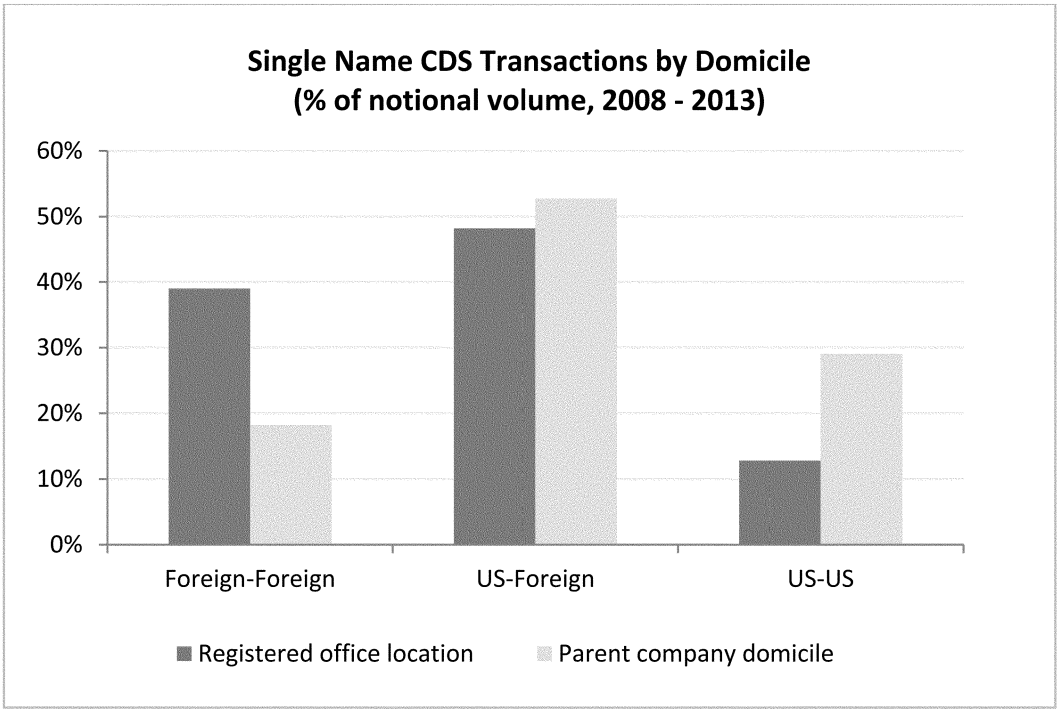
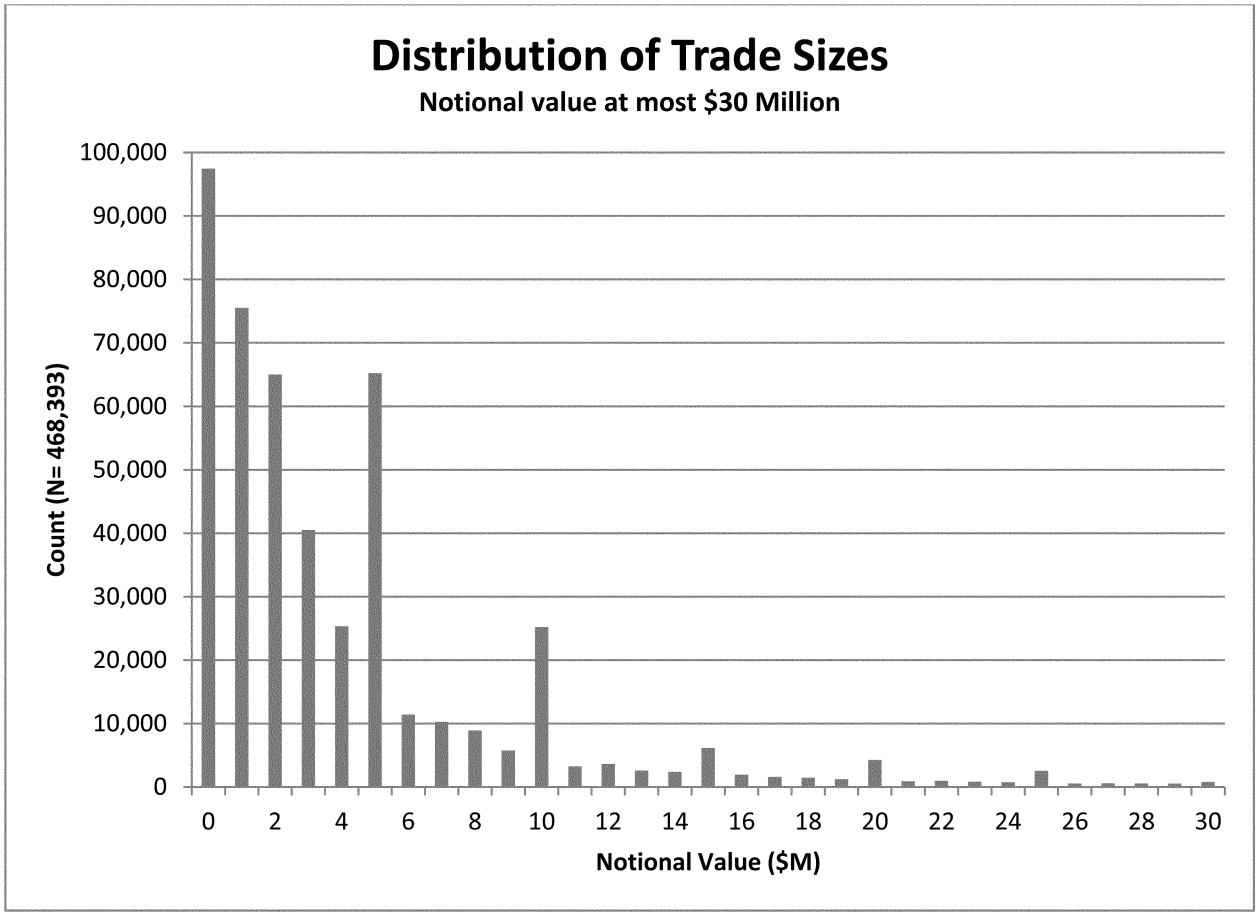


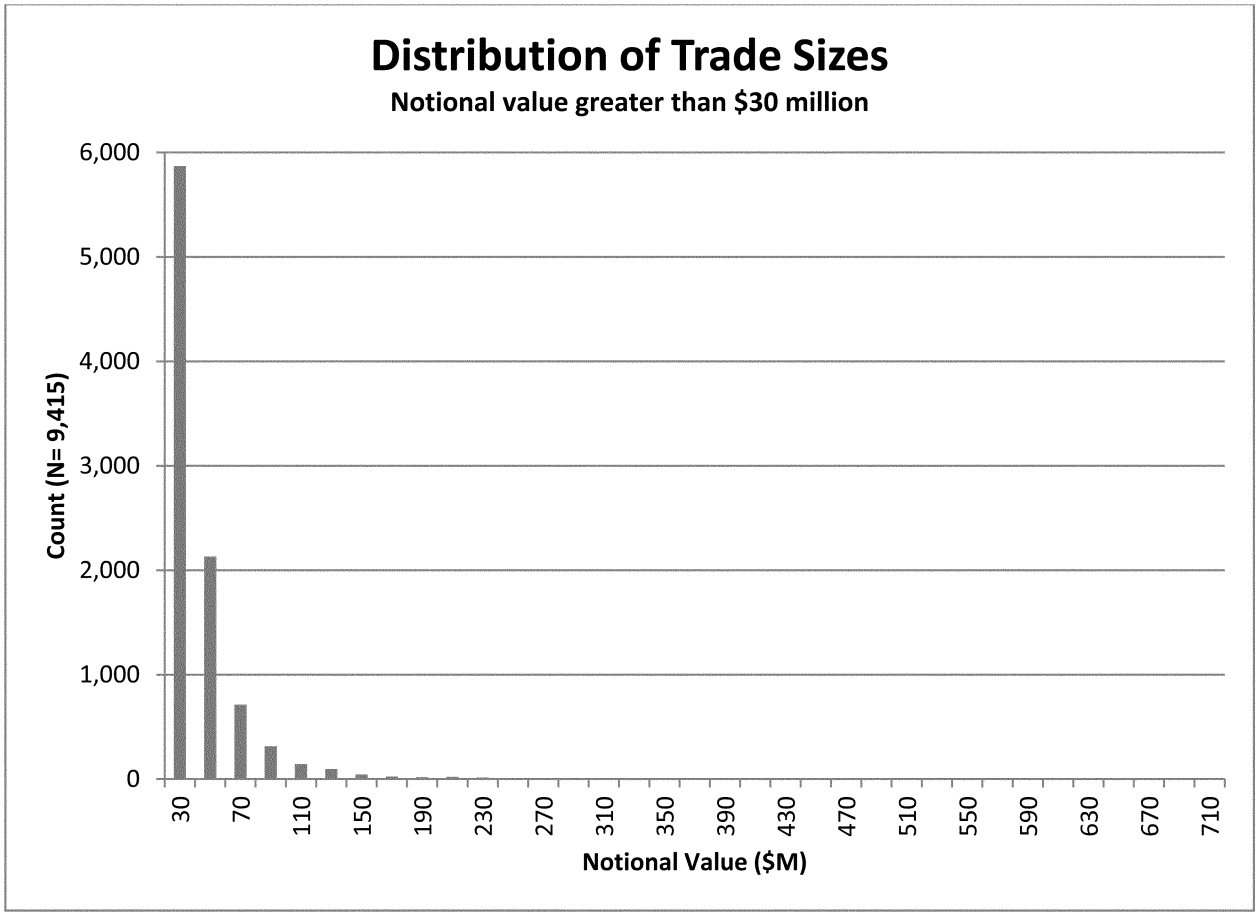
Figure 4: Distribution of notional trading volumes in North American corporate single-name CDS for transactions in 2013 with notional value of at most $30 million.[1202]



Figures 4 and 5 present the frequency distribution of trades by size for two subsamples of transactions observed in 2013. A salient feature of the trade size distribution is that trades tend to be clustered at ''round'' numbers: $1 million, $5 million, $10 million, *etc.* While large and very large trades do occur, less than 1% of the transactions in our sample were for notional amounts greater than $100 million.

[1202] The left-most bar, labeled ''0'', represents the number of trades with notional values greater than $0 and less than $1 million, while the next bar represents the number of trades with notional values greater than or equal to $1 million and less than $2 million, and so on. The right-most bar, labeled ''30'', represents the number of trades with notional values of exactly $30 million.

Figure 5: Distribution of notional trading volumes in North American corporate single-name CDS for transactions in 2013 with notional value of more than $30 million.[1203]



c. Counterparty Reporting

While there is no mandatory reporting requirement for the single-name CDS market yet, virtually all market participants voluntarily report their trades to DTCC–TIW, in some cases with the assistance of post-trade processors, which maintains a legal record of transactions.[1204] Among other things, this centralized record-keeping facilitates settlement of obligations between counterparties when a default event occurs as well as bulk transfers of positions between accounts at a single firm or between firms. In addition, while there is not yet a mandatory clearing requirement in the single-name CDS market, market participants may choose to clear transactions voluntarily. However, neither voluntary reporting nor voluntary clearing results in data that are available to the public on a trade-by-trade basis.

In the Regulation SBSR Proposing Release, the Commission preliminarily estimated that there would be 1,000 reporting parties[1205] and 15.5 million reportable events per year.[1206] In the Cross-Border Proposing Release, the Commission revised its estimate of the number of reporting sides from 1,000 to 300 and revised its estimate of the number of reportable events from 15.5 million to approximately 5 million.[1207] These revised estimates were a result of the Commission obtaining additional and more granular data regarding participation in the security-based swap market from DTCC–TIW. As discussed above, since issuing the Cross-Border Proposing Release, the Commission has obtained additional and even more granular data regarding participation in the security-based swap market from DTCC–TIW. As a result, the Commission is now further revising its estimate of the number of reportable events. Accordingly, the Commission now estimates that 300 reporting sides will be required to report an aggregate total of approximately 3 million reportable events per year under Rule 901, as adopted.[1208]

TABLE 3—TRADE REPORTS BY TRANSACTION TYPE, 2013

	Count
Interdealer	1,231,796
Dealer—Non-Dealer	482,860
Clearinghouse	546,041
Total	2,260,577

[1203] The left-most bar, labeled ''30'', represents the number of trades with notional values greater than $30 and less than $50 million, while the next bar represents the number of trades with notional values greater than or equal to $50 million and less than $70 million, and so on. The right-most bar, labeled ''710'', represents the number of trades with notional value greater than $710 million.

[1204] *See* ''ISDA CDS Marketplace: Exposures and Activity'' (available at *http://www.isdacdsmarketplace.com/exposures_and_activity* (last visited September 22, 2014).

[1205] *See* 75 FR 75247.

[1206] *See id.* at 75248.

[1207] *See* 78 FR 31114.

[1208] *See supra* note 1070.

d. Sources of Security-Based Swap Information

There currently is no robust, widely accessible source of information about individual security-based swap transactions. Nevertheless, market participants can gather certain limited information for the single-name CDS [1209] market from a variety of sources. First, indicative quotes can be obtained through market data vendors such as Bloomberg or Markit. These quotes typically do not represent firm commitments to buy or sell protection on particular reference entities. Since there is no commitment to buy or sell associated with indicative quotes, there are fewer incentives for market participants that post indicative quotes to quote prices that accurately reflect the fundamental value of the asset to be traded. However, market participants can glean information from indicative quotes that may inform their trading.

Second, there is limited, publicly-disseminated information about security-based swap market activity presented at an aggregate level. As mentioned above, market participants sometimes voluntarily clear their transactions, *e.g.,* through ICE Clear Credit.[1210] To support their risk management activities, clearing agencies compute and disseminate information such as end-of-day prices and aggregated volume to their clearing members. ICE Clear Credit also provides aggregated volume data.[1211] Additionally, some large multilateral organizations periodically report measures of market activity. For example, the Bank for International Settlements (''BIS'') reports gross notional outstanding for single-name CDS and equity forwards and swaps semiannually.[1212]

Finally, market intermediaries may draw inferences about security-based swap market activity from observing their customers' order flow or through inquiries made by other market participants who seek liquidity. This source of information is most useful for market participants with a large market share. As noted above, the ability to observe a larger amount of order flow allows for more precise estimates of demand.

The paucity of publicly-available security-based swap data suggests a number of frictions that likely characterize the current state of efficiency, competition, and capital formation in the security-based swap market. As noted in Section XXII(A), without public dissemination of transaction information, security-based swap market participants with the largest order flow have an informational advantage over smaller competitors and counterparties. Moreover, as suggested by Table 1, there is a great deal of heterogeneity in the level of order flow observed by market participants, with a small group of large dealers participating in most transactions. These large market participants can use this advantage to consolidate their own market power by strategically filling orders when it is to their advantage and leaving less profitable trades to competitors.

Asymmetric information and dealer market power can result in financial market inefficiencies. With only a small number of liquidity suppliers competing for order flow, bid-ask spreads in the market may be wider than they would be under perfect competition between a larger number of liquidity suppliers. If this is the case, then it is possible that certain non-dealers who might otherwise benefit from risk-sharing afforded by security-based swap positions may avoid participating in the market because it is too costly for them to do so. For instance, if wide bid-ask spreads in the CDS market reduced the level of credit risk hedging by market participants, the result could be an inefficient allocation of credit risk in the economy as a whole. Additionally, financial market participants may avoid risk-sharing opportunities in the security-based swap market if they determine that lack of oversight by relevant authorities leaves the market prone to disruption. For example, if the threat of sequential counterparty default reduces security-based swap dealers' liquidity, then market participants may reduce their participation if they perceive a high risk that they will be unable to receive the contractual cash flows associated with their security-based swap positions. These sources of inefficiency can adversely affect capital formation if an inability for lenders and investors to efficiently hedge their economic exposures diminishes their willingness to fund certain borrowers and issuers with risky but profitable investing opportunities.

Lack of publicly-available transaction information could affect capital formation in other ways. Information about security-based swap transactions can be used as input into valuation models. For example, the price of a single-name CDS contract can be used to produce estimates of default risk for a particular firm and these estimates can, in turn, be used by managers and investors to value the firm's projects. In the absence of last-sale information in the CDS market, market participants may build models of default risk using price data from other markets. They may, for instance, look to the firm's bond and equity prices, the prices of swaps that may have similar default risk exposure, or to the prices of comparable assets more generally.

2. Global Regulatory Efforts

a. Dealer and Major Swap Participant Definitions for Cross-Border Security-Based Swaps

The Commission adopted final rules governing the application of the ''security-based swap dealer'' and ''major security-based swap participant'' definitions with respect to cross-border security-based swap activity and exposures.[1213] The final rules generally require, among other things, that non-U.S. persons assess whether their dealing activities with and exposures against U.S. persons or with recourse guarantees against U.S. persons rise above *de minimis* levels.[1214] In the Cross-Border Adopting Release, the Commission discussed the costs that non-U.S. persons would incur in order to perform this assessment and the likely number of participants whose activity and exposures would likely be large enough to make such an assessment prudent.[1215] These costs included amounts related to collecting, analyzing, and monitoring representations about the U.S.-person status of counterparties, and whether particular transactions had recourse guarantees against U.S. persons.[1216]

b. International Regulatory Developments

International efforts to coordinate the regulation of the OTC derivatives markets are underway, and suggest that many foreign participants will face

[1209] Regulation SBSR would also cover equity swaps (other than broad-based equity index swaps). However, the Commission has access to limited information concerning the equity swap market. As a result, the Commission's analysis is largely focused on the single-name CDS market, for which the Commission has information.

[1210] Based on the transaction data from the DTCC–TIW, Commission staff has estimated that, during the three-year period from January 2011 until December 2013, approximately 21% of all transactions in CDS with North American single-name corporate reference entities and approximately 21% of all transactions in CDS with European single-name corporate reference entities were cleared.

[1211] Available at *https://www.theice.com/marketdata/reports/98* (last visited October 20, 2014).

[1212] Available at *http://www.bis.org/statistics/derstats.htm* (last visited October 20, 2014).

[1213] *See* Cross-Border Adopting Release, 79 FR 47278.

[1214] *See id.* at 47301.

[1215] *See id.* at 47315.

[1216] *See id.* at 47332.

substantive regulation of their security-based swap activities that resemble rules the Commission is implementing. In 2009, leaders of the Group of 20 (''G20'')—whose membership includes the United States, the European Union, and 18 other countries—called for global improvements in the functioning, transparency, and regulatory oversight of OTC derivatives markets.[1217] In subsequent summits, the G20 leaders have reiterated their commitment to OTC derivatives regulatory reform and encouraged international consultation in developing standards for these markets.[1218] The FSB is a forum for international coordination of OTC derivatives reform and provides progress reports to the G20.[1219]

Jurisdictions with major OTC derivatives markets have taken steps toward substantive regulation of these markets, though the pace of regulation varies. Rulemaking and legislation has focused on four general areas: Post-trade reporting and public dissemination of transaction data, moving OTC derivatives onto centralized trading platforms, clearing of OTC derivatives, and margin requirements for OTC derivatives transactions.

Transaction reporting requirements have entered into force in Europe, Australia, Singapore, and Japan, with other jurisdictions in the process of proposing legislation and rules to implement these requirements. For example, in Canada, Ontario, Quebec, and Manitoba have transaction reporting requirements in force, while other provinces have proposed rules in that area. The European Union is currently considering updated rules for markets in financial instruments that will address derivatives market transparency and trading derivatives on regulated trading platforms.

3. Cross-Market Participation

A single-name CDS contract covers default events for a single reference entity or reference security. These entities and securities are often part of broad-based indices on which market participants write index CDS. Index CDS contracts make payouts that are contingent on the default of one or more index components and allow participants to gain exposure to the credit risk of the basket of reference entities that comprise the index, which is a function of the credit risk of the index components. As a result of this construction, a default event for a reference entity that is an index component will result in payoffs on both single-name CDS written on the reference entity and index CDS written on indices that contain the reference entity. Because of this relationship between the payoffs of single-name and index CDS, prices of these products depend upon one another.

Because payoffs associated with these single-name CDS and index CDS are dependent, hedging opportunities exist across these markets. Participants who sell protection on reference entities through a series of single-name CDS transactions can lay off some of the credit risk of their resulting positions by buying protection on an index that includes those reference entities. Entities that are active in one market are likely to be active in the other. Commission staff analysis of approximately 4,200 DTCC–TIW accounts that participated in the market for single-name CDS in 2013 revealed that approximately 2,200 of those accounts, or 52%, also participated in the market for index CDS. Of the accounts that participated in both markets, data regarding transactions in 2013 suggest that, conditional on an account transacting in notional volume of index CDS in the top third of accounts, the probability of the same account landing in the top third of accounts in terms of single-name CDS notional volume is approximately 62%; by contrast, the probability of the same account landing in the bottom third of accounts in terms of single-name CDS notional volume is only 15%.

The CFTC's cross-border guidance and swap reporting rules have likely influenced the information that market participants collect and maintain about the swap transactions they enter into and the counterparties that they face.[1220] Compliance with the CFTC's cross-border guidance and swap reporting rules would require swap counterparties to collect and maintain data items required by the CFTC regulation if they had not done so before. To the extent that the same or similar information is needed to comply with Regulation SBSR, market participants can use infrastructure already in place as a result of CFTC regulation to comply with Regulation SBSR and the costs to these market participants would be reduced.

Commenters generally expressed concern about potential differences between CFTC rules and rules promulgated by the Commission.[1221] In adopting Regulation SBSR, the Commission has been cognizant of the parallel rules imposed by the CFTC and the costs that would be imposed on market participants that must comply with both agencies' rules.

C. Programmatic Costs and Benefits of Regulation SBSR

The Commission preliminarily identified certain benefits of Regulation SBSR in both the Regulation SBSR Proposing Release and the Cross-Border Proposing Release. After careful consideration of all the issues raised by commenters, the Commission continues to believe that Regulation SBSR will result in certain benefits. These include promoting price discovery and lowering trading costs by improving the level of information to all market participants and by providing a means for the Commission and relevant authorities to gain a better understanding of the trading behaviors of participants in the security-based swap market and to identify large counterparty exposures.[1222] Additionally, the Commission believes that Regulation SBSR will improve risk management by those market participants that choose to supplement their existing risk management programs with publicly disseminated data. Risk management relies on accurate pricing, and valuation models generally yield better estimates with last-sale information being available as input.

[1217] *See* G20 Meeting, Pittsburgh, United States, September 2009, *available at: http://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf* (last visited September 22, 2014).

[1218] *See, e.g.,* G20 Meeting, St. Petersburg, Russia, September 2013, para. 71, available at *https://www.g20.org/sites/default/files/g20_resources/library/Saint_Petersburg_Declaration_ENG_0.pdf* (last visited September 22, 2014); G20 Meeting, Cannes, France, November 2011, available at *https://www.g20.org/sites/default/files/g20_resources/library/Declaration_eng_Cannes.pdf* (last visited September 22, 2014).

[1219] The FSB has published seven progress reports on OTC derivatives markets reform implementation that are available at *http://www.financialstabilityboard.org/list/fsb_publications/index.htm.*

[1220] *See* ''Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations'' (July 17, 2013), 78 FR 45292 (July 26, 2013) (''CFTC Cross-Border Guidance''). *See also Sec. Indus. & Fin. Mkts. Ass'n* v. *CFTC,* Civil Action No. 13–1916 (PLF), slip op. at 89 (D.D.C. September 16, 2014).

[1221] *See, e.g.,* SIFMA/FIA/Roundtable Letter at 3.

[1222] *See* Sections XXII(B)(1)(b), XXII(C)(2), and XXII(D)(2)(b). *See also* Amy K. Edwards, Lawrence Harris, & Michael S. Piwowar, *Corporate Bond Market Transparency and Transaction Costs,* J. of Fin., Vol. 62, at 1421–1451 (2007). It should be noted that Michael Piwowar, one of the co-authors of the first article cited, is currently an SEC Commissioner, and Amy Edwards, another of that article's co-authors, currently serves as an Assistant Director in the Commission's Division of Economic and Risk Analysis.

1. Regulatory Reporting

a. Programmatic Benefits

Rule 901, as adopted, requires all security-based swaps that are covered transactions [1223] to be reported to a registered SDR, establishes a ''reporting hierarchy'' that determines which side must report the transaction, and sets out the data elements that must be reported. The Commission believes that requiring regulatory reporting of covered transactions will yield a number of benefits. First, Rule 901 will provide a means for the Commission and other relevant authorities to gain a better understanding of the security-based swap market,[1224] including the size and scope of that market, as the Commission would have access to transaction data held by any registered SDR. The Commission and other relevant authorities can analyze the security-based swap market and potentially identify exposure to risks undertaken by individual market participants or at various levels of aggregation, as well as credit exposures that arise between counterparties. Additionally, regulatory reporting will help the Commission and other relevant authorities in the valuation of security-based swaps. For example, an improved ability of relevant authorities to value security-based swap exposures may assist these authorities in assessing compliance with rules related to capital requirements by entities that maintain such exposures on their balance sheets. Taken together, regulatory data will enable the Commission and other relevant authorities to conduct robust monitoring of the security-based swap market for potential risks to financial markets and financial market participants.

Second, data reported pursuant to Rule 901 should improve relevant authorities' ability to oversee the security-based swap market to detect, deter, and punish market abuse. The Commission and other relevant authorities will be able, for example, to observe trading activity at the level of both trading desk and individual trader, using trading desk IDs and trader IDs, respectively. While the Commission acknowledges commenters' concerns regarding the costs associated with establishing and maintaining UICs, it has considered these costs in light of its belief that aggregation of the information contained in registered SDRs using appropriate UICs—such as broker ID, trader ID, and trading desk ID—will facilitate the ability of the Commission and other relevant authorities to examine for noncompliance and pursue enforcement actions, as appropriate.[1225]

Rule 901 could result in benefits by encouraging the creation and widespread use of generally accepted standards for reference information by security-based swap market participants and infrastructure providers (such as SDRs and clearing agencies). For example, Rule 901(c)(1) requires the reporting of a product ID, for security-based swaps that can be categorized as belonging to a product group. The development and wider usage of product IDs could result in greater efficiencies for market participants, infrastructure providers, and regulators, as identifying information about security-based swap products can be conveyed with a single ID code in place of several, perhaps dozens, of separate data elements. The development and wider usage of UICs generally will provide market participants with a more reliable means of identifying to each other the same products, persons, units of persons, and transactions. The costs associated with misidentifying these aspects of a transaction include additional time and resources spent to reconcile differing data elements across transaction records. Misidentification could also result in the cancellation of a transaction if, for example, it reveals disagreement between counterparties about the economic attributes of the transaction, such as the reference obligation underlying a CDS contract.

UICs also could lead to greater regulatory efficiencies, as the Commission and other relevant authorities would have greater ability to aggregate transactions along a number of different vectors. Relevant authorities will have greater ability to observe patterns and connections in trading activity, such as whether a trader had engaged in questionable trading activity across different security-based swap products. The reporting of this information will facilitate more effective oversight, enforcement, and surveillance of the security-based swap market by the Commission and other relevant authorities. These identifiers also will facilitate aggregation and monitoring of the positions of security-based swap counterparties, which could be of significant benefit to the Commission and other relevant authorities.

The time stamp and transaction ID requirements under Rules 901(f) and 901(g), respectively, should facilitate data management by the registered SDR, as well as market supervision and oversight by the Commission and other regulatory authorities. The transaction ID required by Rule 901(g) also will provide an important benefit by facilitating the linking of subsequent, related security-based swap transactions that may be submitted to a registered SDR (*e.g.,* a transaction report regarding a security-based swap life cycle event, or report to correct an error in a previously submitted report). Counterparties, the registered SDR, the Commission, and other relevant authorities also will benefit by having the ability to track changes to a security-based swap over the life of the contract, as each change can be linked to the initially reported transaction using the transaction ID.

By requiring reporting of pre-enactment and transitional security-based swap transactions to the extent the information is available, Rule 901(i) will provide the Commission and other relevant authorities with insight as to outstanding notional size, number of transactions, and number and type of participants in the security-based swap market. To the extent pre-enactment and transitional security-based swap transaction information is available and reported, Rule 901(i) may contribute to the development of a well regulated market for security-based swaps by providing a benchmark against which to assess the development of the security-based swap market over time. The data reported pursuant to Rule 901(i) also could help the Commission prepare the reports that it is required to provide to Congress. At the same time, Rule 901(i) limits the scope of the transactions, and the information pertaining to those transactions, that must be reported in a manner designed to minimize undue burdens on security-based swap counterparties. First, Rule 901(i) requires reporting only of those security-based swaps that were open as of the date of enactment (July 21, 2010) or opened thereafter. As discussed in Section II(C)(2), *supra,* Rule 901(i) requires reporting of the information required by Rules 901(c) and 901(d) only to the extent such information is available. Finally, the duty to report historical security-based swaps in a particular asset class is triggered only when there exists a registered SDR that can accept security-based swaps in that asset class.

[1223] *See supra* notes 11–12 and accompanying text.

[1224] Such relevant authorities are enumerated in Section 13(n)(5)(G) of the Exchange Act, 15 U.S.C. 78m(n)(5)(G). *See supra* note 64.

[1225] *See supra* notes 160 and 162.

b. Programmatic Costs

i. Reporting Security-Based Swap Transactions to a Registered SDR—Rule 901

The security-based swap reporting requirements contained in Rule 901 will impose initial and ongoing costs on reporting sides.[1226] The Commission continues to believe that certain of these costs would be a function of the number of reportable events and the data elements required to be submitted for each reportable event. The Commission continues to believe that security-based swap market participants will face three categories of costs to comply with Rule 901. First, each reporting side will likely have to establish and maintain an internal OMS capable of capturing relevant security-based swap transaction information so that it could be reported. Second, each reporting side will have to implement a reporting mechanism. Third, each reporting side will have to establish an appropriate compliance program and support for operating any OMS and reporting mechanism.[1227] Such systems and mechanisms would likely be necessary to report data within the timeframe set forth in Rule 901(j), as it is unlikely that manual processes could capture and report the numerous required data elements relating to a security-based swaps. Many market participants may already have OMSs in place to facilitate voluntary reporting of security-based swap transactions or clearing activity. As a result, any additional costs related to systems and infrastructure will be limited to those reporting sides that either invest in new systems or must upgrade existing systems to meet minimum requirements for reporting. To the extent that the cost estimates discussed below do not take this cost limiting fact into account, they are an upper bound for the estimated costs.

Although the Commission initially estimated that there would be 1,000 reporting sides,[1228] in the Cross-Border Proposing Release the Commission revised that estimate to 300.[1229] No comments were received on the number of entities that would be reporting sides under Regulation SBSR. The Commission notes that, since issuing the Regulation SBSR Proposing Release, the Commission has obtained additional and more granular data regarding its estimate of the number of reporting sides. These historical data suggest that, among these 300 reporting sides, approximately 50 are likely to be required to register with the Commission as security-based swap dealers and up to five are likely to register as major security-based swap participants.[1230] These data further suggest that these 55 potential registrants likely will account for the vast majority of recent security-based swap transactions and transaction reports that will need to be reported by reporting sides, and that there are only a limited number of security-based swap transactions that do not include at least one of these potential registrants on either side.[1231]

The Commission estimates that internal order management costs related to Rule 901 will result in initial one-time aggregate costs of approximately $30,600,000, which corresponds to approximately $102,000 for each reporting side.[1232] The Commission continues to estimate that the cost to establish and maintain connectivity to a registered SDR to facilitate the reporting required by Rule 901 would impose an annual (first-year and ongoing) aggregate cost of approximately $60,000,000, which corresponds to $200,000 for each reporting side.[1233] The Commission continues to estimate, as a result of having to establishing a reporting mechanism for security-based swap transactions, reporting sides will experience certain development, testing and support costs. Such costs would amount to an initial one-time aggregate cost of approximately $14,700,000, which corresponds to an initial one-time cost of approximately $49,000 for each reporting side.[1234] The Commission estimates that internal order management costs related to Rule 901 will impose ongoing annual aggregate costs of approximately $23,100,000, which corresponds to approximately $77,000 per reporting side.[1235] In addition, the Commission estimates that all reporting sides will incur an initial and ongoing aggregate annual cost of $300,000, which corresponds to $1,000 for each reporting side.[1236]

The Commission, in the Regulation SBSR Proposing Release, estimated that reporting specific security-based swap transactions to a registered SDR as required by Rule 901 will impose an annual aggregate cost (first-year and ongoing) of approximately $5,400 for each reporting party.[1237] This estimate was revised in the Cross-Border Proposing Release and this adopting release to reflect improved information

[1226] Certain estimates used throughout this Section XXII (*e.g.,* the number of impacted entities, the number of reportable events, and the hourly cost rates used for each job category) have been updated from those estimated in the Cross-Border Proposing Release to reflect the rule text of Regulation SBSR, as adopted, as well as additional information and data now available to the Commission.

[1227] *See also* Regulation SBSR Proposing Release, 75 FR 75264.

[1228] *See id.* at 75247.

[1229] *See* Cross-Border Proposing Release, 78 FR 31113.

[1230] *See id.* at 31103.

[1231] As a result, the Commission generally will use 300 as an estimate of the number of reporting sides for §§ 900–909 of Regulation SBSR. In cases where a rule is more limited in its application, for example Rule 906(c), the Commission may use a different number that reflects some subset of the estimated 300 reporting sides.

[1232] This estimate is based on the following: [((Sr. Programmer (160 hours) at $303 per hour) + (Sr. Systems Analyst (160 hours) at $260 per hour) + (Compliance Manager (10 hours) at $283 per hour) + (Director of Compliance (5 hours) at $446 per hour) + (Compliance Attorney (20 hours) at $334 per hour)) × 300 reporting sides)] = $30,546,000, or approximately $30,600,000, or approximately $102,000 per reporting side. *See* Regulation SBSR Proposing Release, 75 FR 75264. These estimates have been adjusted to reflect the Commission's new estimate of the number of reporting sides. All hourly cost figures are based upon data from SIFMA's Management & Professional Earnings in the Securities Industry 2013 (modified by the SEC staff to account for an 1800-hour-work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead).

[1233] This estimate is based on discussions of Commission staff with various market participants, as well as the Commission's experience regarding connectivity between securities market participants for data reporting purposes. The Commission derived the total estimated expense from the following: ($100,000 hardware- and software-related expenses, including necessary backup and redundancy, per SDR connection) × (2 SDR connections per reporting side) × (300 reporting sides) = $60,000,000, or $200,000 per reporting side. *See* Regulation SBSR Proposing Release, 75 FR 75265. These estimates have been adjusted to reflect the Commission's new estimate of the number of reporting sides.

[1234] This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer (80 hours) at $303 per hour) + (Sr. Systems Analyst (80 hours) at $260 per hour) + (Compliance Manager (5 hours) at $283 per hour) + (Director of Compliance (2 hours) at $446 per hour) + (Compliance Attorney (5 hours) at $334 per hour) × (300 reporting sides)] = $14,705,100, or approximately $14,700,000, or approximately $49,000 per reporting side. *See* Regulation SBSR Proposing Release, 75 FR 75265, adjusted to reflect the Commission's new estimate of the number of reporting sides.

[1235] This estimate is based on the following: [((Sr. Programmer (32 hours) at $303 per hour) + (Sr. Systems Analyst (32 hours) at $260 per hour) + (Compliance Manager (60 hours) at $283 per hour) + (Compliance Clerk (240 hours) at $64 per hour) + (Director of Compliance (24 hours) at $446 per hour) + (Compliance Attorney (48 hours) at $334 per hour)) × 300 reporting sides)] = $23,127,600, or approximately $23,100,000, or approximately $77,000 per reporting side. *See* Regulation SBSR Proposing Release, 75 FR 75264–5, adjusted to reflect the Commission's new estimate of the number of reporting sides.

[1236] This estimate is based on discussion of Commission staff with various market participants and is calculated as follows: [$250/gigabyte of storage capacity × (4 gigabytes of storage) × (300 reporting sides)] = $300,000, or $1,000 per reporting side. *See* Regulation SBSR Proposing Release, 75 FR 75265, adjusted to reflect the Commission's new estimate of the number of reporting sides.

[1237] *See* Regulation SBSR Proposing Release, 75 FR 75208, notes 195 and 299.

relating to the number of transactions and reporting sides. The Commission believes that the cost of reporting initial security-based swap transactions under Rule 901(c) will be approximately $340,000, or approximately $1,100 per reporting side.[1238] The Commission further believes that the cost of reporting life cycle events under Rule 901(e) will be approximately $415,000, or approximately $1,400 per reporting side.[1239] As a result, the Commission believes that the total cost (first-year and ongoing) of reporting security-based swap transactions under Rule 901, as adopted, will be approximately $750,000, or $2,500 per reporting side.[1240]

The Commission estimates that designing and implementing an appropriate compliance and support program will impose an initial one-time aggregate cost of approximately $16,200,000, which corresponds to a cost of approximately $54,000 for each reporting side.[1241]

The Commission estimates that maintaining its compliance and support program would impose an ongoing annual aggregate cost of approximately $11,550,000, which corresponds to a cost of approximately $38,500 for each reporting side.[1242]

Summing these costs, the Commission estimates that the initial, aggregate annual costs associated with Rule 901 would be approximately $157,200,000, which corresponds to approximately $524,000 per reporting side.[1243] The Commission estimates that the ongoing aggregate annual costs associated with Rule 901 will be approximately $95,700,000, which corresponds to approximately $319,000 per reporting side.[1244]

The Commission continues to believe that the costs associated with required reporting pursuant to Regulation SBSR could represent a barrier to entry for new, smaller firms that might not have the ability to comply with the proposed reporting requirements or for whom the expected benefits of compliance might not justify the costs of compliance. To the extent that Regulation SBSR might deter new firms from entering the security-based swap market, this would be a cost of the regulation and could negatively impact competition. Nevertheless, the Commission continues to believe that the reporting requirements will not impose insurmountable barriers to entry, as firms that are reluctant to acquire and build reporting infrastructure could engage with third-party service providers to carry out any reporting duties incurred under Regulation SBSR.[1245]

In the Cross-Border Proposing Release, the Commission stated its preliminary belief that the infrastructure-related costs identified in the Regulation SBSR Proposing Release associated with Rule 901, on a per-entity basis, would remain largely unchanged as a result of the re-proposal. The Commission preliminarily estimated and continues to believe that the marginal burden of reporting additional transactions once a respondent's reporting infrastructure and compliance systems are in place would be *de minimis* when compared to the costs of putting those systems in place and maintaining them over time. This is because the only additional costs of reporting an individual transaction would be entering the required data elements into the firm's OMS, which could subsequently deliver the required transaction information to a registered SDR. In many cases, particularly with increased standardization of instruments and use of electronic trading, transaction information could more frequently be generated and maintained in electronic form, which could then be provided to a registered SDR through wholly automated processes. The Commission does not believe that the additional changes made to Rule 901 in this adopting release will have any measureable impact on the costs previously discussed in both the Regulation SBSR Proposing Release and the Cross-Border Proposing Release. As a result, the Commission believes that these previous estimates remain applicable.

In the Cross-Border Proposing Release, the Commission noted that each reporting side would be required to report, on average, more security-based swap transactions than envisioned under the original proposal. The Commission further noted that smaller unregistered counterparties, that would have been required to report a small number of security-based swap transactions under the original proposal would, under re-proposed Rule 901(a), be less likely to have to incur reporting duties under Regulation SBSR, and thus less likely to have to incur the initial infrastructure-related costs of reporting.[1246] The Commission noted its

[1238] The Commission believes that 900,000 of the 2 million reportable events will be the result of reporting the initial security-based swap transaction under Rule 901(c). As a result, the Commission estimates: ((900,000 × 0.005 hours per transaction)/(300 reporting sides)) = 15 burden hours per reporting side, or 4,500 total burden hours. The resulting cost of such reporting would be: [((Compliance Clerk (7.5 hours) at $64 per hour) + (Sr. Computer Operator (7.5 hours) at $87 per hour)) × (300 reporting sides)] = approximately $340,000, or $1,133 per reporting side.

[1239] The Commission believes that 1,100,000 of the 2 million reportable events will be the result of reporting life cycle events under Rule 901(e). As a result, the Commission estimates: ((1,100,000 × 0.005 hours per transaction)/(300 reporting sides)) = 18.33 burden hours per reporting side, or 5,500 total burden hours. The resulting cost of such reporting would be: [((Compliance Clerk (9.17 hours) at $64 per hour) + (Sr. Computer Operator (9.17 hours) at $87 per hour)) × (300 reporting sides)] = approximately $415,000, or $1,383 per reporting side.

[1240] The Commission believes that the per reportable event transaction cost will not change and that only approximately 2 million of these events will be reported by the reporting sides. As a result, the Commission now estimates: ((2 million × 0.005 hours per transaction)/(300 reporting sides)) = 33.3 burden hours per reporting side, or 10,000 total burden hours. The Commission therefore estimates the total cost to be: [((Compliance Clerk (16.7 hours) at $64 per hour) + (Sr. Computer Operator (16.7 hours) at $87 per hour)) × (300 reporting sides)] = approximately $750,000, or $2,500 per reporting side. *See* Regulation SBSR Proposing Release, 75 FR 75208, notes 195 and 299. These estimates have been adjusted to reflect the Commission's new estimates of the number of reporting sides and number of reportable events.

[1241] This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer (100 hours) at $303 per hour) + (Sr. Systems Analyst (40 hours) at $260 per hour) + (Compliance Manager (20 hours) at $283 per hour) + (Director of Compliance (10 hours) at $446 per hour) + (Compliance Attorney (10 hours) at $334 per hour) × (300 reporting sides)] = approximately $16,200,000, or $54,000 per reporting side. *See* Regulation SBSR Proposing Release, 75 FR 75266. These estimates have been adjusted to reflect the Commission's new estimate of the number of reporting sides.

[1242] This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer (16 hours) at $303 per hour) + (Sr. Systems Analyst (16 hours) at $260 per hour) + (Compliance Manager (30 hours) at $283 per hour) + (Compliance Clerk (120 hours) at $64 per hour) + (Director of Compliance (12 hours) at $446 per hour) + (Compliance Attorney (24 hours) at $334 per hour) × (300 reporting sides)] = $11,563,800, or approximately $11,550,000, or approximately $38,500 per reporting side. *See* Regulation SBSR Proposing Release, 75 FR 75266. These estimates have been adjusted to reflect the Commission's new estimate of the number of reporting sides.

[1243] This estimate is based on the following: (($102,000 + $200,000 + $49,000 + $2,500 + $54,000 + $77,000 + $1,000 + $38,500) × (300 reporting sides)) = $157,200,000, which corresponds to approximately $524,000 per reporting side. *See* Regulation SBSR Proposing Release, 75 FR 75264–6. These estimates have been adjusted to reflect the Commission's new estimate of the number of reporting sides.

[1244] This estimate is based on the following: (($200,000 + $2,500 + $77,000 + $1,000 + $38,500) × (300 reporting sides)) = $95,700,000, or approximately $319,000 per reporting side. *See* Regulation SBSR Proposing Release, 75 FR 75264–66. These estimates have been adjusted to reflect the Commission's new estimate of the number of reporting sides.

[1245] *See also* Regulation SBSR Proposing Release, 75 FR 75266.

[1246] The Commission notes, however, that non-reporting sides would be required to provide certain information about a reportable transaction. *See* Rule 906(a), as originally proposed (requiring reporting, if applicable, of participant ID, broker ID, trading

preliminary agreement with certain commenters [1247] that basing the reporting duty primarily on status as a security-based swap dealer or major security-based swap participant rather than on whether or not the entity is a U.S. person would, in the aggregate, reduce costs to the security-based swap market.

In the Cross-Border Proposing Release, the Commission noted two additional factors that could serve to limit the average per-transaction costs across all affected entities. First, to the extent that security-based swap instruments become more standardized and trade more frequently on electronic platforms (rather than manually), the act of reporting transactions to a registered SDR should become less costly. These trends are likely to reduce the number of transactions that would necessitate the manual capture of bespoke data elements, which is likely to take more time and be more expensive than electronic capture. Second, the larger entities that would incur additional reporting duties under re-proposed Rules 901(a) and 908(a)(1)(iii)—*i.e.,* non-U.S. person security-based swap dealers and major security-based swap participants—can benefit from certain economies of scale in carrying out reporting duties that might elude smaller, unregistered counterparties. The Commission continues to believe that these factors could limit the average per-transaction costs across all affected entities. However, the extent of these effects is difficult to quantify. It is difficult to predict how many transactions each reporting side will report under manual versus electronic capture. Furthermore, the Commission currently does not have information about the exact reporting systems and the associated cost structures of reporting sides. Therefore, while the Commission has considered the likely effects of electronic trade capture and more concentrated reporting obligations qualitatively, as above, the Commission is not able to quantify these effects.

After reviewing comment letters received in response to the Regulation SBSR Proposing Release and the Cross-Border Proposing Release, as well as evaluating the most recent data available to the Commission, the Commission believes that these cost estimates, as adjusted to account for more recent data on the number of reporting sides, remain valid. The Commission has received no comments to the contrary.

ii. Registered SDRs—Receipt and Processing of Security-Based Swap Transactions—Rule 901

Rule 901, as adopted, requires all security-based swaps that are covered transactions [1248] to be reported to a registered SDR, establishes a ''reporting hierarchy'' that determines which side must report the transaction, and sets out the data elements that must be reported. Together, sections (a), (b), (c), (d), (e), and (h) of Rule 901 set forth the parameters that govern how reporting sides must report security-based swap transactions. Rule 901(i) addresses the reporting of pre-enactment and transitional security-based swaps.

In both the Regulation SBSR Proposing Release and the Cross-Border Proposing Release, the Commission discussed the potential costs to registered SDRs resulting from Rule 901. The Commission preliminarily estimated that the number of registered SDRs would not exceed ten in both releases. No comments discussed the potential number of entities that might register with the Commission as SDRs and incur duties under Regulation SBSR. The Commission continues to believe that it is reasonable to estimate ten registered SDRs for purposes of evaluating the costs and benefits of Regulation SBSR.

As discussed above, Rule 901 imposes certain minor, additional requirements on registered SDRs, in addition to the major duties imposed on SDRs by Rules 902 and 907 of Regulation SBSR and the rules adopted as part of the SDR Adopting Release. Rule 901(f) requires a registered SDR to time stamp, to the lowest second increment practicable but in any event no greater than a second, its receipt of any information submitted to it pursuant to Rules 901(c), (d), or (e). Rule 901(g) requires a registered SDR to assign a transaction ID to each security-based swap reported or establish or endorse a methodology for transaction IDs to be assigned by third parties. Consequently, the Commission estimates that Rules 901(f) and 901(g) will impose an initial aggregate one-time cost of approximately $360,000, which corresponds to $36,000 per registered SDR.[1249] With regard to ongoing costs, the Commission estimates that Rules 901(f) and 901(g) would impose an ongoing aggregate annual cost of $455,000, which corresponds to $45,500 per registered SDR.[1250] This figure represents an estimate of the support and maintenance costs for the time stamp and transaction ID assignment elements of a registered SDR's systems.

The Commission estimates that the initial aggregate annual cost associated with Rules 901(f) and 901(g) will be approximately $815,000, which corresponds to $81,500 per registered SDR.[1251] The above costs per registered SDR are generally consistent with those set forth in the Cross-Border Proposing Release. It is possible, however, that the costs may be lower than previously estimated, as the Commission is now estimating fewer reportable events per year (5 million in the Cross-Border Proposing Release versus 2 million events to be reported by the reporting sides).[1252] In addition, to the extent that those persons planning on registering as SDRs have already expended resources in anticipation of the adoption of Regulation SBSR and as a result of CFTC regulations that are already in place, the costs to become a registered SDR could be significantly lower. As a result, the Commission's estimates should be viewed as an upper bound of the potential costs of Regulation SBSR.

After reviewing comment letters received in response to the Regulation SBSR Proposing Release and Cross-Border Proposing Release, as well as evaluating the most recent data available to the Commission, the

desk ID, and trader ID). *See also* Regulation SBSR Proposing Release, 75 FR 75221 (discussing rationale for proposed Rule 906(a)).

[1247] *See, e.g.,* DTCC II at 8; ICI Letter at 5; Cleary III at 31. *See also* Vanguard Letter at 6; Cleary III at 28 (stating that requiring U.S. end users to report security-based swaps entered into with non-U.S. person security-based swap dealers would be unduly burdensome for end users and could negatively impact the competitiveness of affected U.S. markets).

[1248] *See supra* notes 11–12 and accompanying text.

[1249] This figure is calculated follows: [((Sr. Programmer (80 hours) at $303 per hour) + (Sr. Systems Analyst (20 hours) at $260 per hour) + (Compliance Manager (8 hours) at $283 per hour) + (Director of Compliance (4 hours) at $446 per hour) + (Compliance Attorney (8 hours) at $334 per hour) × (10 registered SDRs)] = $361,600, or approximately $360,000. All hourly cost figures are based upon data from SIFMA's Management & Professional Earnings in the Securities Industry 2013 (modified by the SEC staff to account for an 1,800-hour-work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead). *See also* Regulation SBSR Proposing Release, 75 FR 75266, note 309.

[1250] This figure is calculated as follows: [((Sr. Programmer (60 hours) at $303 per hour) + (Sr. Systems Analyst (48 hours) at $260 per hour) + (Compliance Manager (24 hours) at $283 per hour) + (Director of Compliance (12 hours) at $446 per hour) + (Compliance Attorney (8 hours) at $334 per hour) × (10 registered SDRs)] = $454,760, or approximately $455,000. *See also* Regulation SBSR Proposing Release, 75 FR 75266, note 310.

[1251] This figure is based on the following: (($36,160 + $45,476) × (10 registered SDRs) = $816,360, or approximately $815,000, which corresponds to $81,636, or approximately $81,500 per registered SDR. *See also* Regulation SBSR Proposing Release, 75 FR 75266, note 311.

[1252] *See supra* Section XXII (PRA discussion revising the Commission's estimate of the number of reportable events).

Commission continues to believe that its overall approach to the estimate of costs imposed on registered SDRs remain valid. The Commission received no comments to the contrary.

2. Public Dissemination

Rule 902 requires the public dissemination of security-based swap transaction information. Rule 902(a), as adopted, sets out the core requirement that a registered SDR, immediately upon receipt of a transaction report of a security-based swap or life cycle event, must publicly disseminate information about the security-based swap or life cycle event, plus any condition flags contemplated by the registered SDR's policies and procedures that are required by Rule 907.

a. Programmatic Benefits

There are benefits to public dissemination of security-based swap information, as is required by Rule 902. Among other things, by reducing information asymmetries, post-trade transparency has the potential to facilitate price discovery and price competition,[1253] lower implicit transaction costs,[1254] improve valuation of security-based swap products, and increase liquidity in the security-based swap market.[1255]

Requiring public dissemination of security-based swap transactions will provide all market participants and market observers with more extensive and more accurate information upon which to make trading and valuation determinations. In the absence of post-trade transparency, larger dealers possess private information in the form of transactions prices and volumes, and larger dealers enjoy a greater informational advantage than smaller dealers. As noted above in Section XXII(B), the bulk of security-based swap activity is dealer-intermediated. Non-dealers and small dealers who perceive the informational advantage of their counterparties may be less willing to trade. By reducing the information advantage of large dealers, the public dissemination of security-based swap data may improve the negotiating position of smaller market participants such as non-dealers and small dealers, allowing them to access liquidity and risk sharing opportunities in the security-based swap market at lower implicit transaction costs.

While the Commission has not yet adopted rules governing trading of security-based swaps on centralized venues such as exchanges and SB SEFs, post-trade transparency may have particular benefits for exchange or SB SEF trading.[1256] In particular, providers of liquidity can use publicly disseminated transaction data as a key input into their orders and quotations, thereby increasing the efficiency of price formation. Market participants seeking liquidity can use recent last-sale prices in the same or similar products as a basis for initiating negotiations with liquidity providers. Liquidity seekers also can use public dissemination of other market participants' recent transactions in the same or similar products to evaluate the quality of quotes being offered or the quality of an execution given by a liquidity provider. Furthermore, public dissemination of all transactions may suggest to all market participants profitable opportunities to offer or take liquidity, based on the prices at which recent transactions were effected.

Moreover, the Commission believes that post-trade pricing and volume information could allow valuation models to be adjusted to reflect how security-based swap counterparties have valued a security-based swap product at a specific moment in time. Post-trade transparency of security-based swap transactions also could improve market participants' and market observers' ability to value security-based swaps, especially in opaque markets or markets with low liquidity where recent quotations or last-sale prices may not exist or, if they do exist, may not be widely available. For example, a single-name CDS contract that expires in five years may yield information relevant for pricing other five-year CDS on the same firm, and will also provide information on default probabilities that may help price other CDS on the same firm with different maturities, or on other firms in the same industry.

By improving valuations, post-trade transparency of security-based swap transactions could contribute to more efficient capital allocation. In particular, under the post-trade transparency regime of Regulation SBSR, market observers, whether or not they engage in the security-based swap transactions, could use information produced and aggregated by the security-based swap market as an input to both real investment decisions as well as financial investments in related markets for equity and debt.[1257] Improved valuation, together with more efficient prices, that may arise as a result of publicly disseminated transaction information, could directly contribute to efficiency of capital allocation by firms whose obligations are referenced by security-based swaps.

A number of studies of the corporate bond market have found that post-trade transparency, resulting from the introduction of TRACE, has reduced implicit transaction costs.[1258] Post-trade transparency could have the same effect in the security-based swap market. The Commission acknowledges that the differences between the security-based swap market and other securities markets might be sufficiently great that post-trade transparency might not have the same effects in the security-based swap market.[1259] Nevertheless, similarities in the way the security-based swap market and corporate bond market are structured—both markets evolved as dealer-centric OTC markets with limited pre- or post-trade transparency—suggest that some of the benefits that result from post-trade transparency in the corporate bond market also would arise in the security-based swap market as well.

Public dissemination of security-based swap transactions is also designed to promote better valuation of security-based swaps themselves, as well as of underlying and related assets. In

[1253] *See* Edwards, *et al., supra* note 1223 *supra.*

[1254] As noted in Section XXII(B)(1)(b), dealing activity in the single-name CDS market is concentrated among a small number of firms that each enjoy informational advantages as a result of the large quantity of order flow they privately observe. Implicit transaction costs are the difference between the transaction price and the fundamental value, which could reflect adverse selection or could reflect compensation for inventory risk. In addition to these implicit transaction costs, security-based swap market participants may face explicit transaction costs such as commissions and other fees that dealers might charge non-dealers for access to the market.

[1255] *See infra* Section XXII(D)(2)(b). *See also* Regulation SBSR Proposing Release, 75 FR 75267.

[1256] The size of benefits arising from the use of publicly disseminated transaction data for SB SEF trading depend on the trading models that SB SEFs support pursuant to rules ultimately adopted by the Commission. *See* SB SEF Proposing Release, 76 FR 10948.

[1257] *See* Philip Bond, Alex Edmans, and Itay Goldstein, ''The Real Effects of Financial Markets,'' Annual Review of Financial Economics, Vol. 4 (October 2012) (reviewing the theoretical literature on the feedback between financial market price and the real economy). *See also* Sugato Chakravarty, Huseyin Gulen, and Stewart Mayhew, ''Informed Trading in Stock and Option Markets,'' Journal of Finance, Vol. 59, No. 3 (2004) (estimating that the proportion of information about underlying stocks revealed first in option markets ranges from 10% to 20%).

[1258] *See, e.g.,* Edwards, *et al., supra* note 1223; Hendrik Bessembinder, William F. Maxwell, & Kumar Venkataraman, *Market Transparency, Liquidity Externalities, and Institutional Trading Costs in Corporate Bonds,* J. of Fin. Econ., Vol. 82, at 251–288 (2006).

[1259] In the Regulation SBSR Proposing Release, the Commission requested comment on whether post-trade transparency would have a similar effect on the security-based swap market as it has in other securities markets—and if not, why not. No commenters responded to the Commission's request.

transparent markets with sufficient liquidity, valuations generally can be derived from recent quotations and/or last-sale information. However, in opaque markets or markets with low liquidity—such as the current market for security-based swaps—recent quotations or last-sale information may not exist for many products or, if they do exist, may not be widely available.[1260] Therefore, market participants holding assets that trade in opaque markets or markets with low liquidity frequently rely instead on pricing models to value their positions. These models could be imprecise or be based on assumptions subject to the evaluator's discretion. Thus, market participants holding the same or similar assets but using different valuation models might arrive at significantly different valuations.

All other things being equal, valuation models—particularly for assets in illiquid markets, such as corporate bonds or security-based swaps—that include last-sale information in the valuation models generally will be more informative than models that do not or cannot include such inputs. Models without such inputs could be imprecise or be based on assumptions subject to the evaluator's discretion without having last-sale information to help identify or correct flawed assumptions. As discussed in Section XXII(B)(1)(d), valuation models typically have many inputs even in the absence of last-sale information. However, in general, models improve if the information set is broadened to include additional data related to fundamental value, and last-sale information is of particular relevance for pricing models. Research suggests that post-trade transparency helps reduce the range of valuations of assets that trade infrequently,[1261] and it is likely that the security-based swap market participants and market observers will devise means to incorporate last-sale reports of the asset to be valued, reports of related assets, or reports of benchmark products that include the asset to be valued or closely related assets into their valuation models. This should result in more accurate valuations of security-based swaps generally, as all market participants and market observers would have the benefit of knowing how counterparties to a security-based swap valued the security-based swap at a specific moment in the recent past.

In addition, post-trade transparency of security-based swaps that are CDS should promote better valuation of debt instruments and better understanding of the creditworthiness of debt issuers generally. CDS are contracts that offer protection against events of default by a debt issuer, such as a bankruptcy, debt restructuring, or a failure to pay. All other things being equal, CDS protection on a more creditworthy issuer costs less than CDS protection on a less creditworthy issuer. Furthermore, the cost of CDS protection on a single issuer may change over time: If the issuer's financial position strengthens, it is less likely to default on its debt and the cost of CDS protection on the issuer generally will decrease; if the issuer's financial condition weakens, the cost of CDS protection on the issuer generally will increase. Mandatory post-trade transparency of CDS transactions will offer market participants and market observers the ability to assess the market's view of the creditworthiness of entities underlying CDS contracts, which often are large and systemically significant debt issuers. Currently, last-sale information of CDS transactions generally is known only to the participants involved in a transaction (such as dealers who execute with clients and brokers who may be involved in negotiating transactions). Public dissemination of security-based swap transactions—both CDS and equity-based swaps—as required by Regulation SBSR, will reduce the information asymmetry between insiders who are involved in particular transactions and all others, and is thus designed to promote greater price efficiency in security-based swap markets, the related index swap markets, and the markets for the underlying securities.[1262]

Public dissemination of transactions in CDS that are based on reference entities that issue TRACE-eligible debt securities should reinforce the pricing signals derived from individual transactions in debt securities generated by TRACE. Since prices in debt securities of an issuer and prices of CDS with that debt security as reference entity are related, any pricing signal received as a result of a trade in one asset market may inform prices in the other. In addition, if prices of debt securities in TRACE and last-sale information of related CDS are not consistent with each other, market participants may avail themselves of arbitrage opportunities across these two markets, thereby aligning the respective prices and enhancing price efficiency in both markets. Similarly, public dissemination of transactions in single-name security-based swaps should reinforce the pricing signals derived from public dissemination of transactions in index swaps, where the index includes those individual securities. In addition, post-trade transparency of security-based swap CDS under Regulation SBSR should indirectly bring greater transparency into the market for debt instruments (such as sovereign debt securities) that are not subject to mandatory public dissemination through TRACE or any other means by providing indirect pricing information. For example, last-sale information for CDS referencing sovereign debt may inform prices of the underlying sovereign debt.

b. Programmatic Costs

Market participants may experience costs as a result of revealing the true size of their trades if public dissemination of this information makes it more difficult to hedge their positions. Further, public dissemination of true transaction sizes could result in higher costs if it allows market participants to infer the identities of particular counterparties. Thus, some commenters have argued for dissemination of the notional amount of block trades through a ''masking'' or ''size plus'' convention comparable to that used by TRACE, in which transactions larger than a specified size would be reported as ''size plus.''[1263] The Commission considered this alternative, but has elected to require a registered SDR to publicly disseminate (for all dissemination-eligible transactions[1264]), immediately upon receipt of the transaction report, all of the elements required by Rule 901(c), including the true notional amount of the transaction. The Commission notes, first of all, that a dissemination cap could deprive the market of important information about overall exposure. With a cap in place, market participants would not have information about the true size of very large trades, thereby reducing the precision with which they could

[1260] *See supra* Section XXII(B)(1)(b) (describing current level of trading activity and liquidity in the security-based swap market).

[1261] *See* Gjergji Cici, Scott Gibson, and John J. Merrick, Jr., ''Missing the Marks? Dispersion in Corporate Bond Valuations Across Mutual Funds,'' Journal of Financial Economics, Volume 101, Issue 1 (July 2011), at 206–26.

[1262] *See, e.g.,* Chakravarty, *et al.,* note 1258, *supra* (estimating that the proportion of information about underlying stocks revealed first in option markets ranges from 10 to 20%).

[1263] *See* WMBAA II at 7; ISDA/SIFMA I at 5; ISDA/SIFMA Block Trade Study at 2, 26–27; Vanguard Letter at 5; Goldman Sachs Letter at 6; SIFMA I at 5; J.P. Morgan Letter at 12–13; MFA I at 4; MFA III at 8; UBS Letter at 2; FIA/FSF/ISDA/SIFMA Letter at 6.

[1264] *See* Rule 902(c) (requiring that certain types of security-based swaps not be publicly disseminated).

estimate the level of risk arising from those large trades. Furthermore, as noted above in Section VII(B)(4), the Commission believes that a 24-hour timeframe for reporting of transaction information during the interim phase of Regulation SBSR should address any concerns about disseminating the true notional amount of any transaction and give market participants who choose to hedge adequate time to accomplish a majority of their hedging activity [1265] before transaction data are publicly disseminated. During the interim phase, the Commission will be able to collect and analyze transaction information to develop an understanding of how market participants are reacting to the introduction of mandated post-trade transparency.

Under Rule 902(a), a registered SDR will be required to publicly disseminate a condition flag indicating whether two counterparties to a security-based swap are registered security-based swap dealers. The Commission received one comment expressing concern that disseminating such information would reduce the anonymity of counterparties, ultimately resulting in ''worse pricing and reduced liquidity for end-users.'' [1266] Public dissemination of this information will indicate that a transaction involved two counterparties that are dealers. Although flagging transactions between two registered security-based swap dealers does indeed provide information to the public that the transaction involved two dealers, thus restricting the set of possible counterparties, the Commission believes that, since the majority of transactions in the security-based swap market are between dealers, market observers are unlikely to be able to identify particular counterparties using this information.

Another potential cost of post-trade transparency is that it may increase inventory risks. Dealers often enter trades with their customers as a liquidity supplier. Dealers trying to hedge inventory following a trade might be put in a weaker bargaining position relative to subsequent counterparties if transactions prices and volumes are publicly-disseminated. With mandated post-trade transparency, the market will see when a large transaction or a transaction in an illiquid security occurs and is aware that the dealer who took the other side may attempt to hedge the resulting position. As a result, other market participants may change their pricing unfavorably for the dealer, making it more expensive for the dealer to hedge its position. Dealers could respond either by raising the liquidity premium charged to their clients or refusing to accommodate such trades. Such behavior could lead to lower trading volume or reduce the ability of certain market participants to manage risk, either of which could adversely affect all market participants. An increase in post-trade transparency could also drive trades to other markets or instruments that offer the opacity desired by traders, which could increase fragmentation, since trading would occur at more trading centers, or potentially reduce liquidity. This possibility is consistent with the argument that large, informed traders may prefer a less transparent trading environment that allows them to minimize the price impact of their trades. Public dissemination of security-based swap transaction information, therefore, could cause certain market participants to trade less frequently or to exit the market completely. A reduction in market activity by these participants, especially if they are large, informed traders, could have an adverse effect on market liquidity.

We are currently unable to quantify the costs associated with market exit or reduced liquidity that might result from post-trade transparency. This is due to two factors: (1) Lack of robust data; and (2) lack of experimental conditions necessary for identifying the impact of post-trade transparency on the costs of hedging. As noted above, Commission staff has undertaken a study that attempts to identify instances of hedging behavior by dealers in the single-name CDS market. Subject to the data limitations described in the study, the low levels of such behavior suggest that, in aggregate, post-trade transparency is unlikely to drive down liquidity or increase the liquidity premium charged by dealers to non-dealers as a result of increasing the cost of hedging.[1267] Commission staff has also undertaken a study of the effects of the introduction of mandatory post-trade transparency in the index CDS market pursuant to CFTC rules. Subject to the data limitations in the study, and the fact that the security-based swap and the swap markets are related but not identical, staff found little empirical evidence that the introduction of mandatory post-trade transparency in the index CDS market resulted in reduced trading activity, liquidity, or risk exposure in the index CDS market.[1268] Moreover, studies of the corporate bond market, another largely OTC market, do not find evidence of market exit or reduced liquidity associated with post-transparency.[1269]

Another potential cost of post-trade transparency as required under Rule 902 is that market observers could misinterpret or place undue importance on particular last-sale information that might not accurately reflect the market. For example, if a large market participant failed, it could be required to liquidate its portfolio at ''fire sale'' prices. If market observers were not aware of any unusual conditions surrounding particular transaction prints, they might interpret fire sale prices to indicate changes to the economic fundamentals of security-based swap positions that they hold. If some of these market participants mark down the value of their portfolios, the result could be additional margin calls and further market stress. In these circumstances, use of valuation models that include last-sale data, but do not condition those data on the information about unusual conditions could lead to market de-stabilization.[1270]

Rule 902(a) requires a registered SDR to publicly disseminate a transaction report of any security-based swap immediately upon receipt of transaction information about the security-based swap, except in in certain limited circumstances.[1271] The published transaction report must consist of all the information reported pursuant to Rule 901(c), plus the execution time stamp and any necessary flags required by the registered SDR to which the transaction is reported.

Implementing and complying with the public dissemination requirement of Rule 902 will add 20% to the start-up and ongoing operational expenses that would otherwise be required of a registered SDR.[1272] In particular, the Commission continues to estimate that the initial one-time aggregate costs for development and implementation of the systems needed to disseminate the required transaction information would be $20,000,000, which corresponds to $2,000,000 per registered SDR. Further, the Commission continues to estimate that aggregate annual costs for systems and connectivity upgrades associated

[1265] Market participants typically hedge only a small fraction of large trades and, if they hedge, they tend to do so within one day. *See* Hedging Analysis.

[1266] ISDA IV at 16.

[1267] *See* Hedging Analysis.

[1268] *See* Analysis of Post-Trade Transparency.

[1269] *See supra* note 1259.

[1270] *See, e.g.,* Brunnermeier and Pedersen; Gromb and Vayanos, note 1177, *supra.*

[1271] *See supra* Section VI(D). In addition, registered SDRs shall not publicly disseminate reports of pre-enactment or transitional security-based swaps.

[1272] *See* SDR Adopting Release, Section VIII(D)(2). *See also* Regulation SBSR Proposing Release, 75 FR 75269.

with public dissemination would be approximately $12,000,000, which corresponds to $1,200,000 per registered SDR. Thus the initial aggregate costs associated with Rule 902 are estimated to be $32,000,000, which corresponds to $3,200,000 per registered SDR. To the extent that those market participants planning on registering as SDRs have already expended resources if they voluntarily report their transactions or because they are registered SDRs with the CFTC, the costs to become a registered SDR could be significantly lower. As a result, the Commission's estimates should be viewed as an upper bound of the potential costs of Regulation SBSR.

c. Alternative Approaches to Public Dissemination

The Commission considered alternative approaches to the public dissemination of transactions information. First, the Commission has considered, but is not adopting, an exemption from Regulation SBSR's regulatory reporting or public dissemination requirements for inter-affiliate security-based swaps, although the Commission generally believes that a registered SDR should consider establishing a flag for inter-affiliate security-based swaps to help market observers better understand the information that is publicly disseminated.[1273]

Commenters had raised concerns about the public dissemination of inter-affiliate transactions, comments that the Commission carefully considered in its adoption of Rule 902.[1274] As an example, one commenter argued that ''public reporting of inter-affiliate transactions could seriously interfere with the internal risk management practices of a corporate group'' and that ''[p]ublic disclosure of a transaction between affiliates could prompt other market participants to act in a way that would prevent the corporate group from following through with its risk management strategy by, for instance, causing adverse price movements in the market that the risk-carrying affiliate would use to hedge.'' [1275] As stated above, the Commission agrees generally that corporate groups should engage in appropriate risk management practices. However, the Commission does not agree that Regulation SBSR, as adopted, is inimical to effective risk management. The Commission notes that, during the interim phase of Regulation SBSR, all security-based swaps—regardless of size—must be reported within 24 hours from the time of execution and—except with regard to transactions falling within Rule 908(a)(2)—immediately publicly disseminated. As discussed in Section VII above, this reporting timeframe is designed, in part, to minimize any potential for market disruption resulting from public dissemination of any security-based swap transaction during the interim phase of Regulation SBSR. The Commission anticipates that, during the interim period, it will collect and analyze data concerning the sizes of transactions that potentially affect liquidity in the market. The Commission sees no basis for concluding, at this time, that inter-affiliate security-based swaps are more difficult to hedge than other types of security-based swaps, or that the hedging of these transactions presents unique concerns that would not also arise in connection with the hedging of a security-based swap that was not an inter-affiliate transaction. Therefore, the Commission does not agree with the commenters' concern that public dissemination of inter-affiliate security-based swaps will impede the ability of corporate groups to hedge.

Second, the Commission considered other mechanisms for public dissemination, but has determined not to adopt any of them.[1276] In the Regulation SBSR Proposing Release, the Commission discussed a ''first touch'' approach to public dissemination, whereby a security-based swap dealer or major security-based swap participant that is a counterparty to a security-based swap would be responsible for dissemination. Under a ''modified first touch'' approach, a platform on which a transaction was effected would be required to publicly disseminate a transaction occurring on its market. However, under either of these alternate approaches, market observers would be required to obtain and consolidate information from potentially dozens of different sources. As the Commission stated in the Regulation SBSR Proposing Release: ''Requiring registered SDRs to be the registered entities with the duty to disseminate information would produce some degree of mandated consolidation of [security-based swap] transaction data and help to provide consistency in the form of the reported information. This approach is designed to limit the costs and difficulty to market participants of obtaining and assembling data feeds from multiple venues that might disseminate information using different formats.'' [1277]

Moreover, even though the alternative approaches noted above would allow market participants to circumvent registered SDRs while fulfilling the public dissemination requirement, neither alternative would reduce costs to market participants, since reporting sides would be required to report transactions to an SDR to fulfil the regulatory reporting requirement. The Commission received no comments that disagreed with the proposed approach imposing the duty to disseminate security-based swap transaction information on registered SDRs, and has adopted it as proposed.

3. Interim Phase for Reporting and Public Dissemination

As discussed in more detail above, the rules, as adopted, establish an interim phase of Regulation SBSR. During this interim phase, all covered transactions—regardless of their notional size—must be reported to a registered SDR no later than 24 hours after the time of execution.[1278] The registered SDR will be required to publicly disseminate a report of the transaction immediately upon receipt of the information, except for the information described in Rule 902(c).

Commission staff has undertaken an analysis of the inventory management of dealers in the market for single-name CDS based on transaction data from DTCC–TIW.[1279] The analysis shows that, when large trades in single-name CDS are hedged using offsetting trades in the single-name CDS with the same reference entity, the majority of hedging activity takes places within one day.[1280] The Commission acknowledges the concerns of a commenter that this analysis does not consider hedging activity that might occur between

[1273] *See supra* Sections VI(D) and VI(G).

[1274] *See supra* Section XI(B).

[1275] Cleary II at 17.

[1276] *See* Regulation SBSR Proposing Release, 75 FR 75227–28.

[1277] *Id.*

[1278] If reporting would take place on a non-business day (*i.e.,* a Saturday, Sunday, or U.S. federal holiday), then reporting would be required by the same time on the next day that is a business day.

[1279] *See* Hedging Analysis.

[1280] The Commission staff analysis represents an update and extension of earlier work by staff of the Federal Reserve Bank of New York (Chen *et al.*), which identified same-day and next-day same-instrument dealer hedging activity within a three-month (May 1, 2010–July 31, 2010) sample of DTCC–TIW transaction data. Similar to the Commission staff analysis, these authors' results suggest that ''large customer CDS trades are not typically hedged via offsetting trades in the same instrument soon after they have been transacted.'' The authors conclude by saying that ''requiring same day reporting of CDS trading activity may not significantly disrupt same day hedging activity, since little such activity occurs in the same instrument.'' *See* Chen *et al., supra* note 510, at 17.

markets.[1281] For example, dealers may use index CDS contracts to hedge exposures in single-name CDS. However, the Commission notes that the presence of hedging opportunities in other markets—particularly more liquid markets such as the market for index CDS—may increase the speed with which dealers are able to hedge security-based swap exposures, and may limit the extent to which public dissemination of transaction data with 24 hours of execution impairs their ability to hedge large exposures.[1282]

The same commenter further argued that, if single-name CDS on a reference entity trade infrequently, dealers may not have opportunities to hedge using the same instrument in a short period of time.[1283] The Commission acknowledges that some market participants may take more than 24 hours to hedge exposures that result from large transactions in security-based swaps. As noted below, if a liquidity provider engages in a large trade in an illiquid security but cannot hedge its inventory risk within 24 hours, the result could be higher costs for liquidity provision. However, based on supplemental staff analysis of single-name CDS transaction data, the vast majority of large CDS transactions in the Hedging Analysis were written on reference entities with transaction activity occurring more than once per day, on average.[1284] Hence, based on the available data, the Commission does not conclude that the liquidity of the single-name CDS included in the Hedging Analysis was insufficient to allow dealers ample opportunities to hedge exposures within five days. Taking into consideration staff analysis and comments on this analysis, the Commission continues to believe that a 24-hour time frame for reporting of transaction information should allow market participants who choose to hedge adequate time to accomplish a majority of their hedging activity before transaction data is publicly disseminated.

Although any reporting side could take a full 24 hours to report a given trade under the interim phase, the final rules may provide incentives for reporting sides to submit trade reports in substantially less than 24 hours. In particular, as discussed above in Section VII(B)(1), because Rule 902(d) embargos transaction information until the information is transmitted to a registered SDR, any SB SEF that wants to continue the use of work-ups must ensure that transactions are reported to a registered SDR no later than the time at which a completed transaction is broadcast to the users of the SB SEF. Reporting sides may choose to report trades in less than 24 hours because their gains from work-ups exceed costs stemming from public dissemination.

a. Programmatic Benefits

The Commission notes that the interim phase of Regulation SBSR will result in increased transparency in the security-based swap market, as compared to the current market. Several commenters expressed concern that a public dissemination regime with improper block trade thresholds could harm market liquidity.[1285] A phased approach seeks to create some measure of post-trade transparency in the security-based swap market while avoiding the creation of inappropriate block standards.

This interim phase will afford the Commission the opportunity to use data made available by registered SDRs to consider the potential impact, across different security-based swap asset classes, of various public dissemination times on transaction costs, hedging activity, and price efficiency for trades involving a range of notional amounts in instruments of varying liquidity.[1286] Analysis of additional data is important for two key reasons. First, while the Commission has used available data to inform its current approach to regulatory reporting, the Commission expects the market to evolve in response to substantive regulation pursuant to Regulation SBSR and other Title VII rulemaking. In particular, additional post-trade transparency afforded by the interim phase may alter market participants' trading strategies in ways that will likely affect what constitutes an appropriate block trade threshold in an environment with post-trade transparency. Such changes to the regulatory environment for security-based swap transactions make additional data analysis critical to robust determination of block thresholds and associated dissemination delays.

Second, the Commission believes that data elements such as reporting and execution time stamps required under Rule 901 will make data collected from registered SDRs more suitable than currently available data for examining relationships between reporting delays, notional amounts and other variables of economic interest. For example, as noted by Commission staff in its analysis of inventory risk management in the security-based swap market, although the CDS transaction data currently available to the Commission includes both the date and time at which DTCC received and recorded the transaction, only the date of the execution is reported to DTCC, and not the actual time of the execution.[1287] Under Regulation SBSR, Commission staff will be able to identify not only the execution time, to the second, but also the length of time between when a transaction is executed and when a registered SDR receives the associated transaction report.

Accordingly, the Commission is directing its staff to issue a report, for

[1281] *See* ISDA IV at 15 (stating that ''participants may enter into risk mitigating transactions using other products that are more readily available at the time of the initial trade (for example CD index product [*sic*], CDS in related reference entities, bonds or loans issued by the reference entity or a related entity, equities or equity options)).'' The commenter further ''interprets the data in the study to imply that such temporary hedges in other asset classes (rather than offsetting transactions in the precise reference entity originally traded) are the norm for an illiquid market.'' *Id.*

[1282] The Commission notes that the impact of cross-market hedging may depend on the market characteristics for hedging assets. If dealers use corporate bonds to hedge large single-name CDS exposures, then the relative illiquidity of the corporate bond market may make dealers' ability to hedge sensitive to public dissemination of single-name CDS transaction information. However, the commenter did not provide support for the proposition that dealers rely on the corporate bond or equity markets to hedge single-name CDS exposure. Appropriate data are not currently available to the Commission. By contrast, if dealers use more liquid assets to hedge—such as index CDS—then the relative liquidity of the market for hedging assets may make it less likely that dealers' orders are identified as hedging demand. This, in turn, reduces the likelihood that dealers will face higher costs of hedging as a result of public dissemination of the original security-based swap transaction.

[1283] *See id.* (stating that ''If a reference entity trades less frequently than once per day, and a particular reference entity/maturity combination trades less frequently than that, it is unlikely that a dealer could hedge a large transaction using CDS in the same reference entity even over a period of five days'').

[1284] In response to this comment, Commission staff examined the average trading frequency and volume of the reference entities represented in the sample of large transactions relative to reference entities in the overall sample. According to this supplemental analysis, for over 90% of the reference entities in the sample of ''seed transactions'' (as defined in the Hedging Analysis,) transaction activity took place, on average, one or more times per day between April 2013 and March 2014. Commission staff also examined transaction activity in the six-month period prior to the sample used in the Hedging Analysis to avoid confounding its measures of trading activity with the large transactions and subsequent hedging activity it identified within the original study period. In the six months prior to April 2013, approximately 85% of reference entities in the sample of seed transactions were involved in transaction activity an average of one or more times per day.

[1285] *See supra* note 486.

[1286] *See* ISDA IV at 15 (noting that liquidity of CDS contracts on a reference entity may be a determinant of the risk management strategies of dealers attempting to hedge exposures generated when they engage in single-name CDS transactions).

[1287] *See* Hedging Analysis.

each asset class, regarding block thresholds and dissemination delays for large notional security-based swap transactions in each asset class. The reports are intended to inform the Commission's specification of criteria for determining what constitutes a block trade and the appropriate time delay for reporting block trades. The Commission will take into account the reports, along with public comment on the reports, in determining block thresholds and associated reporting delays.

Each report will be linked to the availability of data from registered SDRs in that each report must be complete no later than two years following the initiation of public dissemination from the first registered SDR in that asset class. The Commission believes that this timeframe is necessary for a thorough analysis of the transaction data. First, a two-year timeframe will help ensure that Commission staff's econometric analysis will have statistical power sufficient to draw clear conclusions about the effects of notional amount and reporting delay on price impact, hedging activity, and price efficiency. Second, the Commission believes that this timeframe is sufficiently large to capture seasonal effects, such as periodic ''rolls'', that may affect trading behavior in the security-based swap market. Finally, a sufficiently long timeframe increases the likelihood that Commission staff can separate potential market impacts resulting from the introduction of mandated post-trade transparency from short-term macroeconomic trends and shocks that also could affect market behavior.

While allowing time for data gathering and analysis by Commission staff that will inform the Commission about appropriate block thresholds and reporting delays, the interim approach to reporting and public dissemination may moderate the economic effects flowing from public dissemination of transaction data. By providing reporting sides up to 24 hours during the interim phase of Regulation SBSR in which to report their transactions, market observers will experience delays in obtaining information about market activity compared to an alternative policy of implementing a requirement for real-time reporting and public dissemination at the present time. For example, if there is a spike in activity or a significant price movement in a particular security-based swap product, market observers might not become aware of this until 24 hours afterwards. Larger dealers that observe more order flow and execute more transactions than other market participants would, during the interim phase, continue to enjoy an informational advantage over others who are not yet aware of recently executed transactions.

b. Programmatic Costs

While the Commission has considered whether there could be a reduction in the programmatic benefits of public dissemination associated with providing too much time before a security-based swap transaction must be reported and publicly disseminated, the Commission also has considered that 24 hours might be too little time for liquidity providers to manage inventory risk. If a liquidity provider who engages in a large trade, or in a trade in an illiquid security, cannot offset the risk within 24 hours, the costs for providing liquidity could rise, resulting in less liquidity provision (*i.e.,* less size provided at the desired price, or the same size provided at worse prices). This result might be avoided in a regulatory environment offering a longer delay between the time of execution of a security-based swap and the time that it must be reported and publicly disseminated.

4. Use of UICs

Rule 903(a) provides that, if an IRSS meeting certain criteria is recognized by the Commission and issues a UIC, that UIC must be used by all registered SDRs and their participants in carrying out duties under Regulation SBSR. Under Rule 903(a), if the Commission has recognized such an IRSS that assigns UICs to persons, each participant of a registered SDR shall obtain a UIC from or through that system. If no IRSS that can issue particular types of UICs has been recognized, the registered SDR is required to assign such UICs using its own methodology.

The following UICs are specifically required by Regulation SBSR: Counterparty ID, product ID, transaction ID, broker ID, branch ID, trading desk ID, trader ID, execution agent ID, platform ID, and ultimate parent ID. The security-based swap market data typically include fee-based codes, and all market participants and market observers must pay license fees and agree to various usage restrictions to obtain the information necessary to interpret the codes. Under Rule 903(b), a registered SDR may permit information to be reported pursuant to Rule 901, and may publicly disseminate that information pursuant to Rule 902, using codes in place of certain data elements only if the information necessary to interpret those codes is widely available to users of the information on a non-fee basis.

a. Programmatic Benefits

UICs will provide market participants that use a common registered SDR with a uniform way to refer to their counterparties and other persons or business units that might be involved in a transaction (such as brokers, trading desks, and individual traders). UICs are designed to allow registered SDRs, relevant authorities, and other users of data to quickly and reliably aggregate security-based swap transaction information by UIC along several dimensions (*e.g.,* by product, by individual trader, or by corporate group (*i.e.,* entities having the same ultimate parent)). The requirement for a registered SDR to refer to each person, unit of a person, product, or transaction with a single identifying code is designed to facilitate the performance of market analysis studies, surveillance activities, and systemic risk monitoring by relevant authorities through the streamlined presentation of security-based swap transaction data. These benefits apply on an SDR level, as each registered SDR is required to assign UICs using its own methodology if a relevant UIC is not available from an IRSS.

To the extent that multiple SDRs use the same UICs, these benefits would apply across SDRs. In particular, because the Commission has recognized the GLEIS—through which LEIs can be obtained—as an IRSS that meets the criteria of Rule 903, if an entity has an LEI issued by or through the GLEIS, then that LEI must be used for all purposes under Regulation SBSR. The Commission believes that this will facilitate aggregation by relevant authorities for surveillance and monitoring purposes. Nevertheless, the Commission acknowledges potential impediments to uniformity of UICs across registered SDRs. While registered SDRs are required to use an LEI issued by the GLEIS to identify a counterparty to a reported transaction, this requirement extends to only those counterparties that have been assigned an LEI by the GLEIS. Under Rule 903(a), these counterparties will include all SDR participants that are U.S. persons, including special entities and investment advisers, as well as all SDR participants that are registered security-based swap dealers and registered major security-based swap participants. Additionally, these counterparties will include non-U.S. subsidiaries of U.S. persons, when their performance under security-based swaps is guaranteed by a U.S. affiliate. For a person who is a counterparty to a security-based swap reported on a mandatory basis to a

registered SDR, who does not meet these conditions, and who has not obtained an LEI from the GLEIS, a registered SDR will be required to assign a UIC to that market participant using its own methodology. For such counterparties, this could result in the proliferation of multiple UIC assignments for the same entity to the extent that they are counterparties to security-based swaps that are reported across several SDRs that each assign a unique UIC.

This could pose challenges to the relevant authorities and other users of data to quickly and reliably aggregate security-based swap transaction information, and potentially impede the performance of market analysis studies and surveillance activities. In particular, mapping the unique identifiers across SDRs would entail a manual process of connecting like entities initially, and maintaining such a mapping over time to the extent that an entity's organizational structure changes in a way that requires a change to the UIC. This manual process could slow or introduce errors into the analysis of transaction activity or economic exposures of such counterparties. Requiring all participants and the entities to which they provide guarantees to utilize LEIs under Regulation SBSR should minimize these potential difficulties. Using the same LEI for these counterparties across all registered SDRs eliminates the need for such mapping.

Even absent uniformity of UICs, the use of such codes by a registered SDR and its participants could give rise to other significant potential benefits. The use of codes could improve the accuracy of the trade reporting system by streamlining the provision of data to the registered SDR. The product ID, for example, replaces several data elements that otherwise would have to be reported separately, thus enforcing the internal consistency of those data elements and reducing the likelihood of reporting errors.

In adopting Rule 903, the Commission has considered not only the benefits of using unique identification codes generally, but also the benefits of ensuring that such codes can be readily understood. Rule 903(b), as adopted, provides that a registered SDR may permit the use of codes in place of certain data elements for use in regulatory reporting and public dissemination of security-base swap transaction information only if the information necessary to interpret such codes is widely available to users of the information on a non-fee basis. This provision is intended to prevent any person who develops identification codes that might be used for the reporting or public dissemination of security-based swap transactions to charge fees or require other compensation from market participants, registered SDRs, other market infrastructure providers, and users of security-based swap data. Open access to UICs will promote the usage of public information about the security-based swap market, thereby furthering the statutory goals of Title VII. Rule 903(b) eliminates the possibility that market participants could be compelled to include fee-based codes in the transaction information that they are required to provide to a registered SDR, or that registered SDRs could be compelled to pay fees to code creators to be able to interpret the transaction information that is reported to them, or that market observers are compelled to pay fees to code creators to be able to interpret the security-based swap transaction information that is publicly disseminated. Rule 903(b) is designed to reduce barriers to entry into the security-based swap market [1288] by counterparties as well as service providers, because it minimizes the need for them to pay fees to code creators as a cost of entry.

b. Programmatic Costs

Rule 903 could also impose certain costs on current security-based swap market participants. Currently, private coding systems exist in the security-based swap market.[1289] To the extent that owners of these private coding systems do not make information to understand these codes widely available on a non-fee basis, Rule 903 would prohibit the use of such codes in the reporting or public dissemination of security-based swap transaction information carried out pursuant to Regulation SBSR. As a result of Rule 903, owners of these coding systems that otherwise might be used to report security-based swap transaction information will be restricted in their ability to profit from utilization of their codes for reporting under Regulation SBSR, although such codes could still be used for other purposes. To the extent that these owners currently generate revenue through fees charged to users of security-based swap data, Rule 903 could lower their revenues and cause them to increase revenues from other sources, including from those entities that wish to have identifiers assigned to them. Thus, Rule 903 may result in a reallocation of the costs associated with developing and maintaining UICs from users of data to producers of data.

Further, to the extent that market participants who currently utilized fee-based codes must reconfigure their systems and internal processes to use other codes (such as those issued by a registered SDR) that are compliant with Rule 903(b), the costs of such reconfiguration can be attributed to Rule 903(b). One commenter believed that reporting these UICs would require ''great cost and effort'' from firms, including the costs associated with establishing and maintaining UICs in the absence of a global standard.[1290] The Commission also acknowledges commenter concerns that there could be a certain degree of cost and effort associated with incorporating new UICs into firms' internal processes and record-keeping systems.[1291] However, the Commission believes that these costs are justified in the context of the programmatic benefits discussed in Section XXII(C)(4)(a), *supra,* such as the ability of relevant authorities to easily aggregate transaction reports on a variety of dimensions. The costs of developing such UICs are included in the discussion of the implementation of Rules 901 (detailing the data elements that must be reported [1292]) and 907 (detailing the requirement that SDRs develop policies and procedures for the reporting of the required data elements [1293]).

Any person who is a participant of a registered SDR must obtain an LEI from or through the GLEIS. Based on transaction data from DTCC–TIW, the Commission believes that no fewer than 3,500 of approximately 4,800 accounts that participated in the market for single-name CDS in 2013 currently have LEIs and are likely to maintain these LEIs in the absence of Regulation

[1288] The fees that a new entrant would have to pay for the use of fee-based codes are a cost that may deter a potential market participant from entering the security-based swap market. Currently, there is no mandated post-trade transparency and the security-based swap market is an OTC market and opaque, which is a barrier to enter for the market, as new entrants are at an informational disadvantage compared to established market participants, especially large dealers with significant order flow.

[1289] The Commission is aware of one such product identification system that involves six-digit reference entity identifiers and three-digit reference obligations identifiers as well as a standard three-digit maturity identifier.

[1290] *See* ISDA III at 2.

[1291] *See supra* Section XXII(C)(1)(c); Section XXII(E)(1)(a) (detailing the data elements that must be reported); Section XXII(C)(6)(d) (detailing the requirement that SDRs develop policies and procedures for the reporting of the required data elements). *See also* note 160, *supra.*

[1292] *See supra* Section XXII(C)(1).

[1293] *See supra* Section XXII(C)(6)(d).

SBSR.[1294] Therefore, the Commission believes that no more than approximately 1,300 DTCC–TIW accounts will have to obtain LEIs in order to comply with Rule 903(a). For these participants, the assignment of an LEI will result in one-time costs assessed by local operation units (''LOUs'') of the GLEIS associated with registering a new LEI. In addition to registration costs, LOUs assess an annual fee for LEI maintenance. The Commission assumes that no market participants that currently have LEIs would continue to maintain their LEIs in the absence of Rule 903(a) in order to arrive at an upper bound on the ongoing costs associated with Rule 903(a).

The prices for registering a new LEI and maintaining an existing LEI vary by LOU. Commission staff collected registration and maintenance charges for nearly all of the pre-LOUs currently endorsed by the interim GLEIS.[1295] Based on these charges, the Commission estimates a per-entity registration cost of between $84 and $220 and a per-entity maintenance cost of between $48 and $156.[1296]

The Commission is aware of two factors that may reduce these costs over time. First, the GLEIS operates on a cost-recovery model. If the marginal cost of an LEI is low, then an increase in the volume of LEIs will reduce the average cost of obtaining an LEI. These cost savings will be passed through to market participants in the form of lower prices. Second, the ability of market participants to port LEIs to the LOU of their choice will result in competitive pressure that may limit the prices that LOUs are able to charge for services. The governance system of the GLEIS is in place to help ensure that these economic factors will be operative.

The Commission expects that, in addition to the costs of obtaining an LEI from an LOU, each entity that registers a new LEI as a result of Rule 903(a) will incur start-up and ongoing administrative costs of no more than $334 per year.[1297] The Commission believes, therefore, that the upper bound on aggregate costs to market participants arising from the obligation to obtain an LEI lies between $500,000 and $700,000 in the first year and between $1,600,000 and $2,100,000 in subsequent years.[1298]

5. Cross-Border Aspects of Regulation SBSR

Rule 908(a)(1), as adopted, identifies the security-based swaps that will be subject to regulatory reporting and public dissemination. Rule 908(a)(2), as adopted, identifies the security-based swaps that will be subject to regulatory reporting but will not be publicly disseminated. Rule 908(b) provides that non-U.S. persons (except for non-U.S. persons that are registered security-based swap dealers or registered major security-based swap participants) have no duties under Regulation SBSR. Rule 908(c) provides that the Title VII requirements relating to regulatory reporting and public dissemination of security-based swaps may be satisfied by compliance with the rules of a foreign jurisdiction if the Commission determines that the jurisdiction has requirements that are comparable to those of Regulation SBSR.

As discussed further in Section XXII(D), the security-based swap market is a global market characterized by a high level of interconnectedness and significant information asymmetries. Because U.S. market participants and transactions regulated under Title VII are a subset of the overall global security-based swap market and the swap markets more generally, concerns surrounding risk and liquidity spillovers are part of the framework in which the Commission analyzes the effects of these rules. Additionally, relevant authorities in other jurisdictions are currently engaged in implementing their own regulatory reforms of the OTC derivatives markets. Because a large portion of security-based swap activity involves both U.S.-person and non-U.S. person counterparties, a key consideration in the Commission's analysis of the economic effects of these rules is the extent to which their application complements or conflicts with rules promulgated by foreign regulators.

a. Programmatic Benefits

Rule 908 provides that a transaction will be subject to regulatory reporting if there is a direct or indirect counterparty on either or both sides that is a U.S. person, a registered security-based swap dealer, or a registered major security-based swap participant, or if the transaction is submitted to a clearing agency having its principal place of business in the United States.

The Commission anticipates that regulatory data that it receives from registered SDRs will aid in its understanding of counterparty relationships in the global security-based swap market that are most likely to affect the U.S. financial markets. Such market data will allow the Commission to view, for example, large security-based swap exposures of U.S. persons, registered security-based swap dealers, registered major security-based swap participants, and U.S. clearing agencies that could have the potential to destabilize U.S. financial markets. Moreover, because registered security-based swap dealers and members of U.S. clearing agencies are likely to participate in other asset markets, regulatory reporting could help the Commission estimate the risk that a corporate event could impair the ability of these market participants to trade in other asset markets. An improved ability to measure such risks could help the Commission evaluate the ability of the Title VII regulatory regime to limit the risk of contagion between the security-based swap market and other asset markets.

A second key programmatic benefit of regulatory reporting is that it would aid the Commission in detecting and taking appropriate action against market abuse. With comprehensive data on transaction volumes and prices involving U.S. persons, the Commission could help ensure that all market participants are able to benefit from the risk-sharing afforded by the security-based swap market on fair terms.

Finally, security-based swap transaction data reported to registered SDRs would aid the Commission and other relevant authorities in enforcing other Title VII rules and deter noncompliance. For example, the Cross-Border Adopting Release set forth *de minimis* levels of activity and exposures above which market participants would have to either register as security-based swap dealers or as major security-based

[1294] *See supra* note 1109. Commission staff used counterparty information provided by Avox to match account numbers in the DTCC–TIW 2013 transactions data to their LEIs. Of 4,760 participating accounts, 3,533 had LEI information in their Avox counterparty record.

[1295] *See* ''Endorsed Pre-LOUs of the Interim Global Legal Entity Identifier System (GLEIS)'', January 2, 2015 (available at *http://www.leiroc.org/publications/gls/lou_20131003_2.pdf*).

[1296] Commission staff converted all foreign currency amounts to U.S. dollars and added taxes and surcharges where these amounts were available.

[1297] This estimate is based on one hour of a compliance attorney at $334 per hour and is based upon data from SIFMA's Management & Professional Earnings in the Securities Industry 2013 (modified by the SEC staff to account for an 1,800-hour-work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead).

[1298] The lower end of the range for costs in the first year is calculated as: [(LEI Registration) $84 + (Administration) $334] × 1,300 participants = $543,400. The upper end of the range for costs in the first year is calculated as: [(LEI Registration) $220 + (Administration) $334] × 1,300 participants = $720,200. The lower end of the range for costs in subsequent years is calculated as: [(LEI Maintenance) $48 + (Administration) $334] × 4,800 participants = $1,833,600. The upper end of the range for costs in subsequent years is calculated as: [(LEI Maintenance) $156 + (Administration) $334] × 4,800 participants = $2,352,000.

swap participants.[1299] Regulatory reporting could help deter participants that engage in high transaction volume with counterparties that are expected to have a significant portion of their financial and legal relationships exist within the United States from avoiding the obligation to register with the Commission when their activity surpasses these thresholds.

Rule 908(a)(2) determines the scope of transactions subject to public dissemination requirements. A security-based swap must be publicly disseminated if there is a direct or indirect counterparty that is a U.S. person on either or both sides of the transaction, or if the transaction is submitted to a clearing agency having its principal place of business in the United States. Certain of the programmatic benefits of public dissemination are similar to those of regulatory reporting. For instance, public dissemination of transaction prices will enable U.S. persons to compare a quote provided by a registered security-based swap dealer against recent transaction prices for security-based swaps referencing the same or similar underlying entities. In addition, market participants will be able to analyze whether the price they paid for credit protection is commensurate with prices revealed by transaction activity immediately following their transaction. In both of these cases, public dissemination enables market participants to evaluate the quality of the prices that dealers offer, providing registered security-based swap dealers with additional incentives to quote narrower spreads.

Rule 908(c) provides that the Title VII requirements relating to regulatory reporting and public dissemination of security-based swaps may be satisfied by compliance with the rules of a foreign jurisdiction if the Commission determines that the jurisdiction has requirements that are comparable to those of Regulation SBSR. In addition, to the extent that a market participant is able to take advantage of a substituted compliance determination made under Rule 908(c), the Commission does believe some cost reduction may be realized. If a market participant does not report to an SDR registered with the Commission, such market participant (whether it be a reporting side or not) would be able to avoid those costs detailed in this adopting release. A market participant evaluating whether or not to take advantage of substituted compliance would consider these potential cost reductions along with the costs it would incur in assessing the feasibility of substituted compliance and meeting any conditions attached to a substituted compliance determination by the Commission.[1300] While, the Commission is, at this time, unable to estimate the net savings—as no substituted compliance determinations have been made—the highest level of savings possible for a reporting side that avails itself of substituted compliance is the aggregate cost of regulatory reporting under the final rules.[1301]

b. Programmatic Costs

Rules 908(a)(1) and (2) require regulatory reporting of transactions that involve U.S. person counterparties, are submitted to U.S. clearing agencies, or that involve registered security-based swap dealers or registered major security-based swap participants.

Other jurisdictions are developing rules relating to post-trade transparency for security-based swaps at different paces. The Commission is mindful that, in the near term and until full implementation of post-trade transparency requirements in the other jurisdictions that are comparable to those in Regulation SBSR, Rule 908(a)(1) may intensify incentives for non-U.S. market participants to avoid contact with U.S. counterparties (whether acting directly or as guarantors of non-U.S. persons) in an effort to avoid the public dissemination requirements. This could result in reduced liquidity for U.S. market participants.[1302]

The Commission cannot readily quantify the costs that might result from reduced market access for U.S. persons or counterparties whose security-based swap activities benefit from recourse to U.S. persons because the Commission does not know what rules other jurisdictions may implement or the times at which they may implement their rules. However, while the Commission has not quantified these costs, it assessed them qualitatively and considered them in formulating the scope for requirements under the final rules.[1303]

As discussed in Section XXII(C)(5), *supra,* the Commission believes that most of the costs related to the cross-border application of Regulation SBSR are subsumed in the costs of Rules 901 and 902, with one exception. Specifically, requests for a substituted compliance determination would result in costs of preparing such requests. The Commission estimates the costs of submitting a request pursuant to Rule 908(c) would be approximately $110,000.[1304] The Commission further estimates that it will receive 10 requests in the first year and two requests each subsequent year, for a total cost in the first year of $1,100,000 and a total cost in each subsequent year of $220,000. Once such request is made, however, other market participants in the same jurisdiction that wish to rely on substituted compliance with respect to regulatory reporting and public dissemination would be able to rely on the Commission's substituted compliance determination. Accordingly, the assessment costs would only need to be incurred once with respect to the same area of a foreign regulatory system.

c. Assessment Costs

The Commission believes that the assessment costs associated with determining the status of counterparties and the location of transactions should be primarily one-time costs of establishing a practice or compliance procedure. As discussed in the Cross-Border Proposing Release,[1305] the

[1299] *See* Cross-Border Adopting Release, 79 FR 47301.

[1300] *See* Cross-Border Proposing Release, 78 FR 31202.

[1301] *See supra* Section XXII(C)(1) (discussing the quantifiable costs of regulatory reporting).

[1302] The efficiency implications for public dissemination of cross-border activity is discussed in Section XXII(D)(4)(b), *infra.*

[1303] *See* Cross-Border Adopting Release, 79 FR 47278–372 (discussing recourse guarantees).

[1304] This estimate is based on information indicating that the average costs associated with preparing and submitting an application to the Commission for an order for exemptive relief under Section 36 of the Exchange Act in accordance with the procedures set forth in Rule 0–12 under the Exchange Act, 17 CFR 240.0–12. A substituted compliance request contemplated by Rule 908(c) would be made under Rule 0–13 under the Exchange Act, which sets forth procedures similar to those used by the Commission in considering exemptive order applications under Section 36. The Commission estimates that preparation of a request would require approximately 80 hours of in-house counsel time and 200 hours of outside counsel time. Such estimate takes into account the time required to prepare supporting documents necessary for the Commission to make a substituted compliance determination, including, without limitation, information regarding applicable requirements established by the foreign financial regulatory authority or authorities, as well as the methods used by the foreign financial regulatory authority or authorities to monitor compliance with these rules. Based upon data from SIFMA's Management & Professional Earnings in the Securities Industry 2013 (modified by the SEC staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead), the Commission estimates that the average national hourly rate for an in-house attorney is $380. The Commission estimates the costs for outside legal services to be $400 per hour. Accordingly, the Commission estimates the total cost to submit a request for a substituted compliance determination to be approximately $110,000 ($30,400 (based on 80 hours of in-house counsel time × $380) + $80,000 (based on 200 hours of outside counsel time × $400)).

[1305] *See* Cross-Border Proposing Release, 78 FR 31202.

assessment costs associated with the substituted compliance would, in part, flow from the assessment of whether the counterparties to a security-based swap transaction satisfy the conditions of Rule 908(a). This assessment may be done by an in-house counsel reviewing readily ascertainable information. The Commission believes that the cost involved in making such assessment should not exceed one hour of in-house counsel's time or $380.[1306]

The Commission believes that market participants will likely incur costs arising from the need to identify and maintain records concerning the status of their counterparties and the location of any clearing agency used. The Commission anticipates that potential applicants for substituted compliance are likely to request representations from their transaction counterparties to determine the counterparties' status. The Commission believes that the assessment costs associated with determining the status of counterparties should be primarily one-time costs of establishing a practice or compliance procedure of requesting and collecting representations from trading counterparties and maintaining the representations collected as part of the recordkeeping procedures and limited ongoing costs associated with requesting and collecting representations.[1307] As discussed in the Cross-Border Proposing Release, the Commission believes that such one-time costs would be approximately $15,160.[1308] The Commission believes that requesting and collecting representations would be part of the standardized transaction process reflected in the policies and procedures regarding security-based swap sales and trading practices and should not result in separate assessment costs.[1309] To the extent that market participants have incurred costs relating to similar or same assessments for other Title VII requirements, their assessment costs with respect to substituted compliance may be less.

6. Other Programmatic Effects of Regulation SBSR

a. Operating Hours of Registered SDRs—Rule 904

Paragraphs (c) to (e) of Rule 904 specify requirements for receiving, handling, and disseminating reported data during a registered SDR's normal and special closing hours. The Commission believes that these provisions will provide benefits in that they clarify how security-based swaps executed while a registered SDR is in normal or special closing hours would be reported and disseminated. The Commission believes that the costs of requirements under these rules will be related to providing notice to participants of its normal and special closing hours and to provide notice to participants that the SDR is available to accept transaction data after its system is unavailable.

One commenter asserted that the proposed requirement for a registered SDR to receive and hold in the queue the data required to be reported during its closing hours ''exceeds the capabilities of currently-existing reporting infrastructures.'' [1310] However, the Commission notes that this comment was submitted in January 2011; since the receipt of this comment, swap data repositories that are provisionally registered with the CFTC that are likely also to register as SDRs with the Commission appear to have developed the capability of receiving and holding data in queue during their closing hours.[1311] Thus, the Commission continues to believe that requiring registered SDRs to hold data in queue during their closing hours would not create a significant burden for registered SDRs.

Rule 904, as adopted, requires a registered SDR to have systems in place to receive and disseminate information regarding security-based swap data on a near-continuous basis, except during ''normal closing hours'' and ''special closing hours.'' A registered SDR will be permitted to establish ''normal closing hours,'' which may occur only when, in the estimation of the registered SDR, the U.S. markets and other major markets are inactive. In addition, a registered SDR will be permitted to declare, on an *ad hoc* basis, special closing hours to perform routine system maintenance, subject to certain requirements. The re-proposal of Regulation SBSR in the Cross-Border Proposing Release only made minor technical changes to Rule 904.

The Commission continues to believe that a registered SDR will not incur significant costs in connection with Rule 904. The requirement for a registered SDR to provide reasonable advance notice to participants and to the public of its normal and special closing hours, and to provide notice to participants that the SDR is available to accept transaction data after its system was unavailable will likely entail only a modest annual cost. The Commission estimates that the ongoing aggregate annual cost would be $45,000, which corresponds to $4,500 per registered SDR.[1312]

The Commission does not believe there are significant one-time costs related to Rule 904. The Commission believes that, other than the costs related to the notice provisions cited above, any additional costs are subsumed in the costs associated with Rules 901 and 902. For example, the requirement for reporting sides to report information to the registered SDR upon receiving a notice that the registered SDR has resumed its normal operations would be part of the reporting sides' reporting obligations under Rule 901. The requirement to disseminate transaction reports held in queue should not present any costs in addition to those already contained in Rule 902. The Commission believes that the systems of the SDR would already have to account for system upgrades and maintenance, power outages, system overloads or other malfunctions or contingencies and as a result there would not be any additional quantifiable costs to also account for normal closing hours. Furthermore, to the extent that market participants have already expended resources in anticipation of the adoption of Regulation SBSR, the costs could be significantly lower. As a result, the Commission's estimates should be viewed as an upper bound of the potential costs of Regulation SBSR.

After reviewing comment letters received in response to the Regulation SBSR Proposing Release and the Cross-Border Proposing Release, the Commission continues to believe that these cost estimates pertaining to Rule 904, as adopted, remain valid. The Commission has received no comments to the contrary.

b. Error Reporting—Rule 905

Rule 905 requires any counterparty to a security-based swap that discovers an error in previously-reported information to take action to ensure that corrected information is provided to the registered SDR to which the initial transaction was reported. The rule also requires a registered SDR to verify any error reports that it receives and correct and, if necessary, publicly disseminate a corrected transaction report. This rule should enhance the overall reliability of security-based swap transaction data that must be maintained by registered

[1306] *See id.,* note 1954.

[1307] *See id.* at 31203.

[1308] *See id.*

[1309] *See id.,* note 1957.

[1310] Markit I at 4.

[1311] *See supra* note 668.

[1312] The Commission derived this number as follows: [(Operations Specialist (36 hours) at $125 per hour) × (10 registered SDRs)] = $45,000, which corresponds to $4,500 per registered SDR.

SDRs. For registered SDRs, the ability to verify disputed information, process a transaction report cancellation, accept a new security-based swap transaction report, and update relevant records are all capabilities that the registered SDR must implement to comply with its obligations under Regulation SBSR. Likewise, to comply with Rule 905, a registered SDR must disseminate a corrected transaction report in instances where the initial report included erroneous primary trade information. This will allow market observers to receive updated transaction information from the same source that publicly disseminated the original transaction and allow them to integrate updated transaction information into their understanding of the security-based swap market.

Requiring participants to promptly correct erroneous transaction information should help ensure that the Commission and other relevant authorities have an accurate view of risks in the security-based swap market. Correcting inaccurate security-based swap transaction data held by a registered SDR also could benefit market participants by helping them to accurately value the security-based swaps they carry on their books.

The Commission believes that the costs of requirements under these rules will be related to developing and publicly providing the necessary protocols for carrying out error correction and reporting.

Rule 905(a), as adopted, establishes procedures for correcting errors in reported and disseminated security-based swap information, recognizing that any system for transaction reporting must accommodate for the possibility that certain data elements may be incorrectly reported. Rule 905(b), as adopted, sets forth the duties of a registered SDR to verify disputed information and make necessary corrections. If the registered SDR either discovers an error in a transaction on its system or receives notice of an error from a counterparty, Rule 905(b)(1) requires the registered SDR to verify the accuracy of the terms of the security-based swap and, following such verification, promptly correct the erroneous information contained in its system. Rule 905(b)(2) will further require that, if the erroneous transaction information contained any data that fall into the categories enumerated in Rule 901(c) as information required to be reported, the registered SDR would be required to publicly disseminate a corrected transaction report of the security-based swap promptly following verification of the trade by the counterparties to the security-based swap.

The Commission continues to believe that promptly submitting an amended transaction report to the appropriate registered SDR after discovery of an error as required under Rule 905(a)(2) will impose costs on reporting sides. Likewise, the Commission continues to believes that promptly notifying the relevant reporting side after discovery of an error as required under Rule 905(a)(1) will impose costs on non-reporting-party participants.

With respect to reporting side, the Commission continues to believe that Rule 905(a) will impose an initial, one-time cost associated with designing and building the reporting entity's reporting system to be capable of submitting amended security-based swap transactions to a registered SDR. In addition, reporting sides will face ongoing costs associated with supporting and maintaining the error reporting function.[1313]

The Commission continues to believe that designing and building appropriate reporting system functionality to comply with Rule 905(a)(2) will be a component of, and represent an incremental ''add-on'' to, the cost to build a reporting system and develop a compliance function as required under Rule 901.

The Commission estimates this incremental burden to be equal to 5% of the one-time and annual costs associated with designing and building a reporting system that is in compliance with Rule 901,[1314] plus 10% of the corresponding one-time and annual costs associated with developing the reporting side's overall compliance program required under Rule 901.[1315] Thus, for reporting sides, the Commission estimates that Rule 905(a) will impose an initial (first-year) aggregate cost of $3,547,500, which is approximately $11,825 per reporting side,[1316] and an ongoing aggregate annual cost of $1,192,500, which is approximately $4,000 per reporting side.[1317]

With regard to participants who are not assigned the duty to report a particular transaction, the Commission believes that Rule 905(a) will impose an initial and ongoing cost associated with promptly notifying the relevant reporting side after discovery of an error as required under Rule 905(a)(1). The Commission estimates that such annual cost will be approximately $64,000,000, which corresponds to approximately $13,000 per participant.[1318] This figure is based on the Commission's estimates of (1) 4,800 participants; and (2) 1.14 transactions per day per participant.[1319]

Rule 905 also imposes duties on security-based swap counterparties and registered SDRs to correct errors in reported and disseminated information.

The costs associated with establishing these capabilities, including systems development, support, and maintenance, are largely addressed in the Commission's analysis of those rules.[1320] The Commission estimates that to develop and publicly provide the necessary protocols for carrying out these functions would impose on each registered SDR a cost of approximately $200,000.[1321] The Commission estimates that to review and update such protocols will impose an annual cost on each registered SDR of $400,000.[1322]

Accordingly, the Commission estimates that the initial aggregate

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[1313] The Commission continues to believe that the actual submission of amended transaction reports required under Rule 905(a)(2) would not result in material, independent costs because this would be done electronically though the reporting system that the reporting party must develop and maintain to comply with Rule 901. The costs associated with such a reporting system are addressed in the Commission's analysis of Rule 901. *See supra* Section XXII(C)(1)(b).

[1314] *See* Regulation SBSR Proposing Release, 75 FR 75271–72.

[1315] *See id.*

[1316] This figure is calculated as follows: [(((($49,000 one-time reporting system development costs) × (0.05)) + (($2,500 annual maintenance of reporting system) × (0.05)) + (($54,000 one-time compliance program development) × (0.1)) + ((($38,500 annual support of compliance program) × (0.1))) × (300 reporting sides)] = $3,547,500, or $11,825 per reporting side.

[1317] This figure is calculated as follows: [(((($2,500 annual maintenance of reporting system) × (0.05)) + ((38,500 annual support of compliance program) × (0.1))) × (300 reporting sides)] = $1,192,500, or approximately $4,000 per reporting side.

[1318] This figure is based on the following: [(1.14 error notifications per non-reporting-side participant per day) × (365 days/year) × (Compliance Clerk (0.5 hours/report) at $64 per hour) × (4,800 participants)] = $63,912,960, or approximately $64,000,000, which corresponds to approximately $13,000 per participant.

[1319] This figure is based on the following: [((2 million estimated annual security-based swap transactions)/(4,800 participants))/(365 days/year)] = 1.14 transactions per day.

[1320] *See* SDR Adopting Release, Sections VIII and IX.

[1321] This figure is based on the following: [(Sr. Programmer (80 hours) at $303 per hour) + (Compliance Manager (160 hours) at $283 per hour) + (Compliance Attorney (250 hours) at $334 per hour) + (Compliance Clerk (120 hours) at $64 per hour) + (Sr. Systems Analyst (80 hours) at $260 per hour) + (Director of Compliance (40 hours) at $446 per hour) = $199,340, or approximately $200,000 per registered SDR.

[1322] This figure is based on the following: [(Sr. Programmer (160 hours) at $303 per hour) + (Compliance Manager (320 hours) at $283 per hour) + (Compliance Attorney (500 hours) at $334 per hour) + (Compliance Clerk (240 hours) at $64 per hour) + (Sr. Systems Analyst (160 hours) at $260 per hour) + (Director of Compliance (80 hours) at $446 per hour)] = $398,680, or approximately $400,000 per registered SDR.

annual cost on registered SDRs under Rule 905, as adopted, will be approximately $6,000,000, which corresponds to approximately $600,000 for each registered SDR.[1323] The Commission further estimates that the ongoing aggregate annual cost on registered SDRs under Rule 905, as adopted, will be approximately $4,000,000, which corresponds to approximately $400,000 for each registered SDR.

c. Other Participants' Duties—Rule 906

Rule 906(a) requires a registered SDR to send a notice to security-based swap counterparties that are participants of that SDR about any UIC information missing from transaction reports. Rule 906(a) also obligates such participants to provide the missing UIC information to the registered SDR upon receipt of such notice. Rule 906(a) is designed to enable a registered SDR to obtain a complete record of the necessary information for each security-based swap transaction and thereby enable the Commission and other relevant authorities to obtain a comprehensive picture of security-based swap transactions, which will facilitate surveillance and supervision of the security-based swap markets. More complete security-based swap records may provide the Commission necessary information to investigate specific transactions and market participants.

Rule 906(b) is designed to enhance the Commission's ability to monitor and surveil the security-based swap markets by requiring each participant of a registered SDR to report the identity of its ultimate parent and any affiliates that also are participants of that registered SDR. Obtaining this ultimate parent and affiliate information will be helpful for understanding the risk exposures of not only individual participants, but also for related participants operating within a larger financial group. The Commission expects these costs of requiring participants to provide ultimate parent and affiliate information to registered SDRs will be modest and, in any event, believes that the costs of providing this information are justified. Having information on the ultimate parent and affiliate would enhance the ability of the Commission to monitor security-based swap exposures within ownership groups, allowing it to better assess the overall risk exposure of these groups. The Commission is also attempting to reduce these burdens by requiring participants to report the identity only of their ultimate parent(s) but not any intermediate parent(s). The Commission further notes that a participant is not required to provide any information about an affiliate, other than its counterparty ID.[1324] The participant is not required to provide any transaction or other information on the affiliate's behalf.

Rule 906(c) is designed to enhance the overall reliability security-based swap transaction data that is required to be reported to a registered SDR pursuant to Rule 901 by requiring registered security-based swap dealers and registered major security-based swap participants to establish, maintain, and enforce written policies and procedures addressing compliance with Regulation SBSR. Rule 901(a) should result in reliable reporting of security-based swap transaction data by requiring key participants to focus internal procedures on the reporting function. Reliable reporting would benefit counterparties, relevant authorities, and the market generally, by reducing the likelihood of errors in regulatory and publicly disseminated data. This could allow relevant authorities and the public to have confidence in the data and minimize the need to make corrections in the future.

The Commission believes that the costs of requirements under these rules will be related to developing the written policies and procedures necessary to satisfy Rule 901's reporting requirements. Once development is complete, SDRs will face ongoing costs associated with maintaining and enforcing these policies and procedures.

Rule 906(a) requires a registered SDR, once a day, to send a report to each participant identifying, for each security-based swap to which that participant is a counterparty, any security-based swap(s) for which the registered SDR lacks counterparty ID and (if applicable) broker ID, trading desk ID, and trader ID. Rule 906(a) requires a participant that receives such a report to provide the missing information to the registered SDR within 24 hours. Rule 906(b) requires participants to provide a registered SDR with information identifying the participant's affiliate(s) that are also participants of the registered SDR, as well as its ultimate parent(s). Additionally, under Rule 906(b), participants are required to promptly notify the registered SDR of any changes to the information previously provided. Rule 906(c) requires a participant that is a registered security-based swap dealer or registered major security-based swap participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any security-based swap transaction reporting obligations in a manner consistent with Regulation SBSR.

Rule 906(a) requires a participant that receives a daily report from a registered SDR to provide the missing UICs to the registered SDR within 24 hours. The Commission believes that Rule 906(a) will result in an initial and ongoing aggregate annual cost for all participants since even participants that are the reporting side for some transactions will be the non-reporting side for other transactions. The Commission estimates that Rule 906(a) will result in an initial and ongoing aggregate annual cost for participants of approximately $12,800,000, which corresponds to a cost of approximately $2,700 per participant.[1325] This figure was based on the Commission's preliminary estimates of (1) 4,800 participants and (2) 1.14 transactions per day per participant.[1326]

Rule 906(b) requires every participant to provide a registered SDR an initial parent/affiliate report, using ultimate parent IDs and counterparty IDs, and updating that information, as necessary. The Commission continues to believe that the cost for each participant to submit an initial or update report will be $32.[1327] The Commission estimates that each participant will submit two reports each year.[1328] In addition, the Commission estimates that there may be 4,800 security-based swap participants and that each one may connect to two registered SDRs. Accordingly, the Commission estimates that the initial and ongoing aggregate annual cost

[1323] This figure is based on the following: [($199,340 to develop protocols) + ($398,680 for annual support)) × (10 registered SDRs)] = $5,980,200, or approximately $6,000,000, which corresponds to approximately $600,000 per registered SDR.

[1324] The Commission does not believe that the change in Rule 906(b) from ''participant ID'' to ''counterparty ID'' will result in any change in the cost to participants. The information to be provided is similar in scope and will, in the Commission's estimation, better accomplish the objective of ensuring that a registered SDR can identify each counterparty to a security-based swap.

[1325] This figure is based on the following: [(1.14 missing information reports per participant per day) × (365 days/year) × (Compliance Clerk (0.1 hours) at $64 per hour) × (4,800 participants)] = $12,782,592, or approximately $12,800,000, which corresponds to approximately $2,700 per participant.

[1326] This figure is based on the following: [((2 million estimated annual security-based swap transactions)/(4,800 participants))/(365 days/year)] = 1.14 transactions per day. *See supra* Section XXI.

[1327] This figure is based on the following: [(Compliance Clerk (0.5 hours) at $64 per hour) × (1 report)] = $32.

[1328] During the first year, the Commission believes each participant would submit its initial report and one update report. In subsequent years, the Commission estimates that each participant would submit two update reports.

associated with Rule 906(b) will be $614,400, which corresponds to $128 per participant.[1329]

Rule 906(c) requires each participant of a registered SDR that is a registered security-based swap dealer or registered major security-based swap participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any security-based swap transaction reporting obligations in a manner consistent with Regulation SBSR.[1330] Rule 906(c) also requires the review and updating of such policies and procedures at least annually. The Commission continues to estimate that developing and implementing written policies and procedures as required under the Rule 906 could result in a one-time initial cost to each registered security-based swap dealer or registered major security-based swap participant of approximately $58,000.[1331] This figure includes the estimated cost to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing.[1332] In addition, the Commission estimates that the annual cost to maintain such policies and procedures, including a full review at least annually, as required under the adopted rule, will be approximately $34,000 for each registered security-based swap dealer or registered major security-based swap participant.[1333] This figure is based on an estimate of the cost to review existing policies and procedures, make any necessary updates, conduct ongoing training, maintain relevant systems and internal controls systems, and perform necessary testing.

Accordingly, the Commission estimates that the initial aggregate annual cost associated with Rule 906(c) would be approximately $5,060,000, which corresponds to $92,000 per covered participant.[1334] The Commission further estimates that the ongoing aggregate annual cost associated with Rule 906(c) will be approximately $1,870,000, which corresponds to $34,000 per covered participant.[1335]

Rule 906(a) requires a registered SDR, once a day, to send a report to each participant identifying, for each security-based swap to which that participant is a counterparty, the security-based swap(s) for which the registered SDR lacks counterparty ID and (if applicable) broker ID, branch ID, execution agent ID, trading desk ID, and trader ID. Under Rule 906(a), a participant that receives such a report will be required to provide the missing ID information to the registered SDR within 24 hours.

The Commission believes that each registered SDR would face a one-time, initial cost of approximately $33,000 to create a report template and develop the necessary systems and processes to produce a daily report required by Rule 906(a).[1336] The Commission further believes that there will be an ongoing annual cost for a registered SDR to generate and issue the daily reports, and to enter into its systems the ID information supplied by participants in response to the daily reports, of approximately $30,000.[1337]

The Commission continues to estimate that the initial aggregate annual cost for registered SDRs associated with Rule 906(a) would be approximately $630,000, which corresponds to $63,000 per registered SDR.[1338] The Commission estimates that the ongoing aggregate annual cost for registered SDRs associated with Rule 906(a) will be approximately $300,000, which corresponds to $30,000 per for registered SDR.

d. Registered SDR Policies and Procedures—Rule 907

Rule 907(a) requires a registered SDR to establish and maintain written policies and procedures with respect to the receipt, reporting, and dissemination of security-based swap transaction data pursuant to Regulation SBSR. Under Rules 907(a)(1) and (2), a registered SDR's policies and procedures must specify the data elements of a security-based swap that must be reported and the reporting format that must be used for submitting information. Under Rule 907(a)(3), the registered SDR's policies and procedures must specify procedures for reporting life cycle events and corrections to previously submitted information. Rule 907(a)(4) requires policies and procedures for flagging transactions having special characteristics. Rules 907(a)(5) requires policies and procedures for assigning UICs in a manner consistent with Rule 903. Rule 907(a)(6) requires policies and procedures for periodically obtaining from each of its participants the ultimate parent and affiliate information required to be submitted to the SDR by Rule 906(b).

By requiring SDRs to establish and maintain policies and procedures pursuant to Rule 907(a)(1), SDRs likely will have to consult with their participants in devising flexible and efficient methods of obtaining high quality transaction data from market participants. This rule allows SDRs to adjust their policies and procedures as market conventions and technologies change. For example, registered SDRs will have the flexibility to incorporate new reporting methodologies more quickly. In addition, Rule 907(a)(1) should reduce the likelihood that financial innovation that leads to a new security-based swap products will disrupt regulatory reporting and public dissemination of transaction information related to the new product.

At the same time, the Commission believes that there are benefits to enforcing minimum standards for reporting transaction information, standards that will be established as a result of the requirement that SDRs develop policies and procedures in accordance with Rule 907. As noted in

[1329] This figure is based on the following: [($32/report) × (2 reports/year/registered SDR connection) × (2 registered SDR connections/participant) × (4,800 participants)] = $614,400, which corresponds to $128 per participant.

[1330] As is explained in the Paperwork Reduction Act discussion, the Commission estimates that there will be approximately 50 registered security-based swap dealers and 5 registered major security-based swap participants for a total of 55 respondents. *See supra* Section XXII(C)(1)(b)(i).

[1331] The Commission derived its estimate from the following: [(Sr. Programmer (40 hours) at $303 per hour) + (Compliance Manager (40 hours) at $283 per hour) + (Compliance Attorney (40 hours) at $334 per hour) + (Compliance Clerk (40 hours) at $64 per hour) + (Sr. Systems Analyst (32 hours) at $260 per hour) + (Director of Compliance (24 hours) at $446 per hour)] = $58,384, or approximately $58,000 per covered participant.

[1332] *See* Cross-Border Proposing Release, 78 FR 30994, note 256.

[1333] The Commission derived its estimate from the following: [(Sr. Programmer (8 hours) at $303 per hour) + (Compliance Manager (24 hours) at $283 per hour) + (Compliance Attorney (24 hours) at $334 per hour) + (Compliance Clerk (24 hours) at $64 per hour) + (Sr. Systems Analyst (16 hours) at $260 per hour) + (Director of Compliance (24 hours) at $446 per hour)] = $33,632, or approximately $34,000 per covered participant.

[1334] The Commission derived its estimate from the following: [($58,000 + $34,000) × (55 covered participants)] = $5,060,000, or approximately $92,000 per covered participant.

[1335] The Commission derived its estimate from the following: [($34,000) × (55 covered participants)] = $1,870,000.

[1336] The Commission derived its estimate from the following: [(Senior Systems Analyst (40 hours) at $260 per hour) + (Sr. Programmer (40 hours) at $303 per hour) + (Compliance Manager (16 hours) at $283 per hour) + (Director of Compliance (8 hours) at $446 per hour) + (Compliance Attorney (8 hours) at $334)] = $33,288, or approximately $33,000 per registered SDR.

[1337] The Commission derived its estimate from the following: [(Senior Systems Analyst (24 hours) at $260 per hour) + (Sr. Programmer (24 hours) at $303 per hour) + (Compliance Clerk (260 hours) at $64 per hour)] = $30,152, or approximately $30,000 per registered SDR.

[1338] The Commission derived its estimate from the following: [($33,288 + $30,152) × (10 registered SDRs)] = $634,400, or approximately $630,000, which corresponds to $63,440, or approximately $63,000 per registered SDR.

Section XXII(B)(1)(a)(iii), the Commission anticipates that a small number of registered SDRs will serve the security-based swap market. These SDRs may enjoy market power relative to their participants, and we believe that imposing minimum standards on them is reasonable to mitigate the risk that imperfect competition leads to low quality data collection.

Further, the requirement in Rule 907(c) that a registered SDR make publicly available on its Web site the policies and procedures required by Regulation SBSR will allow the public to better understand and interpret the data publicly disseminated by SDRs. For example, under Rule 907(a)(4)(i), a registered SDR will have policies and procedures that identify the characteristics of a security-based swap that could, in the fair and reasonable estimation of the registered SDR, cause a person without knowledge of these characteristics to receive a distorted view of the market. Making publicly available a description of the flags that it requires will allow the public to interpret the flags they observe in publicly disseminated data. Rule 907(d) requires registered SDRs to review, and update as necessary, the policies and procedures required by Regulation SBSR at least annually, and indicate the date on which they were last reviewed.

Finally, Rule 907(e) requires a registered SDR to provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to the registered SDR pursuant to Regulation SBSR and the registered SDR's policies and procedures established thereunder. Rule 907(e) will assist the Commission in examining for compliance with Regulation SBSR and in bringing enforcement or other administrative actions as necessary or appropriate. Required data submissions that are untimely, inaccurate, or incomplete could diminish the value of publicly disseminated reports that are designed to promote transparency and price discovery.

The Commission believes that the costs of requirements under Rule 907(a) are related to developing policies and procedures. Rules 907(c) and 907(d) require a registered SDR to update its policies and procedures as necessary and to post these policies and procedures on its Web site. Rule 907(e) requires a registered SDR to provide the Commission with information related to the timeliness, accuracy, and completeness of data reported to it pursuant to Regulation SBSR and the registered SDR's policies and procedures established thereunder.

Under Regulation SBSR, registered SDRs have the flexibility to determine the precise means through which they will accept reports of security-based swap transaction data. Rather than setting—by rule—a fixed schedule of data elements that must be reported as well as the specific reporting language or reporting protocols that must be used, Regulation SBSR instead requires registered SDRs to establish and maintain policies and procedures that detail these requirements. Persons seeking to register as SDRs may have ongoing discussions with their participants—both before and after registration—about the appropriate means of permitting reporting in a manner that captures all the elements required by Rule 901 while minimizing the administrative burden on reporting sides. Also, the data elements necessary to understand a trade could evolve over time as new contracts are developed, or that the most efficient means of reporting also could evolve as new technologies or reporting languages are devised. In light of these considerations, the Commission believes that registered SDRs and, to the extent that SDRs seek discussion with them, market participants will be in a better position to define the necessary reporting elements over time as the security-based swap market evolves.

As discussed above in Section IV, the Commission considered the alternative of requiring reporting parties to use a single reporting language or protocol in submitting data to registered SDRs, and three commenters encouraged the use of the FpML standard.[1339]

While specifying a single, acceptable standard would remove any ambiguity surrounding data formats that reporting parties could use for transaction reports, the Commission has chosen not to adopt such an approach, for three reasons. First, market participants may have preferences over the different open-source structured data formats available. By allowing registered SDRs to choose from among formats widely used by participants, the adopted approach allows SDRs to coordinate with their participants to select standards that allow reporting parties to efficiently carry out their obligations under Rule 901. Second, allowing SDRs flexibility in the formats they accept should help ensure that they can accommodate innovations in the security-based swap market that lead to changes in data elements that must be reported under Rule 901. Third, the Commission believes that, so long as registered SDRs can make security-based swap transaction data accessible to the Commission using a uniform format and taxonomy, it may not be necessary to require reporting sides to report transaction data to registered SDRs using a single format or taxonomy. This approach gives a registered SDR the opportunity to differentiate its services by offering reporting sides the ability to report using different formats and taxonomies, if the SDR can convert these transaction reports into the uniform format and taxonomy pursuant to which the Commission will require the SDR to make transaction data accessible to the Commission.

The Commission believes that ten registered SDRs will be subject to Rule 907, and that developing and implementing written policies and procedures as required under Rule 907, will result in an initial, one-time cost to each registered SDR of approximately $4,100,000.[1340] This figure includes the estimated cost to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, perform necessary testing, monitor participants, and compile data. In addition, the Commission believes that its estimate for maintaining such policies and procedures, including a full review at least annually; making its policies and procedures publicly available on its Web site; and providing the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to Regulation SBSR, and the registered SDR's policies and procedures is reasonable. As a result, the Commission believes its preliminary estimate of approximately $8,200,000 for each registered SDR is valid.[1341] This figure

[1339] *See* DTCC II at 16; ISDA I at 4; ISDA/SIFMA I at 8.

[1340] The Commission derived its estimate from the following: [(Sr. Programmer (1,667 hours) at $303 per hour) + (Compliance Manager (3,333 hours) at $283 per hour) + (Compliance Attorney (5,000 hours) at $334 per hour) + (Compliance Clerk (2,500 hours) at $64 per hour) + (Sr. Systems Analyst (1,667 hours) at $260 per hour) + (Director of Compliance (833 hours) at $446 per hour)] = $4,083,278, or approximately $4,100,000 per registered SDR. The Commission believes that potential SDRs that have similar policies and procedures in place may find that these costs would be lower, while potential SDRs that do not have similar policies and procedures in place may find that the potential costs would be higher.

[1341] The Commission derived its estimate from the following: [(Sr. Programmer (3,333 hours) at $303 per hour) + (Compliance Manager (6,667 hours) at $283 per hour) + (Compliance Attorney (10,000 hours) at $334 per hour) + Compliance Clerk (5,000 hours) at $64 per hour) + (Sr. Systems Analyst (3,333 hours) at $260 per hour) + (Director of Compliance (1,667 hours) at $446 per hour)] = $8,166,722, or approximately $8,200,000 per

Continued

is based on an estimate of the cost to review existing policies and procedures, make necessary updates, conduct ongoing training, maintain relevant systems and internal controls systems, perform necessary testing, monitor participants, and collect data.[1342] Accordingly, the Commission estimates that the initial annual cost associated with Rule 907 will be approximately $12,250,000 per registered SDR, which corresponds to an initial annual aggregate cost of approximately $122,500,000.[1343] The Commission estimates that the ongoing annual cost associated with Rule 907 will be approximately $8,200,000 per registered SDR, which corresponds to an ongoing annual aggregate cost of approximately $82,000,000.[1344] These figures are based, in part, on the Commission's experience with other rules that require entities to establish and maintain compliance with policies and procedures.[1345]

Finally, the Commission continues to believe that the Rule 907(e) requirement that a registered SDR must provide to the Commission, upon request, such information as the Commission determines necessary or appropriate for the Commission to perform the duties of the Commission, registered SDRs will incur costs. The Commission notes, however, that any such costs are already covered by rules governing SDRs adopted in the SDR Adopting Release and, thus, do not need to be separately considered here. Specifically, Rule 13n–5(b) requires a registered SDR to establish, maintain, and enforce written policies and procedures reasonably designed to satisfy itself that the transaction data that has been submitted to the SDR is complete and accurate, and also to ensure that the transaction data and positions that it maintains are complete and accurate.[1346] The Commission further believes that these capabilities will enable a registered SDR to provide the Commission information or reports as may be requested pursuant to Rule 907(e). The Commission believes that Rule 907(e) will not impose any costs on a registered SDR beyond those imposed by Rule 13n–5(b). Furthermore, to the extent that market participants have already expended resources in anticipation of the adoption of Regulation SBSR, the costs could be significantly lower. As a result, the Commission's estimates should be viewed as an upper bound of the potential costs of Regulation SBSR.

After reviewing comment letters received in response to the Regulation SBSR Proposing Release and the Cross-Border Proposing Release, as well as evaluating the most recent data available to the Commission, the Commission continues to believe that these cost estimates related to Rule 907, as adopted, remain valid.

e. SIP Registration by Registered SDRs—Rule 909

Rule 909 requires a registered SDR to register with the Commission as a SIP. SIP registration of a registered SDR will help ensure fair access to important security-based swap transaction data reported to and publicly disseminated by the registered SDR. Specifically, requiring a registered SDR to register with the Commission as a SIP will subject it to Section 11A(b)(5) of the Exchange Act,[1347] which provides that a registered SIP must notify the Commission whenever it prohibits or limits any person's access to its services. If the Commission finds that the person has been discriminated against unfairly, the Commission can require the SIP to provide access to that person.[1348] Section 11A(b)(6) of the Exchange Act[1349] also provides the Commission authority to take certain regulatory action as may be necessary or appropriate against a registered SIP.[1350] Potential users of security-based swap market data will benefit from the Commission having the additional authority over a registered SDR/SIP provided by Sections 11A(b)(5) and 11A(b)(6) to help ensure that these persons offer their security-based swap market data on terms that are fair and reasonable and not unreasonably discriminatory.

Because the Commission is adopting a revised Form SDR that incorporates certain requests for information derived from Form SIP and will not require submission of a separate Form SIP, all programmatic costs of completing Form SDR are included in the Commission's SDR Adopting Release.[1351] As proposed and re-proposed, Regulation SBSR would have required the use of a separate form, existing Form SIP, for this purpose. In response to comments, however, the Commission is adopting a revised Form SDR that incorporates certain requests for information derived from Form SIP, and will not require submission of a separate Form SIP. All programmatic costs of completing Form SDR are scored in the SDR Adopting Release.[1352] Therefore, final Rule 909 itself imposes no programmatic costs on registered SDRs.

7. Definitions—Rule 900

The Commission believes that Rule 900 will not entail any material costs to market participants. Rule 900 defines terms used in Regulation SBSR and does not, in itself, impose any obligations or duties. To the extent that the scope of a particular definition subjects a person to one or more provisions of Regulation SBSR, the costs and benefits of that rule are assessed (and, where feasible, calculated) in light of the scope of persons affected. With respect to the definition of ''U.S. person,'' the Commission believes that the Commission's Title VII rules would benefit from having the same terms throughout and could, therefore, reduce assessment costs for market participants that might be subject to these rules.

D. Effects on Efficiency, Competition, and Capital Formation

1. Introduction

Section 3(f) of the Exchange Act[1353] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, also to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation (''ECCF''). In addition, Section 23(a)(2) of the Exchange Act[1354] requires the Commission, when making rules under

registered SDR. The Commission believes that potential SDRs that have similar policies and procedures in place may find that these costs would be lower, while potential SDRs that do not have similar policies and procedures in place may find that the potential costs would be higher.

[1342] In the Regulation SBSR Proposing Release, the Commission also included ''calculate and publish block trade thresholds'' as one of the items in the list of items that an SDR would need to undertake on an ongoing basis with respect to its policies and procedures under Rule 907. *See* Regulation SBSR Proposing Release, 75 FR 75276–77. Although the Commission is not adopting Rule 907(b) at this time, the costs discussed herein pertain to all of the policies and procedures of a registered SDR. The Commission does not believe that not adopting Rule 907(b), which applies only to policies and procedures relating to block trades, would have had a measureable impact on the costs related to developing the policies and procedures of the registered SDR. As a result, the Commission believes that its cost estimate continues to be valid.

[1343] The Commission derived its estimate from the following: [((4,083,278) + ($8,166,722)) × (10 registered SDRs)] = $122,500,000, or approximately $123,000,000.

[1344] The Commission derived its estimate from the following: [($8,166,722) × (10 registered SDRs)] = $81,667,220, or approximately $82,000,000.

[1345] *See* Cross-Border Proposing Release, 78 FR 30994, note 256.

[1346] *See* SDR Adopting Release, Rules 13n–5(b)(1)(iii) and 13n–5(b)(3).

[1347] 15 U.S.C. 78k–1(b)(5).

[1348] *See* 15 U.S.C. 78k–1(b)(5)(B).

[1349] 15 U.S.C. 78k–1(b)(6).

[1350] *See supra* note 994.

[1351] *See* SDR Adopting Release, Section VIII(D)(1).

[1352] *See id.*

[1353] 15 U.S.C. 78c(f).

[1354] 15 U.S.C. 78w(a)(2).

the Exchange Act, to consider the impact of such rules on competition. Section 23(a)(2) also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Regulation SBSR's effects on efficiency, competition, and capital formation are often closely related to one another, and it is difficult to distinguish between the effects of the final rules on each of these elements. For example, elements of a security-based swap market structure that foster competition between liquidity suppliers may result in narrower spreads and higher trading volume, eventually resulting in greater price efficiency. Similarly, a security-based swap market that provides low-cost opportunities for firms to hedge commercial and financial risks as a result of low implicit transaction costs may encourage capital formation by allowing these firms to share risks with market participants that are better able to bear them, thereby reducing their need to engage in precautionary savings. However, as the last example indicates, the final rules' effects on capital formation often arise indirectly through their effects on efficiency and competition.

The following discussion of the effects of Regulation SBSR on efficiency, competition, and capital formation considers the regime that Regulation SBSR establishes for regulatory reporting and public dissemination as well as the particular means of implementation that the Commission has chosen, relative to alternative means of implementation considered. Because the various elements of these rules will affect the behavior of counterparties, infrastructure providers, and market participants in general, the Commission has considered the economic effects at each of these levels, including cases in which policy alternatives that may be privately efficient for individual actors, may nevertheless fail to be efficient for the overall market.

Regulation SBSR establishes a regime for regulatory reporting and public dissemination of security-based swap transaction data. Under the final rules, the Commission and other relevant authorities will have access to detailed information about security-based swap transaction activity and about the risk exposures of security-based swap counterparties to both reference entities and to each other. At the same time, the public will enjoy unprecedented access to pricing and volume data of security-based swap transactions. Post-trade transparency in the security-based swap market will reduce information asymmetries, thereby allowing even small counterparties to base their trading decisions on information about activity in the broader market, which they would not be able to observe without post-trade transparency. Moreover, public dissemination of security-based swap transactions could be used as an input to economic decisions in other markets (*e.g.,* the corporate equity or bond markets).

2. Regulatory Reporting

As a result of the final rules, the Commission and other relevant authorities will have access, through registered SDRs, to comprehensive information about the security-based swap market. This information should improve relevant authorities' ability to oversee the security-based swap market both for systemic risk purposes and to detect, deter, and address market abuse.

Regulatory access to security-based swap data will facilitate monitoring of risk exposures with implications for financial stability that market participants do not internalize. For example, Regulation SBSR will provide relevant authorities with visibility into the security-based swap positions of a participant's ultimate parent. Regulation SBSR also will allow relevant authorities to detect unusual activity at a very granular level, by trading desk or even individual trader. Similarly, by filtering exposures to single-name CDS via the product ID, relevant authorities will be able to better understand any potential risk to financial stability that could arise if a corporate default triggers CDS payouts between counterparties. Information about the activity and exposures of security-based swap market participants could allow the Commission or other relevant authorities to take actions that reduce the likelihood of disruption to the smooth functioning of financial markets or to reduce the magnitude of such disruptions when they do occur.[1355] If such disruptions also impair capital formation by reducing the ability or willingness of financial intermediaries or other market participants to borrow or lend, then market oversight that reduces financial instability may also facilitate capital formation.

The opacity of the security-based swap market can contribute to uncertainty during periods of financial crisis. In the absence of information about the outstanding obligations between counterparties to security-based swaps, financial market participants may face uncertainty over the extent to which large financial institutions are exposed to each other's credit risk. This environment may create incentives for financial market participants to reduce risk exposures and seek safer assets (such as cash or Treasury securities), which could lead to a significant reduction in investment in capital goods.[1356] Under a robust regime of regulatory reporting, the Commission and other relevant authorities will have greater means to identify the extent of the relevant exposures and the interrelatedness of risks in the security-based swap market, which could be particularly important in times of financial stress. Providing relevant authorities access to information about outstanding obligations that result from security-based swap activity could allow these authorities to assist in the event of counterparty default. This knowledge could reduce market participants' uncertainty in times of stress, if, for example, it suggests to them a more orderly wind-down of risk exposures of the defaulting counterparty. To the extent that reduced uncertainty results in more efficient risk-sharing it may reduce market participants' demand for safe assets, as described above, and hence may improve the environment for capital formation.

Regulatory reporting will also enable the Commission and other relevant authorities to improve their monitoring of market practices. This could have direct effects on competition in the security-based swap market. Absent regulation by the Commission and other relevant authorities, potential market participants may consider the potential costs of market abuse to be a barrier that discourages their entry into the security-based swap market. The knowledge that the Commission and other relevant authorities are able to conduct surveillance on the basis of regulatory reporting may lower their barriers to entry since surveillance and the resulting increased probability of detection may deter potential market abuse in the security-based swap market. This could result in broader participation and improved efficiency, competition, and capital formation due to the availability of more risk-sharing opportunities between market participants.

[1355] *See supra* Section XXII(B)(1)(d) (describing current state of efficiency in the security-based swap market).

[1356] If financial market participants invest their money in cash or Treasury securities, rather than riskier assets such as stocks or corporate bonds, this may make it more difficult for companies to raise capital and invest in capital goods.

3. Public Dissemination

Regulation SBSR establishes a requirement for public dissemination of security-based swap transaction information. Currently, public access to security-based swap transaction information is limited to aggregate pricing and volume data made available by clearing agencies and DTCC–TIW, as well as infrequent reporting by large multilateral organizations. There is no comprehensive or widely available source of transaction-by-transaction pricing and volume information.

The Commission believes that public availability of pricing and volume data for individual security-based swaps, as required by Title VII, should promote efficiency and competition by enabling information produced by activity in the security-based swap markets to be used as an input to myriad economic decisions, when currently limited transaction information is generally available only to large dealers who observe customer order flow.[1357] Thus, smaller market participants, being able to view all security-based swap transactions disseminated by registered SDRs, can observe from recently executed prices whether there may be profitable opportunities to enter the market, thereby increasing competition. In addition, a firm may use information about the pricing of CDS written on its debt to decide on the appropriate opportunity cost of capital to apply to the cash flows of new investment projects, thereby promoting efficiency. Similarly, a lender may use information about credit risk embedded in the pricing of CDS written on a borrower's existing debt to inform the lender's decision of whether or not to extend additional financing, thereby also promoting efficiency.

As discussed in Section XXII(C)(2)(a), public dissemination of security-based swap transactions also may promote better valuation of underlying and related assets by allowing for the inclusion of last-sale information into valuation models. Models without the input of last-sale information could be imprecise or be based on assumptions subject to the evaluator's discretion without having last-sale information to help identify or correct flawed assumptions. As a result, otherwise identical market participants holding the same asset but using different valuation models might arrive at significantly different valuations. This could result in these market participants developing very different views of their risk exposures, resulting in inefficient economic decisions. The Commission anticipates that market observers will incorporate last-sale information that is publicly disseminated by registered SDRs into their valuation models for the same and related assets. Such last-sale information will assist them in developing and validating their pricing models and improve the accuracy of the valuations that they use for a variety of purposes, such as making new investment decisions or managing the risk of existing positions. Efficient allocation of capital relies on accurate valuation of asset prices. Overvaluation of assets could result in a misallocation of capital, as investors seek to purchase or hold an asset that cannot deliver the anticipated risk-adjusted return. By the same token, undervalued assets represent investment opportunities that might go unpursued, because investors do not realize that a more attractive risk-adjusted return may be available. To the extent that post-trade transparency enables asset valuations to move closer to their fundamental values, capital should be more efficiently allocated.

Information revealed through public dissemination of security-based swap transaction details takes on two key characteristics. First, use of a piece of information by one economic agent does not necessarily preclude use of the same information by another. Second, once information is made public under Regulation SBSR, it is, by definition, non-excludable. Dissemination cannot be limited only to those that have direct access to the information (such as dealers who observe significant order flow) or to larger market participants who are willing to pay for the information. These characteristics make it difficult for parties who report transaction data to capture the value that market participants and market observers may gain from receipt of publicly disseminated security-based swap data. As a result, public dissemination of security-based swap transaction information is prone to inefficient supply—for example, parties have an incentive to make incomplete reports of their activity. By establishing minimum requirements for what is reported and publicly disseminated, the Commission believes that Regulation SBSR will limit the degree of this inefficient supply.

Public dissemination will also likely affect efficiency and competition within the security-based market. A primary economic effect of the final rules on public dissemination of transaction information is to reduce the degree of information asymmetry between market participants. Information asymmetries are currently endemic in the security-based swap market. Large dealers can observe a significant amount of order flow provided by their customers and know the prices at which their various customers have traded with them. Other market participants, including the customers of large dealers, generally do not know the prices that other market participants have paid or would be willing to pay for particular security-based swaps, what products are being transacted, or in what volumes. Large dealers collectively, who are able to observe their customers' orders and executions, may be able use this information to adjust the prices that they quote to extract profits at the expense of their customers.[1358] Customers, with very limited ability to obtain information about the prices or sizes of others' transactions, are in an inferior bargaining position to the dealers that they face. To the extent that dealer private information counters the incentives for market participants to efficiently share risks using security-based swaps, it represents a dead-weight loss and not a simple reallocation of gains from trade between dealers and their customers.[1359] Post-trade transparency increases the bargaining power of customers because knowledge of last-sale prices in the same or similar instruments allows them to establish a baseline for negotiations with any dealer.

Post-trade transparency in other financial markets has been shown to improve competition and efficiency by decreasing implicit transaction costs and improving the bargaining power of investors and other non-dealers. For example, a number of studies of the corporate bond market have found that post-trade transparency, resulting from the introduction of FINRA's TRACE system, reduced implicit transaction costs.[1360] Reduced implicit transaction costs could encourage market entry, particularly of smaller dealers and non-dealers, and potentially increase risk sharing and price competition, thereby promoting efficiency. To the extent that the current security-based swap market

[1357] *See supra* Section XXII(B)(1)(d) (discussing sources of security-based swap information and efficiency in the current security-based swap market).

[1358] *See, e.g.,* Bessembinder *et al., supra* note 1259.

[1359] A dead-weight loss means that the economy in aggregate is worse off. If market participants do not share risks efficiently as a result of their inferior bargaining position relative to dealers, then risks are not transferred to those market participants who are in the best position to bear them. A dead-weight loss results when the benefits that accrue to dealers as a result of their private information are less than the costs of inefficient risk sharing, or when dealers do not benefit at the equal expense of other market participants.

[1360] *See* Edwards, *et al., supra* note 1223.

is similar to the corporate bond market prior to the introduction of TRACE, post-trade transparency could have similar effects in the security-based swap market.[1361]

Regulation SBSR will permit all market observers for the first time to see last-sale information of security-based swap transactions, thereby reducing the information asymmetry between dealers and non-dealers.[1362] Non-dealers may be able to use publicly disseminated information to negotiate more favorable prices from dealers or to decline to enter into security-based swaps offered at unfavorable prices, thereby improving the efficiency of risk sharing in the security-based swap market. Additionally, public dissemination could assist dealers in deriving better quotations, as knowledge of the prices and volumes at which other market participants have executed transactions could serve as a valuable input for quotations in the same or similar instruments.[1363] As a result, dealers will have a better sense of the market and may not need to build large margins into their quotations to compensate for uncertainty in providing quotations. Increased competition from new entrants and quotations that more accurately reflect fundamental value could lead to lower implicit transaction costs for security-based swaps, which will encourage efficient risk sharing and promote price efficiency.[1364]

The Commission recognizes, however, that the final rules will not eliminate entirely the informational advantage of large intermediaries. These market participants will still have the advantage of seeing order flows or inquiries that are not ultimately executed and disseminated. They also will be able to see their completed transactions against customers in real time, while market observers who consume the transaction data that is publicly disseminated by registered SDRs might not—during the interim phase of Regulation SBSR—learn of these transactions until up to 24 hours after they are executed. In addition, an executing intermediary may derive an informational advantage from knowing the identities of both its counterparties and other customers who submit orders or make inquiries about liquidity.

The Commission also acknowledges that implementing post-trade transparency in the security-based swap market could cause some market participants to execute fewer security-based swaps in the U.S. market or to exit the U.S. market completely and execute their transactions in foreign markets instead. To the extent that such events occur, these could be viewed as costs of the final rules that could have a detrimental impact on efficiency, competition, and capital formation. For example, certain market participants that are currently active in the market might not find it desirable for information about their security-based swaps to be publicly known. If market participants respond to the final rules by reducing their trading activity or exiting the market, or if the final rules raise barriers to entry, the result could be reduced competition between the remaining market participants. Besides reduced price competition, exit by certain participants from the market also could result in a less efficient allocation of credit risk. This could have implications for capital formation if market participants engage in precautionary savings and self-insurance rather than hedging their risks by using capital resources offered by third parties through security-based swaps.[1365]

Public dissemination of security-based swap transactions also may promote efficient valuation of various financial instruments. As a result of the final rules, all market participants and market observers will have the benefit of knowing how counterparties to a particular security-based swap valued the security-based swap at a specific moment in the recent past, and can incorporate this last-sale information into their own valuations for that security-based swap, as well as any related or underlying instrument.[1366] To the extent that last-sale information results in valuations that are more informationally efficient, they may help improve financial stability by making risk management by financial institutions more efficient. This in turn could enhance the ability of market participants to accurately measure financial exposures to each of their counterparties.

Public dissemination of security-based swap transaction information could improve the efficiency of the security-based swap market through more efficient deployment of assets used as collateral for security-based swap transactions. Appropriate collateral allocation is dependent on accurate valuation of security-based swaps. As the value of a security-based swap changes, the likelihood of one party having to make a payout to the other party also changes, which could impact the amount of collateral that one counterparty owes to the other. Hence, misvaluation of a security-based swap contract could lead to inefficient allocation of collateral across counterparties. To the extent that public dissemination of security-based swap transactions will help enable better valuations, instances of overcollateralization or undercollateralization should decrease. Furthermore, the better investors can judge the performance of collective investment vehicles because of better valuations, the more efficiently they can allocate their investment capital among available funds.

Post-trade transparency of security-based swaps should promote more efficient valuation of securities on which security-based swaps are based. A clear example of this is the market for single-name CDS, where post-trade transparency may lead to better estimates of the creditworthiness of debt issuers. All other things being equal, CDS protection on a more creditworthy issuer costs less than CDS protection on a less creditworthy issuer. Furthermore, the cost of CDS protection on a single issuer may change over time, reflecting, in part, the financial position of the issuer. Mandatory post-trade transparency of CDS transactions will offer market participants and market observers the ability to dynamically assess the market's view of the creditworthiness of the reference entities that underlie CDS contracts, thus promoting efficiency in the market for cash bonds. For example, public dissemination of transactions in CDS on reference entities that issue TRACE-eligible debt securities will help reinforce the pricing signals derived from individual transactions in debt securities generated by TRACE. Market participants can arbitrage disparities in prices reflected in TRACE and as suggested in last-sale information of related CDS, helping create more overall efficiency in the market for credit. Similarly, public dissemination of transactions in single-name CDS should

[1361] In the Regulation SBSR Proposing Release, the Commission requested comment on whether post-trade transparency would have a similar effect on the security-based swap market as it has in other securities markets—and if not, why not. *See* 75 FR 75226. No commenters responded to the Commission's request.

[1362] A similar information asymmetry, but to a lesser and varying degree, exists between larger and smaller dealers, and it would also be reduced.

[1363] *See supra* Section XXII(B)(2)(a) (discussing the benefits of improved valuation).

[1364] *See* Edwards, *et al., supra* note 1223.

[1365] The Commission notes there are also plausible cases in which Regulation SBSR might increase the efficiency of risk allocation while also reducing transaction volume. Market participants might determine, as a result of observing publicly disseminated price and volume data, that engaging in a security-based swap transaction is an inefficient means of managing financial or commercial risks.

[1366] *See supra* Section XXII(C)(2).

reinforce the pricing signals derived from public dissemination of index CDS transactions. Post-trade transparency of security-based swap CDS under Regulation SBSR could indirectly bring greater transparency into the market for debt instruments (such as sovereign debt securities) that are not subject to mandatory public dissemination through TRACE or any other means.

Finally, business owners and managers can use information gleaned from the publicly disseminated security-based swap transaction data to make more-informed investment decisions in physical assets and capital goods, as opposed to investment in financial assets, thereby promoting efficient resource allocation and capital formation in the real economy. Transparent security-based swap prices may also make it easier for firms to obtain new financing for business opportunities, by providing information and reducing uncertainty about the value and profitability of a firm's investments.[1367]

4. Implementation of Regulatory Reporting and Public Dissemination

a. Role of Registered SDRs

In adopting Regulation SBSR, the Commission has attempted to design the duties of registered SDRs to promote efficiency of the reporting and public dissemination requirements and thereby minimize any adverse impacts on competition and capital formation. At the same time, the Commission acknowledges that, to the extent that the final rules place regulatory obligations on registered SDRs, these obligations may constitute a barrier to entry that, at the margin, reduces competition between registered SDRs. Regulation SBSR requires a registered SDR to publicly disseminate specified information about reported security-based swap transactions immediately upon receipt. The Commission believes that this requirement will help promote an efficient allocation of public dissemination responsibilities for a number of reasons. First, registered SDRs—because of their role in the regulatory reporting function—already possess all of the information necessary to carry out public dissemination and would not have to collect additional information from other parties. Second, placing the duty to publicly disseminate on registered SDRs eliminates the need for the development of other infrastructure and mechanisms for public dissemination of security-base swap transaction information in addition to the infrastructure that is required to support regulatory reporting.[1368] Third, users of publicly disseminated security-based swap data will be required to consolidate transaction data from only a small number of registered SDRs, rather than a potentially larger number of dissemination agents that might exist under an alternative regime. Under Rules 907(a)(1) and 907(a)(2), registered SDRs have the flexibility to determine the precise means through which they will accept reports of security-based swap transaction data. This degree of flexibility has implications for the efficiency of data collection. Registered SDRs could choose to innovate and adopt new reporting formats that could lower costs to market participants while maintaining the required level of information and data integrity. Moreover, in an effort to attract business, registered SDRs could decide to accept data from market participants in a wide variety of formats, taking on additional data management and systems burdens. Indeed, such an outcome could represent an efficient allocation of the costs of data management, in which a handful of registered SDRs invest in technologies to transform data rather than approximately 300 reporting sides making similar changes to their systems in an effort to provide identical reports to each SDR. The Commission acknowledges, however, that the same features that support a market structure that yields only a handful of registered SDRs could temper the incentives of these registered SDRs to compete on reporting efficiency. For example, registered SDRs could decide to accept data from customers in only one specific format. The Commission further anticipates efficiency gains if data elements necessary to understand a trade evolve over time as new security-based swap contracts are developed. Additionally, this approach may support competition among security-based swap counterparties by maintaining low barriers to entry with respect to reporting obligations under Regulation SBSR.

Further, the final rules do not presume a market structure for registered SDRs. On one hand, this means that market participants, the Commission, and other relevant authorities cannot rely on efficiency gains from receiving security-based swap transaction data from a single, consolidated source, but must instead consolidate fragmented data from multiple SDRs. On the other hand, a monopoly in the market for SDR services could preclude innovations that may lead to higher quality outputs or lower costs for reporting parties, SDR participants more generally, the Commission, and other relevant authorities.

b. Interim Phase of Reporting Requirements and Block Rules

As discussed above in Section VII, the Commission is adopting rules for regulatory reporting and public dissemination of security-based swaps that are intended only as the interim phase of implementation of these Title VII requirements. At a later date, the Commission anticipates seeking additional comment on potential block thresholds and associated block rules (such as the time delay for disseminating block trades and the time period for the mandatory reporting and public dissemination of non-block trades).

Immediately implementing a complete regime that includes block trade thresholds and final reporting timeframes could improve efficiency, competition, and capital formation by increasing price transparency in the security-based swap market sooner. Several commenters, however, argued that requiring post-trade transparency for security-based swaps with incorrectly designed block trade thresholds could significantly damage the market,[1369] and the Commission is concerned that disruptions to the market that could result from establishing block trading rules without the benefit of comprehensive data analysis could cause certain market participants to limit their security-based swap activity or to withdraw from the market entirely. This in turn could lead to reduced competition, higher prices, and inefficient allocations of risk and capital.

Currently, there are no data that can be used to directly assess the impact of mandated post-trade transparency of security-based swap transactions on market behavior, because there is no widely available post-trade data to which the security-based swap market can react.[1370] The Commission anticipates that the initial phase of Regulation SBSR will yield at least some useful data about how much time market participants believe they need to hedge transactions and how other

[1367] *See* Bond, *et al.,* note 1258, *supra.*

[1368] *See supra* Section XXII(C)(2)(c).

[1369] *See supra* note 486.

[1370] The Commission's economic analysis of the effects of post-trade transparency on the security-based swap market has included indirect evidence from the swap market and from the security-based swap market. *See* Analysis of Post-Trade Transparency; Hedging Analysis.

market participants react when they see transactions of different sizes with different delays after the time of execution. The phased approach is designed to introduce mandatory post-trade transparency in the security-based swap market while allowing the Commission sufficient time to gather and analyze data regarding potential block thresholds and dissemination delays.

The Commission acknowledges that allowing up to 24 hours for reporting a security-based swap means that market participants not involved in that particular transaction, and other market observers, will not have access to information about the transactions for up to 24 hours after the initial execution, depending upon the specific time when the transaction is reported. This delay could impact the development of more vigorous price competition in the security-based swap market because market participants who are involved in transactions would have access to potentially market-moving information up to 24 hours before those who are not. The Commission believes, however, that allowing up to 24 hours for transactions to be reported and publicly disseminated still represents a significant improvement over the status quo, where market participants report transactions to data repositories only on a voluntary basis and information about transaction is not publicly disseminated.

c. Use of UICs and Rule 903

Regulation SBSR requires the use of several UICs in the reporting of security-based swap transactions. Use of UICs improves efficiency of data intake by registered SDRs and data analysis by relevant authorities and other users of data, as the reported security-based swap transaction information can be readily aggregated by UIC along several dimensions (*e.g.,* product ID, trading desk ID, or trader ID). The efficiency gain in aggregation applies primarily at the SDR level in cases where the SDR uses its own UICs that are not otherwise applied at other SDRs (assuming that no IRSS exists to provide such UICs). To the extent that multiple SDRs were to use the same UICs—because they use UICs provided by an IRSS, such as the GLEIS, or because SDRs agree to recognize UICs assigned by another SDR [1371]—the efficiency gain would extend to aggregation across SDRs, although this is not required under Regulation SBSR. The efficiency gains described in this section may be limited to regulatory reporting and only extend to public dissemination to the extent that the relevant information is being publicly disseminated. Additionally, minimizing the operational risks arising from inconsistent identification of persons, units of persons, products, or transactions by counterparties and market infrastructure providers would enhance efficiency.

Under Rule 903(b), as adopted, a registered SDR may permit information to be reported to it, and may publicly disseminate information, using codes in place of certain data elements only if the information necessary to interpret such codes is widely available to users of the information on a non-fee basis. If information to understand embedded codes is not widely available on a non-fee basis, information asymmetries would likely continue to exist between large market participants who pay for the codes and other market participants. Rents paid for the use of codes could decrease transparency and increase barriers to entry to the security-based swap market, because the cost of necessary licenses may reduce the incentives for smaller potential market participants to enter the market. Preventing this barrier to entry from forming should help promote competition by facilitating the entry of new market participants.

One commenter suggested that alternatives could be developed to the status quo of using fee-based codes in security-based swap market data.[1372] The Commission welcomes the development of such alternatives, and believes that Rule 903(b), as adopted, may encourage such development.

d. Rules Assigning the Duty To Report

Rule 901(a) assigns the reporting obligation for security-based swaps other than clearing transactions and platform-executed transactions that are submitted to clearing. The reporting hierarchy in Rule 901(a) is designed to increase efficiency for market participants, as well as the Commission and other relevant authorities, by locating the duty to report with counterparties who are most likely to have the resources and who are best able to support the reporting function. Furthermore, Rule 901(a) seeks to increase efficiency by leveraging existing infrastructure to support security-based swap reporting, where practicable.

The Commission anticipates that the majority of security-based swaps covered by Rule 901(a), as adopted, will include a registered security-based swap dealer or registered major security-based swap participant on at least one side. Many of the entities that are likely to register as security-based swap dealers or major security-based swap participants already have committed time and resources building the infrastructure to support reporting security-based swaps and some reporting to DTCC–TIW is occurring on a voluntary basis.[1373] Moreover, many such entities currently report swaps pursuant to the CFTC's swap data reporting rules. Rule 901(a) is designed, as much as practicable, to allow these market participants to use these existing reporting capabilities and to minimize the chance that a market participant with limited involvement in the security-based swaps market might incur the duty to report. This approach could lead to lower barriers to entry into the market compared to the approach contemplated in the SBSR Proposing Release.[1374] Also, by reducing infrastructure costs imposed on smaller market participants, this approach also could promote competition by reducing the likelihood that these smaller entrants without existing reporting capabilities would be required to incur fixed costs necessary to develop reporting capabilities. Finally, to the extent that non-registered persons are not required to devote resources to support transaction reporting—because reporting is carried out instead by registered security-based swap dealers and registered major security-based swap participants who, due to economies of scale and the presence of existing reporting capabilities, are likely to face relatively lower costs of reporting—such resources could be put to more efficient uses.[1375]

The Commission recognizes that this approach puts smaller market participants on the same rung of the hierarchy with entities that likely meet

[1371] For example, assume that a person becomes a participant of a registered SDR and obtains UICs for its trading desks and individual traders from that SDR. Later, that person becomes a participant at a second registered SDR. The second SDR could issue its own set of UICs for this person's trading desks and individual traders, or it could recognize and permit use of the same UICs that had been assigned by the first registered SDR.

[1372] *See* Bloomberg Letter at 2 (stating that it would be possible to develop a public domain symbology for security-based swap reference entities that relied on products in the public domain to ''provide an unchanging, unique, global and inexpensive identifier'').

[1373] As discussed in Section XXII(B)(1), *supra,* the data in DTCC–TIW are self-reported and the vast majority of trades involves at least one dealer as a counterparty. Further, both transaction counterparties submit records for confirmation, covering all likely registrants.

[1374] *See* Cross-Border Proposing Release, 78 FR 31194.

[1375] *See supra* Section XXII(C) (discussing the costs that reporting sides are likely to incur).

the definition of ''security-based swap dealer'' and will have to register with the Commission as such in the future. In theory, this could force these smaller market participants into a negotiation with the ''likely dealers,'' because Rule 901(a)(2)(ii)(E)(1) requires both sides to select the reporting side. The Commission believes that this outcome will be unlikely in practice. The Commission understands that voluntary reporting practices in the security-based swap market are broadly consistent with the principle behind the reporting hierarchy in Rule 901(a)(2)(ii): That the more sophisticated market participant should report the transaction. Moreover, market participants who are active in the security-based swap market are likely also to be active in the swap market, where CFTC rules have established a reporting hierarchy that assigns the heaviest reporting duties to swap dealers and major swap participants.[1376] Because practices have already been established for larger market participants to assume reporting duties, it is likely that these practices will be applied in the security-based swap market even before the Commission adopts registration rules for security-based swap dealers and major security-based swap participants.

One of the general principles underlying Rule 901(a) is that, if a person has the duty to report information under Regulation SBSR, it should also have the ability to choose the registered SDR to which it reports. The Commission believes that this approach will promote efficiency and competition, because it enables each person with a duty to report a security-based swap to connect and report transactions to the registered SDR (or SDRs) that offer it the highest quality services and/or the lowest fees to the extent that there is more than one SDR. Two commenters believed that the Commission could promote competition by allowing a counterparty to a security-based swap—typically a security-based swap dealer—to choose the registered SDR that receives information reported under Regulation SBSR.[1377] The Commission agrees with the views of the commenters that allowing a counterparty to choose the registered SDR that received information reported under Regulation SBSR could promote competition. Rule 901(a), as adopted, reflects this approach by allowing the person with the duty to report to choose the registered SDR to which it reports.

Finally, the Commission believes that, if Rule 901(a) affects capital formation at all, it would be in only a limited and indirect way. The Commission does not see—and no commenter has presented any evidence to suggest—that the economic considerations of how, where, and by whom security-based swap transactions will be reported to registered SDRs will have any direct bearing on how, how often, and at what prices market participants might be willing to transact. As mentioned above, by placing the reporting duty on the person with the most direct access to required information, Rule 901(a) is designed to minimize reporting burdens, which could facilitate a more efficient allocation of capital by reducing expenditures on security-based swap reporting infrastructure.

e. Embargo Rule

Rule 902(d), the Embargo Rule, prohibits the release of security-based swap transaction information to persons (other than a counterparty or post-trade processor) until that information has been transmitted to a registered SDR. The Embargo Rule is designed to promote competition among market participants in the security-based swap market by prohibiting persons who obtain knowledge of a security-based swap transaction shortly after execution from providing information about that transaction to third parties before that information is provided to a registered SDR so that it can be publicly disseminated. In the absence of the Embargo Rule, selected third parties who are told about executions could obtain an informational advantage relative to other market participants, reducing the ability of these other market participants to compete in the market. The potential benefits of Regulation SBSR with respect to competition would suffer in the absence of the Embargo Rule, because market participants who gain earlier access to information could maintain a high degree of information asymmetry in the market.

Rule 902(d), as adopted, includes a carve-out for post-trade processors, such as entities involved in comparing or clearing transactions. This carve-out is designed to promote efficiency in the processing of security-based swap transactions by recognizing that the policy goals of the Embargo Rule are not served by impeding the ability of security-based swap counterparties to obtain post-trade processing services. Post-trade processors must obtain information about a transaction to carry out their functions, even if the transaction has not yet been reported to a registered SDR. In the absence of the carve-out, efficiency could be harmed if post-trade processors were barred from obtaining information about the transaction until it had been publicly disseminated by a registered SDR. Without this carve-out, Regulation SBSR could cause the services and functions provided by post-trade processors to be delayed. This could result in a disruption of current market practices, where post-trade processors provide a variety of services to security-based swap counterparties, and thus a reduction in security-based swap market efficiency.

5. Impact of Cross-Border Aspects of Regulation SBSR

a. General Considerations

The security-based swap market is global in nature, and dealers and other market participants are highly interconnected within this global market. This interconnectedness provides a myriad of paths for liquidity and risk to move throughout the financial system and makes it difficult, in many cases, to precisely identify the impact of a particular entity's activity on financial stability or liquidity. As a corollary to this, it is difficult to isolate risk and liquidity problems to one geographical segment of the market. Further, as we noted in Section XXII(B)(1), security-based swap market participants in one jurisdiction can conduct activity through branches or subsidiaries located in another. These features of the market form the basis of the Commission's analysis of the effects of rule 908 on competition, efficiency and capital formation.

b. Regulatory Reporting and Public Dissemination

Rule 908(a) generally applies regulatory reporting and public dissemination requirements depending on the characteristics of the counterparties involved in a transaction. The regulatory reporting requirement allows the Commission and other relevant authorities the ability to monitor risk and conduct market surveillance. Because the security-based swap market represents a conduit through which financial risks from foreign markets can manifest themselves in the United States, the Commission believes that it is appropriate to focus on those transactions that are likely to serve as routes for risk transmission to the United States, either because a direct or indirect counterparty is a U.S. person, is registered with the

[1376] *See* 17 CFR 45.8 (providing a hierarchy for regulatory reporting of swaps); 17 CFR 43.3(a).

[1377] *See* DTCC VI at 8–9; DTCC VIII; MarkitSERV III at 4–5.

Commission as a security-based swap dealer or major security-based swap participant, or if the transaction is submitted to a clearing agency having its principal place of business within the United States. A regulatory reporting requirement that did not include within its scope such transactions would provide the Commission with such an incomplete view of transaction activity with potential to undermine the stability of U.S. financial markets that it would likely undermine the beneficial effects of a regulatory requirement on efficiency, competition and capital formation.

Under Regulation SBSR, as adopted, many of the provisions of Regulation SBSR will apply to a cross-border security-based swap if one of the direct counterparties, even if a non-U.S. person, is guaranteed by a U.S. person. For example, Rule 908(a)(1)(i) requires regulatory reporting of a security-based swap if there is a direct or indirect counterparty that is a U.S. person on either or both sides of the transaction. Because guarantees extended by U.S. persons on transactions executed abroad can nevertheless import risk into the United States, regulatory reporting of security-based swaps should extend to any security-based swap transaction having an indirect counterparty (*i.e.,* a guarantor) that is a U.S. person. This will improve the Commission's ability to monitor risks posed by activity guaranteed by U.S. persons and, as a result, reduce any adverse impacts on efficiency, competition, and capital formation that might arise without this ability or that might arise from attempts by certain market participants to shift activity into guaranteed foreign subsidiaries in order to evade Regulation SBSR.

Under the approach taken in this release, market participants could avoid regulatory reporting and public dissemination requirements by shifting activity into unguaranteed foreign subsidiaries, assuming there was no other basis for Regulation SBSR to apply, such as the direct counterparty being a U.S. person. Thus, the Commission's action in distinguishing between guaranteed and unguaranteed foreign subsidiaries of U.S. parent entities could affect how these parent entities allocate capital across the organization. For example, a U.S. parent could separately capitalize a foreign subsidiary to engage in transactions with non-U.S. persons. If the U.S. parent takes such action solely as a response to Title VII regulation, it is unlikely that such a move would improve the efficiency with which the parent allocates its capital.

The primary economic effects of public dissemination of transaction information are related to improving market transparency. Rule 908(a) defines a scope of transactions subject to this requirement in the cross-border context that considers the benefits of public dissemination, including effects on efficiency, competition, and capital formation. The scope defined by Rule 908(a) also considers the potential costs that market participants could incur if counterparties restructure their operations so that their activity falls outside of the scope of Regulation SBSR and continues in a more opaque market. Such a response could result in lessened competition in the security-based swap market within the United States, less efficient risk-sharing and pricing, and impaired capital formation.

The public dissemination requirements under Regulation SBSR could affect the behavior of foreign market participants in ways that reduce market access for U.S. persons. For example, some non-U.S. persons might seek to minimize their contact with U.S. persons in an effort to avoid having their transactions publicly disseminated. Moreover, to the extent that the Commission's rules treat the foreign business of U.S. persons and non-U.S. persons differently from their respective U.S. business, market participants could perceive an incentive to restructure their business to separate their foreign and U.S. operations.

Programmatic benefits of this scope, beyond those already noted as benefits of regulatory reporting, are related to the ability of market observers to condition their beliefs about the security-based swap market on realized transaction prices.[1378] Post-trade transparency in the U.S. security-based swap market could have spillover benefits in foreign markets, even if those foreign markets impose no (or only limited) post-trade transparency requirements.[1379] Post-trade transparency provided by Regulation SBSR will make transaction data available to any market observer in the world. These data will also allow global market observers to use security-based swap prices as an input for valuation models and trading decisions for the same or related instruments, thereby improving the efficiency of these processes.[1380]

Relevant authorities in other jurisdictions are currently engaged in implementing their own regulatory reforms of the OTC derivatives markets that could apply to participants in those foreign markets. Regulatory differences among jurisdictions in the global security-based swap markets could create incentives for business restructuring. To the extent that such restructuring results from regulatory incentives rather than economic fundamentals, efficiency in the real economy could be reduced. Conflicting regulations or unnecessary duplication of regulation also might lead to fragmented markets.[1381]

Even if the substance of statutory and regulatory efforts across jurisdictions is comparable, different jurisdictions may impose new regulatory requirements on different timelines. To the extent that these timelines or the underlying requirements differ, market participants might have the opportunity to take advantage of these differences by making strategic choices, at least in the short term, with respect to their transaction counterparties and business models. For example, at a larger scale, firms may choose whether to participate in or withdraw from the U.S. security-based swap market. As a result of exits, registered security-based swap dealers that are U.S. persons might have less access to foreign markets, unless they were to restructure their business to conduct foreign transactions through unguaranteed foreign subsidiaries whose transactions with non-U.S. persons would not be subject to the regulatory reporting and public dissemination under Regulation SBSR.

These potential restructurings could impact competition in the U.S. market. On one hand, the ability to restructure one's business rather than exit the U.S. market entirely to avoid application of Title VII to an entity's non-U.S. operations could reduce the number of entities that exit the market, thus

[1378] The effects of public dissemination are discussed more generally in Section XXII(C)(2); the economic effects of Rule 908 that relate to efficiency, competition, and capital formation are examined in Section XXII(D)(4)(i).

[1379] *See* Edwards, *et al., supra* note 1223. (presenting a model implying, and finding empirical evidence in TRACE data for, what the authors term a ''liquidity externality,'' *i.e.,* improved market quality in certain securities that were not yet TRACE-eligible, when related securities had become subject to TRACE post-trade transparency).

[1380] *See supra* Section XXII(C)(2)(a) (discussing the benefits of improved valuation).

[1381] *See, e.g.,* Arnoud W.A. Boot, Silva Dezelan, and Todd T. Milbourn, ''Regulatory Distortions in a Competitive Financial Services Industry,'' Journal of Financial Services Research, Vol. 17, No. 1 (2000) (showing that, in a simple industrial organization model of bank lending, a change in the cost of capital resulting from regulation results in a greater loss of profits when regulated banks face competition from non-regulated banks than when regulations apply equally to all competitors); Victor Fleischer, ''Regulatory Arbitrage,'' 89 Texas Law Review 227 (March 4, 2010) (discussing how, when certain firms are able to choose their regulatory structure, regulatory burdens are shifted onto those entities that cannot engage in regulatory arbitrage).

mitigating the negative effects on competition described above. On the other hand, non-registered U.S. persons may find that the only non-U.S. person registered security-based swap dealers that are willing to deal with them are those whose security-based swap business is sufficiently large to afford the compliance costs associated with regulatory reporting and public dissemination requirements. To the extent that smaller dealers have an incentive to exit the market, the overall level of competition in the market could decline.

The Commission is mindful that, in the near term and until full implementation of comparable requirements for regulatory reporting and public dissemination of security-based swaps in other jurisdictions, the rules may generate incentives for market participants to restructure and reduce contact with U.S. market participants. As a result, for example, U.S. market participants seeking to hedge risk could face higher prices for hedging or fewer opportunities to hedge at all, which could impede capital formation. Another result could be inefficiency in risk allocation, because those market participants who are best placed to take on risks shared through security-based swap activity might be discouraged from doing so because of perceived necessity to avoid regulatory reporting and public dissemination requirements under Title VII. Furthermore, U.S. market participants that are able to restructure their business across national boundaries to avoid regulation are likely to be the largest financial institutions that can bear the greatest risks. The remaining firms will likely be smaller and have less capital with which to offer liquidity to the market.

Restructuring of business lines to take advantage of low-transparency regimes also would impede transparency, as fewer transactions would be subject to public dissemination under Regulation SBSR. Market participants who had relocated abroad would still be able to free-ride on price formation generated by the public dissemination of others' transactions in the same or similar instruments while not contributing any transactions of their own. The value of regulatory reporting and public dissemination in the U.S. market would be reduced to the extent that liquidity migrates to jurisdictions that are less-transparent.[1382]

c. Substituted Compliance

Rule 908(c) provides that the Title VII requirements relating to regulatory reporting and public dissemination of security-based swaps may be satisfied by compliance with the rules of a foreign jurisdiction if the Commission issues an order determining that the jurisdiction has requirements that comparable to those of Regulation SBSR. Rule 908(c) is designed to promote efficiency, competition, and capital formation in the security-based swap market, to the extent practical, given the state of regulatory reform of the OTC derivatives market being applied by specific foreign jurisdictions.

The Commission believes a regulatory regime that allows for substituted compliance under comparable foreign rules promotes efficiency by reducing the need for certain market participants to double report security-based swaps (*i.e.,* once to a foreign trade repository or foreign regulatory authority and again to a registered SDR). Substituted compliance also has the potential to improve market and price efficiency by reducing or even eliminating instances of the same transaction being publicly disseminated under two separate systems. The Commission assumes that market observers will obtain and utilize last-sale information about security-based swaps from any available sources around the globe. Without substituted compliance, a security-based swap that met the jurisdictional requirements of Rule 908(a)(2) of Regulation SBSR as well as the public dissemination rules of a foreign jurisdiction would be publicly disseminated in both jurisdictions. It might be difficult or impossible for market observers to understand that the two trade reports represent the same transaction, which would thus distort their view of the market. If the Commission were to issue a substituted compliance order with respect to that jurisdiction, market observers would see only a single report (emanating from the foreign jurisdiction) of that transaction.

While the rules governing substituted compliance are not designed to promote efficiency at the regulatory level, they are designed at least to minimize detractions from regulatory efficiency. Under substituted compliance, certain cross-border transactions that otherwise would be reported to an SEC-registered SDR would instead be reported to a foreign trade repository or foreign regulatory authority. Final Rule 908(c) requires, among other things, direct electronic access to the foreign security-based swap data in order to make a substituted compliance determination. However, there could be some difficulties in normalizing and aggregating the data from SEC-registered SDRs with the data from the foreign trade repositories or foreign regulatory authorities.

Overall, the Commission believes that, on balance, there will be certain positive impacts on efficiency from allowing substituted compliance. The principle behind this approach is that the Commission would grant substituted compliance with respect to regulatory reporting and public dissemination of security-based swaps in another jurisdiction only if the requirements of that jurisdiction are comparable to otherwise applicable requirements in Regulation SBSR. If a foreign jurisdiction does not have a comparable regime for regulatory reporting and public dissemination of security-based swaps, allowing the possibility of substituted compliance could, on balance, erode any impacts of Regulation SBSR on efficiency, to the extent that the foreign jurisdiction's regulatory outcomes for regulatory reporting and public dissemination differ from those under Regulation SBSR. This result could be viewed as privately efficient by market participants who might otherwise restructure their activities to avoid public dissemination. However, the result also would be that many transactions with significant connections to the U.S. market would remain opaque, thus reducing opportunities for greater price competition and price discovery. Moreover, granting substituted compliance in such cases could provide incentives for foreign jurisdictions to impose lower regulatory standards for security-based swaps than those mandated by Title VII. Under the rules, as adopted, the Commission may not grant substituted compliance unless the foreign jurisdiction's rules are comparable to otherwise applicable requirements.

Under Rule 908(c), the Commission could make a determination of comparability for regulatory reporting and public dissemination either separately or together. A few commenters argued that the Commission should separate them, which would, for example, permit substituted compliance for regulatory reporting for a foreign jurisdiction, but not for public dissemination.[1383] The Commission agrees with the commenter's suggestions and has determined to take such an approach.

[1382] By the same token, regulatory reporting and public dissemination in the U.S. security-based swap market could have spillover benefits in foreign markets that trade the same or similar instruments as the U.S. market, even if those foreign markets impose no (or only limited) requirements. *See supra* note 1259.

[1383] *See supra* note 917.

Permitting substituted compliance for regulatory reporting but not for public dissemination might be privately efficient for firms, who would be obligated to report transactions to a foreign jurisdiction for regulatory purposes, but would be obligated to only report to a registered SDR only those data elements necessary for public dissemination under Regulation SBSR. The Commission could, for instance, permit transactions to be reported into a foreign jurisdiction with no or only limited public dissemination requirements.

One commenter correctly pointed out that there are a few classes of security-based swap for which Regulation SBSR requires regulatory reporting but not public dissemination and argued, therefore, that the Commission should permit itself to grant substituted compliance for regulatory reporting only (and not public dissemination) for these classes.[1384] The Commission agrees with the commenter and is adopting Rule 908(c) with certain revisions that will allow the Commission to issue a substituted compliance order with respect to regulatory reporting but not public dissemination in such cases.[1385] This revision should increase the scope of transactions that may enjoy the efficiency benefits of substituted compliance discussed above.

E. Aggregate Quantifiable Total Costs

Based on the foregoing, the Commission estimates that Regulation SBSR will impose an initial one-time cost of approximately $194,500,000 on all entities.[1386] The Commission estimates that Regulation SBSR will impose a total ongoing annual aggregate cost of approximately $275,500,000 for all entities.[1387] With regard to registered SDRs, the Commission estimates that Regulation SBSR will impose an initial aggregate one-time cost of approximately $63,700,000,[1388] and an ongoing aggregate annual cost of approximately $98,800,000.[1389]

XXIII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'') requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) of the Administrative Procedure Act,[1390] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on ''small entities.'' [1391] Section 605(b) of the RFA [1392] states that this requirement shall not apply to any proposed rule or proposed rule amendment which, if adopted, would not have a significant economic impact on a substantial number of small entities.

In developing the final rules contained in Regulation SBSR, the Commission has considered their potential impact on small entities. For purposes of Commission rulemaking in connection with the RFA, a small entity includes: (1) When used with reference to an ''issuer'' or a ''person,'' other than an investment company, an ''issuer'' or ''person'' that, on the last day of its most recent fiscal year, had total assets of $5 million or less; [1393] or (2) a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[1394] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[1395]

The Regulation SBSR Proposing Release stated that, based on input from security-based swap market participants and its own information, the Commission preliminarily believed that the majority of security-based swap transactions have at least one counterparty that is either a security-based swap dealer or major security-based swap participant, and that these entities, whether registered broker-dealers or not, would exceed the thresholds defining ''small entities'' set out above.[1396] Thus, the Commission noted that it preliminarily believed that neither of these types of entities would likely qualify as small entities for purposes of the RFA.[1397] Moreover, in the Regulation SBSR Proposing Release, the Commission noted that, even in cases where one of the counterparties to a security-based swap was outside of the categories of security-based swap dealer or major security-based swap participant, the Commission preliminarily did not believe any such entities would be ''small entities'' as defined in Commission Rule 0–10.[1398] In this regard, the Commission noted that feedback from industry participants and the Commission's own information about the security-based swap market (including a survey conducted by the Office of the Comptroller of the Currency) indicated that only persons or entities with assets significantly in excess of $5 million participate in the

[1384] *See* IIB Letter at 25. *See also* Rule 902(c).

[1385] *See supra* Section XV(E)(6).

[1386] The Commission derived its estimate from the following: [($360,000 (Rule 901 one-time costs on registered SDRs)) + ($20,000,000 (Rule 902 one-time costs on registered SDRs)) + ($2,000,000 (Rule 905 one-time costs on registered SDRs)) + ($330,000 (Rule 906 one-time costs on registered SDRs)) + ($41,000,000 (Rule 907 one-time costs on registered SDRs)) + ($3,190,000 (Rule 906 one-time costs on covered participants) + ($121,800,000 (Rule 901 one-time costs on reporting sides) + ($720,200 (Rule 903 one-time costs on SDR participants)) + ($3,547,500 (Rule 905 one-time costs on reporting sides) + ($1,540,000 (Rule 908(c) one-time costs on requesting entities)] = $194,487,700, or approximately $194,500,000.

[1387] The Commission derived its estimate from the following: [($455,000 (Rule 901 ongoing annual costs on registered SDRs)) + ($12,000,000 (Rule 902 ongoing annual costs on registered SDRs)) + ($45,000 (Rule 904 ongoing annual costs on registered SDRs)) + ($4,000,000 (Rule 905 ongoing annual costs on registered SDRs)) + ($300,000 (Rule 906 ongoing annual costs on registered SDRs)) + ($82,000,000 (Rule 907 ongoing annual costs on registered SDRs)) + ($1,870,000 (Rule 906 ongoing annual costs on covered participants)) + ($95,700,000 (Rule 901 ongoing annual costs on reporting sides)) + ($2,352,000 (Rule 903 one-time costs on SDR participants)) + ($1,192,500 (Rule 905 ongoing annual costs on reporting sides)) + ($64,000,000 (Rule 905 ongoing annual costs on non-reporting sides)) + ($13,400,000 (Rule 906 ongoing annual costs on all participants)) + ($1,540,000 (Rule 908(c) costs of requests in the first year)] = $275,444,500 or approximately $275,500,000.

[1388] The Commission derived its estimate from the following: [($360,000 (Rule 901 one-time costs on registered SDRs)) + ($20,000,000 (Rule 902 one-time costs on registered SDRs)) + ($2,000,000 (Rule 905 one-time costs on registered SDRs)) + ($330,000 (Rule 906 one-time costs on registered SDRs)) + ($41,000,000 (Rule 907 one-time costs on registered SDRs))] = $63,690,000 or approximately $63,700,000.

[1389] The Commission derived its estimate from the following: [($455,000 (Rule 901 ongoing annual costs on registered SDRs)) + ($1,000,000 (Rule 902 ongoing annual costs on registered SDRs)) + ($45,000 (Rule 904 ongoing annual costs on registered SDRs)) + ($4,000,000 (Rule 905 ongoing annual costs on registered SDRs)) + ($300,000 (Rule 906 ongoing annual costs on registered SDRs)) + ($82,000,000 (Rule 907 ongoing annual costs on registered SDRs))] = $98,800,000.

[1390] 5 U.S.C. 603(a).

[1391] Although Section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term ''small entity'' for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10 under the Exchange Act, 17 CFR 240.0–10. *See* Securities Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. AS–305).

[1392] 5 U.S.C. 605(b).

[1393] *See* 17 CFR 240.0–10(a).

[1394] 17 CFR 240.17a–5(d).

[1395] *See* 17 CFR 240.0–10(c).

[1396] *See* Regulation SBSR Proposing Release, 75 FR 75282.

[1397] *See id.*

[1398] *See id.* at 75283.

security-based swap market.[1399] As a result, the Commission stated its preliminarily belief that the vast majority of, if not all, security-based swap transactions are between large entities for purposes of the RFA.[1400]

Similarly, in the Regulation SBSR Proposing Release, the Commission stated its preliminarily belief that the entities likely to register as SDRs would not be small entities.[1401] Based on input from security-based swap market participants and its own information, the Commission stated its preliminarily belief that most if not all the registered SDRs would be part of large business entities, and that all registered SDRs would have assets exceeding $5 million and total capital exceeding $500,000.[1402] On this basis, the Commission preliminarily believed that the number of security-based swap transactions involving a small entity as that term is defined for purposes of the RFA would be *de minimis* and that no aspect of proposed Regulation SBSR would be likely to alter the type of counterparties presently engaging in security-based swap transactions.[1403] Therefore, the Commission preliminarily did not believe that proposed Regulation SBSR would impact any small entities.[1404]

As a result, in the Regulation SBSR Proposing Release, the Commission certified that Regulation SBSR would not have a significant economic impact on a substantial number of small entities for purposes of the RFA and requested written comments regarding this certification.[1405] Specifically, the Commission requested that commenters describe the nature of any impact on small entities, indicate whether they believe that participants and registered SDRs are unlikely to be small entities, and provide empirical data to support their responses.[1406] The Commission did not receive any comments contrary to its conclusion.

The Commission continues to believe that few if any security-based swap counterparties that would incur duties under Regulation SBSR, as adopted, are ''small entities'' as defined in Commission Rule 0–10. Feedback from industry participants and the Commission's own information about the security-based swap market indicate that only persons or entities with assets significantly in excess of $5 million participate in the security-based swap market.[1407] The Commission continues to believe that the vast majority of, if not all, security-based swap transactions are between large entities for purposes of the RFA.

Based on input from security-based swap market participants and its own information, the Commission continues to believe that registered SDRs would be part of large business entities, and that all registered SDRs would have assets exceeding $5 million and total capital exceeding $500,000. Therefore, the Commission continues to believe that none of the registered SDRs would be small entities.

The Commission believes that the number of security-based swap transactions involving a small entity as that term is defined for purposes of the RFA would be *de minimis.* Moreover, the Commission does not believe that any aspect of Regulation SBSR would be likely to alter the type of counterparties presently engaging in security-based swap transactions. Therefore, the Commission does not believe that Regulation SBSR would impact any small entities.

For the foregoing reasons, the Commission certifies that Regulation SBSR would not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

XXIV. Statutory Basis and Text of Final Rules

Pursuant to the Exchange Act, 15 U.S.C. 78a *et seq.,* and particularly Sections 3C(e), 11A(b), 13(m)(1), 13A(a), 23(a)(1), 30(c), and 36(a), 15 U.S.C. 78c–3(e), 78k–1(b), 78m(m)(1), 78m–1(a), 78w(a)(1), 78dd(c), and 78mm(a) thereof, the Commission is adopting Rules 900, 901, 902, 903, 904, 905, 906, 907, 908, and 909 under the Exchange Act.

List of Subjects in 17 CFR Part 242

Brokers, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 242—REGULATIONS M, SHO, ATS, AC, NMS, AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 1. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–l(c), 78*l,* 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37, unless otherwise noted.

■ 2. The heading for part 242 is revised as set forth above.

■ 3. Add §§ 242.900, 242.901, 242.902, 242.903, 242.904, 242.905, 242.906, 242.907, 242.908, and 242.909 under an undesignated center heading to read as follows:

Regulation SBSR—Regulatory Reporting and Public Dissemination of Security-Based Swap Information

Sec.

§ 242.900 Definitions.

Terms used in §§ 242.900 through 242.909 that appear in Section 3 of the Exchange Act (15 U.S.C. 78c) have the same meaning as in Section 3 of the Exchange Act and the rules or regulations thereunder. In addition, for purposes of Regulation SBSR (§§ 242.900 through 242.909), the following definitions shall apply:

(a) *Affiliate* means any person that, directly or indirectly, controls, is controlled by, or is under common control with, a person.

(b) *Asset class* means those security-based swaps in a particular broad category, including, but not limited to, credit derivatives and equity derivatives.

(c) [Reserved].

(d) *Branch ID* means the UIC assigned to a branch or other unincorporated office of a participant.

(e) *Broker ID* means the UIC assigned to a person acting as a broker for a participant.

(f) *Business day* means a day, based on U.S. Eastern Time, other than a Saturday, Sunday, or a U.S. federal holiday.

(g) *Clearing transaction* means a security-based swap that has a registered clearing agency as a direct counterparty.

(h) *Control* means, for purposes of §§ 242.900 through 242.909, the

[1399] *See id.*
[1400] *See id.*
[1401] *See id.*
[1402] *See id.*
[1403] *See id.*
[1404] *See id.*
[1405] *See id.*
[1406] *See id.*
[1407] *See id. See also* Cross-Border Proposing Release, 78 FR 31205.

possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. A person is presumed to control another person if the person:

(1) Is a director, general partner or officer exercising executive responsibility (or having similar status or functions);

(2) Directly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities; or

(3) In the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25 percent or more of the capital.

(i) *Counterparty* means a person that is a direct counterparty or indirect counterparty of a security-based swap.

(j) *Counterparty ID* means the UIC assigned to a counterparty to a security-based swap.

(k) *Direct counterparty* means a person that is a primary obligor on a security-based swap.

(*l*) *Direct electronic access* has the same meaning as in § 240.13n–4(a)(5) of this chapter.

(m) *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), as amended.

(n) *Execution agent ID* means the UIC assigned to any person other than a broker or trader that facilitates the execution of a security-based swap on behalf of a direct counterparty.

(o) *Foreign branch* has the same meaning as in § 240.3a71–3(a)(1) of this chapter.

(p) *Indirect counterparty* means a guarantor of a direct counterparty's performance of any obligation under a security-based swap such that the direct counterparty on the other side can exercise rights of recourse against the indirect counterparty in connection with the security-based swap; for these purposes a direct counterparty has rights of recourse against a guarantor on the other side if the direct counterparty has a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, the guarantor in connection with the security-based swap.

(q) *Life cycle event* means, with respect to a security-based swap, any event that would result in a change in the information reported to a registered security-based swap data repository under § 242.901(c), (d), or (i), including: An assignment or novation of the security-based swap; a partial or full termination of the security-based swap; a change in the cash flows originally reported; for a security-based swap that is not a clearing transaction, any change to the title or date of any master agreement, collateral agreement, margin agreement, or any other agreement incorporated by reference into the security-based swap contract; or a corporate action affecting a security or securities on which the security-based swap is based (*e.g.,* a merger, dividend, stock split, or bankruptcy). Notwithstanding the above, a life cycle event shall not include the scheduled expiration of the security-based swap, a previously described and anticipated interest rate adjustment (such as a quarterly interest rate adjustment), or other event that does not result in any change to the contractual terms of the security-based swap.

(r) *Non-mandatory report* means any information provided to a registered security-based swap data repository by or on behalf of a counterparty other than as required by §§ 242.900 through 242.909.

(s) *Non-U.S. person* means a person that is not a U.S. person.

(t) *Parent* means a legal person that controls a participant.

(u) *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).

(v) *Platform* means a national securities exchange or security-based swap execution facility that is registered or exempt from registration.

(w) *Platform ID* means the UIC assigned to a platform on which a security-based swap is executed.

(x) *Post-trade processor* means any person that provides affirmation, confirmation, matching, reporting, or clearing services for a security-based swap transaction.

(y) *Pre-enactment security-based swap* means any security-based swap executed before July 21, 2010 (the date of enactment of the Dodd-Frank Act (Pub. L. 111–203, H.R. 4173)), the terms of which had not expired as of that date.

(z) *Price* means the price of a security-based swap transaction, expressed in terms of the commercial conventions used in that asset class.

(aa) *Product* means a group of security-based swap contracts each having the same material economic terms except those relating to price and size.

(bb) *Product ID* means the UIC assigned to a product.

(cc) *Publicly disseminate* means to make available through the Internet or other electronic data feed that is widely accessible and in machine-readable electronic format.

(dd) [Reserved].

(ee) *Registered clearing agency* means a person that is registered with the Commission as a clearing agency pursuant to section 17A of the Exchange Act (15 U.S.C. 78q–1) and any rules or regulations thereunder.

(ff) *Registered security-based swap data repository* means a person that is registered with the Commission as a security-based swap data repository pursuant to section 13(n) of the Exchange Act (15 U.S.C. 78m(n)) and any rules or regulations thereunder.

(gg) *Reporting side* means the side of a security-based swap identified by § 242.901(a)(2).

(hh) *Side* means a direct counterparty and any guarantor of that direct counterparty's performance who meets the definition of indirect counterparty in connection with the security-based swap.

(ii) *Time of execution* means the point at which the counterparties to a security-based swap become irrevocably bound under applicable law.

(jj) *Trader ID* means the UIC assigned to a natural person who executes one or more security-based swaps on behalf of a direct counterparty.

(kk) *Trading desk* means, with respect to a counterparty, the smallest discrete unit of organization of the participant that purchases or sells security-based swaps for the account of the participant or an affiliate thereof.

(*ll*) *Trading desk ID* means the UIC assigned to the trading desk of a participant.

(mm) *Transaction ID* means the UIC assigned to a specific security-based swap transaction.

(nn) *Transitional security-based swap* means a security-based swap executed on or after July 21, 2010, and before the first date on which trade-by-trade reporting of security-based swaps in that asset class to a registered security-based swap data repository is required pursuant to §§ 242.900 through 242.909.

(oo) *Ultimate parent* means a legal person that controls a participant and that itself has no parent.

(pp) *Ultimate parent ID* means the UIC assigned to an ultimate parent of a participant.

(qq) *Unique Identification Code* or *UIC* means a unique identification code assigned to a person, unit of a person, product, or transaction.

(rr) *United States* has the same meaning as in § 240.3a71–3(a)(5) of this chapter.

(ss) *U.S. person* has the same meaning as in § 240.3a71–3(a)(4) of this chapter.

§ 242.901 Reporting obligations.

(a) *Assigning reporting duties.* A security-based swap, including a security-based swap that results from the allocation, termination, novation, or assignment of another security-based swap, shall be reported as follows:

(1) [Reserved].

(2) *All other security-based swaps.* For all security-based swaps other than platform-executed security-based swaps that will be submitted to clearing, the reporting side shall provide the information required by §§ 242.900 through 242.909 to a registered security-based swap data repository. The reporting side shall be determined as follows:

(i) [Reserved].

(ii) *Security-based swaps other than clearing transactions.* (A) If both sides of the security-based swap include a registered security-based swap dealer, the sides shall select the reporting side.

(B) If only one side of the security-based swap includes a registered security-based swap dealer, that side shall be the reporting side.

(C) If both sides of the security-based swap include a registered major security-based swap participant, the sides shall select the reporting side.

(D) If one side of the security-based swap includes a registered major security-based swap participant and the other side includes neither a registered security-based swap dealer nor a registered major security-based swap participant, the side including the registered major security-based swap participant shall be the reporting side.

(E) If neither side of the security-based swap includes a registered security-based swap dealer or registered major security-based swap participant:

(*1*) If both sides include a U.S. person, the sides shall select the reporting side.

(*2*) [Reserved].

(b) *Alternate recipient of security-based swap information.* If there is no registered security-based swap data repository that will accept the report required by § 242.901(a), the person required to make such report shall instead provide the required information to the Commission.

(c) *Primary trade information.* The reporting side shall report the following information within the timeframe specified in paragraph (j) of this section:

(1) The product ID, if available. If the security-based swap has no product ID, or if the product ID does not include the following information, the reporting side shall report:

(i) Information that identifies the security-based swap, including the asset class of the security-based swap and the specific underlying reference asset(s), reference issuer(s), or reference index;

(ii) The effective date;

(iii) The scheduled termination date;

(iv) The terms of any standardized fixed or floating rate payments, and the frequency of any such payments; and

(v) If the security-based swap is customized to the extent that the information provided in paragraphs (c)(1)(i) through (iv) of this section does not provide all of the material information necessary to identify such customized security-based swap or does not contain the data elements necessary to calculate the price, a flag to that effect;

(2) The date and time, to the second, of execution, expressed using Coordinated Universal Time (UTC);

(3) The price, including the currency in which the price is expressed and the amount(s) and currenc(ies) of any up-front payments;

(4) The notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed;

(5) If both sides of the security-based swap include a registered security-based swap dealer, an indication to that effect;

(6) Whether the direct counterparties intend that the security-based swap will be submitted to clearing; and

(7) If applicable, any flags pertaining to the transaction that are specified in the policies and procedures of the registered security-based swap data repository to which the transaction will be reported.

(d) *Secondary trade information.* In addition to the information required under paragraph (c) of this section, for each security-based swap for which it is the reporting side, the reporting side shall report the following information within the timeframe specified in paragraph (j) of this section:

(1) The counterparty ID or the execution agent ID of each counterparty, as applicable;

(2) As applicable, the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID of the direct counterparty on the reporting side;

(3) To the extent not provided pursuant to paragraph (c)(1) of this section, the terms of any fixed or floating rate payments, or otherwise customized or non-standard payment streams, including the frequency and contingencies of any such payments;

(4) For a security-based swap that is not a clearing transaction, the title and date of any master agreement, collateral agreement, margin agreement, or any other agreement incorporated by reference into the security-based swap contract;

(5) To the extent not provided pursuant to paragraph (c) of this section or other provisions of this paragraph (d), any additional data elements included in the agreement between the counterparties that are necessary for a person to determine the market value of the transaction;

(6) If applicable, and to the extent not provided pursuant to paragraph (c) of this section, the name of the clearing agency to which the security-based swap will be submitted for clearing;

(7) If the direct counterparties do not intend to submit the security-based swap to clearing, whether they have invoked the exception in Section 3C(g) of the Exchange Act (15 U.S.C. 78c–3(g));

(8) To the extent not provided pursuant to the other provisions of this paragraph (d), if the direct counterparties do not submit the security-based swap to clearing, a description of the settlement terms, including whether the security-based swap is cash-settled or physically settled, and the method for determining the settlement value; and

(9) The platform ID, if applicable.

(10) If the security-based swap arises from the allocation, termination, novation, or assignment of one or more existing security-based swaps, the transaction ID of the allocated, terminated, assigned, or novated security-based swap(s), except in the case of a clearing transaction that results from the netting or compression of other clearing transactions.

(e) *Reporting of life cycle events.* (1)(i) *Generally.* A life cycle event, and any adjustment due to a life cycle event, that results in a change to information previously reported pursuant to paragraph (c), (d), or (i) of this section shall be reported by the reporting side, except that the reporting side shall not report whether or not a security-based swap has been accepted for clearing.

(ii) [Reserved]

(2) All reports of life cycle events and adjustments due to life cycle events shall, within the timeframe specified in paragraph (j) of this section, be reported to the entity to which the original security-based swap transaction was reported and shall include the transaction ID of the original transaction.

(f) *Time stamping incoming information.* A registered security-based swap data repository shall time stamp, to the second, its receipt of any information submitted to it pursuant to paragraph (c), (d), (e), or (i) of this section.

(g) *Assigning transaction ID.* A registered security-based swap data

repository shall assign a transaction ID to each security-based swap, or establish or endorse a methodology for transaction IDs to be assigned by third parties.

(h) *Format of reported information.* A reporting side shall electronically transmit the information required under this section in a format required by the registered security-based swap data repository to which it reports.

(i) *Reporting of pre-enactment and transitional security-based swaps.* With respect to any pre-enactment security-based swap or transitional security-based swap in a particular asset class, and to the extent that information about such transaction is available, the reporting side shall report all of the information required by paragraphs (c) and (d) of this section to a registered security-based swap data repository that accepts security-based swaps in that asset class and indicate whether the security-based swap was open as of the date of such report.

(j) *Interim timeframe for reporting.* The reporting timeframe for paragraphs (c) and (d) of this section shall be 24 hours after the time of execution (or acceptance for clearing in the case of a security-based swap that is subject to regulatory reporting and public dissemination solely by operation of § 242.908(a)(1)(ii)), or, if 24 hours after the time of execution or acceptance, as applicable, would fall on a day that is not a business day, by the same time on the next day that is a business day. The reporting timeframe for paragraph (e) of this section shall be 24 hours after the occurrence of the life cycle event or the adjustment due to the life cycle event.

Appendix to 17 CFR 242.901 Reports Regarding the Establishment of Block Thresholds and Reporting Delays for Regulatory Reporting of Security-Based Swap Transaction Data

This appendix sets forth guidelines applicable to reports that the Commission has directed its staff to make in connection with the determination of block thresholds and reporting delays for security-based swap transaction data. The Commission intends to use these reports to inform its specification of the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts; and the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public in order to implement regulatory requirements under Section 13 of the Act (15 U.S.C. 78m). In producing these reports, the staff shall consider security-based swap data collected by the Commission pursuant to other Title VII rules, as well as any other applicable information as the staff may determine to be appropriate for its analysis.

(a) *Report topics.* As appropriate, based on the availability of data and information, the reports should address the following topics for each asset class:

(1) *Price impact.* In connection with the Commission's obligation to specify criteria for determining what constitutes a block trade and the appropriate reporting delay for block trades, the report generally should assess the effect of notional amount and observed reporting delay on price impact of trades in the security-based swap market.

(2) *Hedging.* In connection with the Commission's obligation to specify criteria for determining what constitutes a block trade and the appropriate reporting delay for block trades, the report generally should consider potential relationships between observed reporting delays and the incidence and cost of hedging large trades in the security-based swap market, and whether these relationships differ for interdealer trades and dealer to customer trades.

(3) *Price efficiency.* In connection with the Commission's obligation to specify criteria for determining what constitutes a block trade and the appropriate reporting delay for block trades, the report generally should assess the relationship between reporting delays and the speed with which transaction information is impounded into market prices, estimating this relationship for trades of different notional amounts.

(4) *Other topics.* Any other analysis of security-based swap data and information, such as security-based swap market liquidity and price volatility, that the Commission or the staff deem relevant to the specification of:

(i) The criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts; and

(ii) The appropriate time delay for reporting large notional security-based swap transactions (block trades).

(b) *Timing of reports.* Each report shall be complete no later than two years following the initiation of public dissemination of security-based swap transaction data by the first registered SDR in that asset class.

(c) *Public comment on the report.* Following completion of the report, the report shall be published in the **Federal Register** for public comment.

§ 242.902 Public dissemination of transaction reports.

(a) *General.* Except as provided in paragraph (c) of this section, a registered security-based swap data repository shall publicly disseminate a transaction report of a security-based swap, or a life cycle event or adjustment due to a life cycle event, immediately upon receipt of information about the security-based swap, or upon re-opening following a period when the registered security-based swap data repository was closed. The transaction report shall consist of all the information reported pursuant to § 242.901(c), plus any condition flags contemplated by the registered security-based swap data repository's policies and procedures that are required by § 242.907.

(b) [Reserved].

(c) *Non-disseminated information.* A registered security-based swap data repository shall not disseminate:

(1) The identity of any counterparty to a security-based swap;

(2) With respect to a security-based swap that is not cleared at a registered clearing agency and that is reported to the registered security-based swap data repository, any information disclosing the business transactions and market positions of any person;

(3) Any information regarding a security-based swap reported pursuant to § 242.901(i);

(4) Any non-mandatory report;

(5) Any information regarding a security-based swap that is required to be reported pursuant to §§ 242.901 and 242.908(a)(1) but is not required to be publicly disseminated pursuant to § 242.908(a)(2);

(6) Any information regarding a clearing transaction that arises from the acceptance of a security-based swap for clearing by a registered clearing agency or that results from netting other clearing transactions; or

(7) Any information regarding the allocation of a security-based swap.

(d) *Temporary restriction on other market data sources.* No person shall make available to one or more persons (other than a counterparty or a post-trade processor) transaction information relating to a security-based swap before the primary trade information about the security-based swap is sent to a registered security-based swap data repository.

§ 242.903 Coded information.

(a) If an internationally recognized standards-setting system that imposes fees and usage restrictions on persons that obtain UICs for their own usage that are fair and reasonable and not unreasonably discriminatory and that meets the criteria of paragraph (b) of this section is recognized by the Commission and has assigned a UIC to a person, unit of a person, or product (or has endorsed a methodology for assigning transaction IDs), the registered security-based swap data repository shall employ that UIC (or methodology for assigning transaction IDs). If no such 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 (or has not endorsed a methodology for assigning transaction IDs), the registered security-based swap data repository shall assign a UIC to that person, unit of person, or product using its own methodology (or endorse a methodology for assigning transaction IDs). If the

Commission has recognized such a system that assigns UICs to persons, each participant of a registered security-based swap data repository shall obtain a UIC from or through that system for identifying itself, and each participant that acts as a guarantor of a direct counterparty's performance of any obligation under a security-based swap that is subject to § 242.908(a) shall, if the direct counterparty has not already done so, obtain a UIC for identifying the direct counterparty from or through that system, if that system permits third-party registration without a requirement to obtain prior permission of the direct counterparty.

(b) A registered security-based swap data repository may permit information to be reported pursuant to § 242.901, and may publicly disseminate that information pursuant to § 242.902, using codes in place of certain data elements, provided that the information necessary to interpret such codes is widely available to users of the information on a non-fee basis.

§ 242.904 Operating hours of registered security-based swap data repositories.

A registered security-based swap data repository shall have systems in place to continuously receive and disseminate information regarding security-based swaps pursuant to §§ 242.900 through 242.909, subject to the following exceptions:

(a) A registered security-based swap data repository may establish normal closing hours during periods when, in its estimation, the U.S. market and major foreign markets are inactive. A registered security-based swap data repository shall provide reasonable advance notice to participants and to the public of its normal closing hours.

(b) A registered security-based swap data repository may declare, on an *ad hoc* basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. A registered security-based swap data repository shall, to the extent reasonably possible under the circumstances, avoid scheduling special closing hours during periods when, in its estimation, the U.S. market and major foreign markets are most active; and provide reasonable advance notice of its special closing hours to participants and to the public.

(c) During normal closing hours, and to the extent reasonably practicable during special closing hours, a registered security-based swap data repository shall have the capability to receive and hold in queue information regarding security-based swaps that has been reported pursuant to §§ 242.900 through 242.909.

(d) When a registered security-based swap data repository re-opens following normal closing hours or special closing hours, it shall disseminate transaction reports of security-based swaps held in queue, in accordance with the requirements of § 242.902.

(e) If a registered security-based swap data repository could not receive and hold in queue transaction information that was required to be reported pursuant to §§ 242.900 through 242.909, it must immediately upon re-opening send a message to all participants that it has resumed normal operations. Thereafter, any participant that had an obligation to report information to the registered security-based swap data repository pursuant to §§ 242.900 through 242.909, but could not do so because of the registered security-based swap data repository's inability to receive and hold in queue data, must promptly report the information to the registered security-based swap data repository.

§ 242.905 Correction of errors in security-based swap information.

(a) *Duty to correct.* Any counterparty to a security-based swap that discovers an error in information previously reported pursuant to §§ 242.900 through 242.909 shall correct such error in accordance with the following procedures:

(1) If a side that was not the reporting side for a security-based swap transaction discovers an error in the information reported with respect to such security-based swap, the counterparty shall promptly notify the reporting side of the error; and

(2) If the reporting side discovers an error in the information reported with respect to a security-based swap, or receives notification from its counterparty of an error, the reporting side shall promptly submit to the entity to which the security-based swap was originally reported an amended report pertaining to the original transaction report. If the reporting side reported the initial transaction to a registered security-based swap data repository, the reporting side shall submit an amended report to the registered security-based swap data repository in a manner consistent with the policies and procedures contemplated by § 242.907(a)(3).

(b) *Duty of security-based swap data repository to correct.* A registered security-based swap data repository shall:

(1) Upon discovery of an error or receipt of a notice of an error, verify the accuracy of the terms of the security-based swap and, following such verification, promptly correct the erroneous information regarding such security-based swap contained in its system; and

(2) If such erroneous information relates to a security-based swap that the registered security-based swap data repository previously disseminated and falls into any of the categories of information enumerated in § 242.901(c), publicly disseminate a corrected transaction report of the security-based swap promptly following verification of the trade by the counterparties to the security-based swap, with an indication that the report relates to a previously disseminated transaction.

§ 242.906 Other duties of participants.

(a) *Identifying missing UIC information.* A registered security-based swap data repository shall 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. 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 security-based swap referenced in the report to the registered security-based swap data repository within 24 hours.

(b) *Duty to provide ultimate parent and affiliate information.* Each participant of a registered security-based swap data repository shall provide to the registered security-based swap data repository information sufficient to identify its ultimate parent(s) and any affiliate(s) of the participant that also are participants of the registered security-based swap data repository, using ultimate parent IDs and counterparty IDs. Any such participant shall promptly notify the registered security-based swap data repository of any changes to that information.

(c) *Policies and procedures of registered security-based swap dealers and registered major security-based swap participants.* Each participant of a registered security-based swap data

repository that is a registered security-based swap dealer or registered major security-based swap participant shall establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that it complies with any obligations to report information to a registered security-based swap data repository in a manner consistent with §§ 242.900 through 242.909. Each such participant shall review and update its policies and procedures at least annually.

§ 242.907 Policies and procedures of registered security-based swap data repositories.

(a) *General policies and procedures.* With respect to the receipt, reporting, and dissemination of data pursuant to §§ 242.900 through 242.909, a registered security-based swap data repository shall establish and maintain written policies and procedures:

(1) That enumerate the specific data elements of a security-based swap that must be reported, which shall include, at a minimum, the data elements specified in § 242.901(c) and (d);

(2) That specify one or more acceptable data formats (each of which must be an open-source structured data format that is widely used by participants), connectivity requirements, and other protocols for submitting information;

(3) For specifying procedures for reporting life cycle events and corrections to previously submitted information, making corresponding updates or corrections to transaction records, and applying an appropriate flag to the transaction report to indicate that the report is an error correction required to be disseminated by § 242.905(b)(2), or is a life cycle event, or any adjustment due to a life cycle event, required to be disseminated by § 242.902(a);

(4) For:

(i) Identifying characteristic(s) of a security-based swap, or circumstances associated with the execution or reporting of the security-based swap, that could, in the fair and reasonable estimation of the registered security-based swap data repository, cause a person without knowledge of these characteristic(s) or circumstance(s), to receive a distorted view of the market;

(ii) Establishing flags to denote such characteristic(s) or circumstance(s);

(iii) Directing participants that report security-based swaps to apply such flags, as appropriate, in their reports to the registered security-based swap data repository; and

(iv) Applying such flags:

(A) To disseminated reports to help to prevent a distorted view of the market; or

(B) In the case of a transaction referenced in § 242.902(c), to suppress the report from public dissemination entirely, as appropriate;

(5) For assigning UICs in a manner consistent with § 242.903; and

(6) For periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any participant(s) with which the participant is affiliated, using ultimate parent IDs and counterparty IDs.

(b) [Reserved].

(c) *Public availability of policies and procedures.* A registered security-based swap data repository shall make the policies and procedures required by §§ 242.900 through 242.909 publicly available on its Web site.

(d) *Updating of policies and procedures.* A registered security-based swap data repository shall review, and update as necessary, the policies and procedures required by §§ 242.900 through 242.909 at least annually. Such policies and procedures shall indicate the date on which they were last reviewed.

(e) A registered security-based swap data repository shall provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to §§ 242.900 through 242.909 and the registered security-based swap data repository's policies and procedures thereunder.

§ 242.908 Cross-border matters.

(a) *Application of Regulation SBSR to cross-border transactions.* (1) A security-based swap shall be subject to regulatory reporting and public dissemination if:

(i) There is a direct or indirect counterparty that is a U.S. person on either or both sides of the transaction; or

(ii) The security-based swap is accepted for clearing by a clearing agency having its principal place of business in the United States.

(2) A security-based swap that is not included within paragraph (a)(1) of this section shall be subject to regulatory reporting but not public dissemination if there is a direct or indirect counterparty on either or both sides of the transaction that is a registered security-based swap dealer or a registered major security-based swap participant.

(b) *Limitation on obligations.* Notwithstanding any other provision of §§ 242.900 through 242.909, a person shall not incur any obligation under §§ 242.900 through 242.909 unless it is:

(1) A U.S. person; or

(2) A registered security-based swap dealer or registered major security-based swap participant.

(c) *Substituted compliance*—(1) *General.* Compliance with the regulatory reporting and public dissemination requirements in sections 13(m) and 13A of the Act (15 U.S.C. 78m(m) and 78m–1), and the rules and regulations thereunder, may be satisfied by compliance with the rules of a foreign jurisdiction that is the subject of a Commission order described in paragraph (c)(2) of this section, provided that at least one of the direct counterparties to the security-based swap is either a non-U.S. person or a foreign branch.

(2) *Procedure.* (i) The Commission may, conditionally or unconditionally, by order, make a substituted compliance determination regarding regulatory reporting and public dissemination of security-based swaps with respect to a foreign jurisdiction if that jurisdiction's requirements for the regulatory reporting and public dissemination of security-based swaps are comparable to otherwise applicable requirements. The Commission may, conditionally or unconditionally, by order, make a substituted compliance determination regarding regulatory reporting of security-based swaps that are subject to § 242.908(a)(2) with respect to a foreign jurisdiction if that jurisdiction's requirements for the regulatory reporting of security-based swaps are comparable to otherwise applicable requirements.

(ii) A party that potentially would comply with requirements under §§ 242.900 through 242.909 pursuant to a substituted compliance order or any foreign financial regulatory authority or authorities supervising such a person's security-based swap activities may file an application, pursuant to the procedures set forth in § 240.0–13 of this chapter, requesting that the Commission make a substituted compliance determination regarding regulatory reporting and public dissemination with respect to a foreign jurisdiction the rules of which also would require reporting and public dissemination of those security-based swaps.

(iii) In making such a substituted compliance determination, the Commission shall take into account such factors as the Commission determines are appropriate, such as the scope and objectives of the relevant foreign regulatory requirements, as well as the effectiveness of the supervisory

compliance program administered, and the enforcement authority exercised, by the foreign financial regulatory authority to support oversight of its regulatory reporting and public dissemination system for security-based swaps. The Commission shall not make such a substituted compliance determination unless it finds that:

(A) The data elements that are required to be reported pursuant to the rules of the foreign jurisdiction are comparable to those required to be reported pursuant to § 242.901;

(B) The rules of the foreign jurisdiction require the security-based swap to be reported and publicly disseminated in a manner and a timeframe comparable to those required by §§ 242.900 through 242.909 (or, in the case of transactions that are subject to § 242.908(a)(2) but not to § 242.908(a)(1), the rules of the foreign jurisdiction require the security-based swap to be reported in a manner and a timeframe comparable to those required by §§ 242.900 through 242.909);

(C) The Commission has direct electronic access to the security-based swap data held by a trade repository or foreign regulatory authority to which security-based swaps are reported pursuant to the rules of that foreign jurisdiction; and

(D) Any trade repository or foreign regulatory authority in the foreign jurisdiction that receives and maintains required transaction reports of security-based swaps pursuant to the laws of that foreign jurisdiction is subject to requirements regarding data collection and maintenance; systems capacity, integrity, resiliency, availability, and security; and recordkeeping that are comparable to the requirements imposed on security-based swap data repositories by the Commission's rules and regulations.

(iv) Before issuing a substituted compliance order pursuant to this section, the Commission shall have entered into memoranda of understanding and/or other arrangements with the relevant foreign financial regulatory authority or authorities under such foreign financial regulatory system addressing supervisory and enforcement cooperation and other matters arising under the substituted compliance determination.

(v) The Commission may, on its own initiative, modify or withdraw such order at any time, after appropriate notice and opportunity for comment.

§ 242.909 Registration of security-based swap data repository as a securities information processor.

A registered security-based swap data repository shall also register with the Commission as a securities information processor on Form SDR (§ 249.1500 of this chapter).

By the Commission.

Dated: February 11, 2015.

Brent J. Fields,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations:

Appendix

Reopening of Comment Periods for Certain Rulemaking Releases and Policy Statement Applicable to Security-Based Swaps Proposed Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Action

[Release No. 34–69491; File No. S7–34–10]

http://www.sec.gov/comments/s7-34-10/s73410.shtml

- Email message from Larry E. Thompson, Managing Director and General Counsel, Depository Trust & Clearing Corporation (''DTCC''), to Stephen Luparello, SEC, dated December 10, 2014 (''DTCC X'').
- Letter from Marisol Collazo, Chief Executive Officer, DTCC Data Repository US LLC, to Elizabeth M. Murphy, Secretary, SEC, dated November 14, 2014 (''DTCC IX'').
- Letter from Angie Karna, Managing Director, Legal, Nomura Global Financial Products, Inc., to Brent J. Fields, Secretary, SEC, dated September 10, 2014 (''NGFP Letter'')
- Letter from Carl Levin, Chairman, U.S. Senate Permanent Subcommittee on Investigations, to Kevin M. O'Neill, Deputy Secretary, SEC, dated July 3, 2014 (''Levin Letter'').
- Email message from Christopher Young, Director, U.S. Public Policy, ISDA, to Thomas Eady, SEC, dated March 27, 2014 (''ISDA III'').
- Email message from Marisol Collazo, Chief Executive Officer, DTCC Data Repository US LLC, to Thomas Eady and Michael J. Gaw, SEC, dated March 24, 2014 (with attached letters submitted to the CFTC regarding CME Rule 1001) (''DTCC VIII'').
- Email message from Marisol Collazo, Chief Executive Officer, DTCC Data Repository US LLC, to Thomas Eady, SEC, dated March 21, 2014 (with attached message submitted to the CFTC (''DTCC VII'').
- Letter from Kim Taylor, President, Clearing, CME Group, and Kara L. Dutta, General Counsel, ICE Trade Vault (''ICE''), LLC, to Elizabeth M. Murphy, Secretary, Commission, dated November 19, 2013 (''CME/ICE Letter'').
- Letter from Kara L. Dutta, General Counsel, ICE Trade Vault, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated September 23, 2013 (''ICE Letter'').
- Letter from Matti Leppälä, Secretary General/CEO, PensionsEurope, to Elizabeth M. Murphy, Secretary, Commission, dated September 3, 2013 (''PensionsEurope Letter'').
- Letter from Americans for Financial Reform, to Elizabeth Murphy, Secretary, Commission, dated August 22, 2013 (''AFR Letter'').
- Letter from Anne-Marie Leroy, Senior Vice President and Group General Counsel, World Bank, and Fady Zeidan, Acting Deputy/General Counsel, International Finance Corporation, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''World Bank Letter'').
- Letter from Futures and Options Association, dated August 21, 2013 (''FOA Letter'').
- Letter from Kenneth E. Bentsen, Jr., President, Securities Industry and Financial Markets Association (''SIFMA''); Walt Lukken, President & Chief Executive Officer, Futures Industry Association (''FIA''); and Richard M. Whiting, Executive Director and General Counsel, The Financial Services Roundtable (''Roundtable''), to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''SIFMA/FIA/Roundtable Letter'').
- Letter from Per Sjöberg, Chief Executive Officer, and Christoffer Mohammar, General Counsel, TriOptima AB, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''TriOptima Letter'').
- Letter from Larry E. Thompson, General Counsel, DTCC, to Elizabeth M. Murphy, Secretary, SEC, dated August 21, 2013 (''DTCC VI'').
- Letter from Jeff Gooch, Head of Processing, Markit, Chair and CEO, MarkitSERV, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''MarkitSERV IV'').
- Letter from Coalition for Derivatives End-Users, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''CDEU Letter'').
- Letter from Kathleen Cronin, Senior Managing Director, General Counsel, CME Group Inc., to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''CME II'').
- Letter from Sarah A. Miller, Chief Executive Officer, Institute of International Bankers (''IIB''), to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''IIB Letter'').
- Letter from Sullivan & Cromwell LLP, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''Sullivan Letter'').
- Letter from Søren Elbech, Treasurer, and Jorge Alers, General Counsel, lnter-American Development Bank, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''IDB Letter'').
- Letter from Karrie McMillan, General Counsel, Investment Company Institute (''ICI'') and Dan Waters, Managing Director, ICI Global, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''ICI II'').
- Letter from Dennis M. Kelleher, President and CEO, Stephen W. Hall, Securities

Specialist, and Katelynn 0. Bradley, Attorney, Better Markets, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''Better Markets IV'').
- Letter from Monique S. Botkin, Associate General Counsel, Investment Adviser Association, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''IAA Letter'').
- Letter from Patrick Pearson, European Commission, dated August 21, 2013 (''Pearson Letter'').
- Letter from Lutz-Christian Funke, Senior Vice President, and Frank Czichowski, Senior Vice President and Treasurer, KfW, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''KfW Letter'').
- Letter from Koichi lshikura, Executive Chief of Operations for International Headquarters, Japan Securities Dealers Association, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''JSDA Letter'').
- Letter from Bruce E. Stern, Chairman, Association of Financial Guaranty Insurers, to Elizabeth M. Murphy, Secretary, Commission, dated August 20, 2013 (''AFGI Letter'').
- Letter from Ernst-Albrecht Brockhaus, Member of the Management Board, and Nico Zachert, Authorized Signatory, Legal/Compliance, FMS Wertmanagement, to Elizabeth M. Murphy, Secretary, Commission, dated August 2013 (''FMS Letter'').
- Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association (''MFA''), and Adam Jacobs, Director, Head of Markets Regulation, Alternative Investment Management Association, to Elizabeth M. Murphy, Secretary, Commission, dated August 19, 2013 (''MFA/AIMA Letter'').
- Letter from Jonathan B. Kindred and Shigesuke Kashiwagi, Co-chairs, Japan Financial Markets Council, to Elizabeth M. Murphy, Secretary, Commission, dated August 15, 2013 (''JFMC Letter'').
- Letter from Kevin Nixon, Managing Director, Institute of International Finance, to Elizabeth M. Murphy, Secretary, Commission, dated August 8, 2013 (''IIF Letter'').
- Letter from Larry E. Thompson, General Counsel, DTCC, to Elizabeth M. Murphy, Secretary, SEC, dated July 22, 2013 (''DTCC V'').
- Letter from Dennis Kelleher, President & CEO, and Stephen W. Hall, Securities Specialist, Better Markets, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated July 22, 2013 (''Better Markets III'').
- Letter from Chris Barnard, to Commission, dated July 15, 2013 (''Barnard II'').
- Letter from Gregory Ugwi, Strategist, ThinkNum.com, dated June 15, 2013 (''ThinkNum Letter'').
- Letter from FSR, FIA, IIB, International Swaps and Derivatives Association (''ISDA''), ICI, and SIFMA, to Elizabeth M. Murphy, Secretary, Commission, dated May 21, 2013 (''Six Associations Letter'').

Comments on Proposed Rule: Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information

[Release No. 34–63346; File No. S7–34–10]

http://www.sec.gov/comments/s7-34-10/s73410.shtml

- Letter from Thomas G. McCabe, Chief Operating Officer, OneChicago, to Elizabeth M. Murphy, Secretary, Commission, dated March 1, 2013 (''OneChicago II'').
- Letter from Elizabeth K. King, Head of Regulatory Affairs, GETCO, to Elizabeth M. Murphy, Secretary, Commission, dated March 21, 2012 (''GETCO Letter'').

Letter from Michael Hisler, Co-Founder, Swaps & Derivatives Market Association (''SDMA''), to Elizabeth M. Murphy, Secretary, Commission, dated October 19, 2011 (''SDMA II'').
- Letter from the ABA Securities Association, American Council of Life Insurers, FSR, FIA, IIB, ISDA, and SIFMA to David A. Stawick, Secretary, CFTC; Jennifer J. Johnson, Secretary, Federal Reserve Board; Robert E. Feldman, Executive Secretary, FDIC; Gary K. Van Meter, Director, Office of Regulatory Policy, Farm Credit Administration; Elizabeth M. Murphy, Secretary, Commission; Office of the Comptroller of the Currency; and Alfred M. Pollard, General Counsel, Federal Housing Finance Agency, dated September 8, 2011 (''Multiple Associations Letter'').
- Letter from Scott Pintoff, General Counsel, GFI Group, Inc. (''GFI''), to Elizabeth M. Murphy, Secretary, Commission, dated July 12, 2011 (''GFI Letter).
- Letter from Larry E. Thompson, General Counsel, the Depository Trust & Clearing Corporation (''DTCC''), to the Honorable Mary L. Schapiro, Chairman, Commission, and the Honorable Gary Gensler, Chairman, CFTC, dated June 3, 2011 (''DTCC IV'').
- Letter from Stephen Merkel, Chairman, Wholesale Markets Brokers' Association Americas (''WMBAA''), to the Honorable Mary L. Schapiro, Chairman, Commission, and the Honorable Gary Gensler, Chairman, CFTC, dated June 3, 2011 (''WMBAA III''). [**NOTE:** This comment letter is in fact dated ''June 3, *2010,''* but the Commission deems the true date to be June 3, *2011.* The comment letter references proposed Regulation SBSR, which the Commission issued in November 2010, and thus the comment could not have been submitted in June 2010.]
- Letter from John R. Gidman, Association of Institutional Investors, to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated June 2, 2011 (''Institutional Investors Letter''). [**Note:** This comment letter is in fact dated ''June 2, *2010,''* but the Commission deems the true date to be June 2, *2011.* The comment letter references proposed Regulation SBSR, which the Commission issued in November 2010, and thus the comment could not have been submitted in June 2010.]
- Letter from Chris Koppenheffer, SDMA, to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated June 1, 2011 (''SDMA I'').
- Letter from Richard M. Whiting, Executive Director and General Counsel, FSR, to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated May 12, 2011 (''Roundtable Letter'').
- Letter from Davis Polk & Wardwell LLP on behalf of The Bank of Tokyo-Mitsubishi UFJ. Ltd., Mizuho Corporate Bank, Ltd., and Sumitomo Mitsui Banking Corporation, to David A. Stawick, Secretary, CFTC, Elizabeth M. Murphy, Secretary, Commission, and Jennifer L. Johnson, Secretary, Federal Reserve Board, dated May 6, 2011 (''Japanese Banks Letter'').
- Letter from Richard H. Baker, President and Chief Executive Officer, MFA, to the Honorable Mary L. Schapiro, Chairman, Commission, dated March 24, 2011 (''MFA II''), and attached ''MFA Recommended Timeline for Adoption and Implementation of Final Rules Pursuant to Title VII of the Dodd-Frank Act'' (''MFA Recommended Timeline'').
- Letter from Davis Polk & Wardwell LLP on behalf of Barclays Bank PLC, PNP Paribas S.A., Credit Suisse AG, Deutsche Bank AG, HSBS, Nomura Securities International, Inc., Rabobank Nederland, Royal Bank of Canada, The Royal Bank of Scotland Group, PLC, Société Générale, The Toronto-Dominion Bank, and UBS AG, to David A. Stawick, Secretary, CFTC, Elizabeth M. Murphy, Secretary, Commission, and Jennifer L. Johnson, Secretary, Federal Reserve Board, dated February 17, 2011 (''Davis Polk II'').
- Letter from Robert Carpenter, President and Chief Executive Officer, GS1 U.S., Miguel A. Lopera, Chief Executive Officer, GS1 Global, and Allan D. Grody, President, Financial Inter Group, to Elizabeth Murphy, Secretary, Commission, dated February 14, 2011 (''GS1 Letter'') and ''GS1 & Financial InterGroup Response to Securities & Exchange Commission'' (''GS1 Proposal'').
- Letter from Edward J. Rosen, Cleary Gottlieb Steen & Hamilton LLP, on behalf of Bank of America Merrill Lynch, BNP Paribas, Citi, Credit Agricole Corporate and Investment Bank, Credit Suisse Securities (USA), Deutsche Bank AG, Morgan Stanley, Nomura Securities International, Inc., PNC Bank, Société General, UBS Securities LLC, and Wells Fargo & Company, to Elizabeth M. Murphy, Secretary, Commission, and David A. Stawick, Secretary, CFTC, dated February 14, 2011 (''Cleary II'').
- Letter from Charles Llewellyn, Regional Legal Counsel—Americas, Society for Worldwide Interbank Financial Telecommunication SCRL (''SWIFT''), to the Commission, dated February 14, 2011 (''SWIFT Letter'').
- Letter from Patrick Durkin, Managing Director, Barclays Capital Inc. (''Barclays''), to Elizabeth M. Murphy, Secretary, Commission, dated February 11, 2010

(''Barclays Letter''). [**Note:** This comment letter is in fact dated ''February 11, *2010,''* but the Commission deems the true date to be February 11, *2011.* The comment letter references proposed Regulation SBSR, which the Commission issued in November 2010, and thus the comment could not have been submitted in February 2010.]

- Letter from Daniel G. Viola, Partner, Sadis & Goldberg LLP, to the CFTC and the Commission, dated February 7, 2011 (''Viola Letter'').
- Letter from Andrew Downes, Managing Director, UBS Investment Bank, and James B. Fuqua, Managing Director, UBS Securities LLC, to Elizabeth M. Murphy, Secretary, Commission, dated February 7, 2011 (''UBS Letter'').
- Letter from Cravath, Swaine & Moore, LLP, to Elizabeth M. Murphy, Secretary, Commission, dated February 6, 2011 (''Cravath Letter'').
- Letter from Richard G. Ketchum, Chairman and Chief Executive Officer, Financial Industry Regulatory Authority (''FINRA''), to Elizabeth M. Murphy, Secretary, Commission, dated January 27, 2011 (''FINRA Letter'').
- Letter from David G. Downey, Chief Executive Officer, OneChicago, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated January 26, 2011 (''OneChicago I'').
- Letter from Dennis M. Kelleher, President and Chief Executive Officer, Stephen W. Hall, Securities Specialist, and Wallace C. Turbeville, Derivatives Specialist, Better Markets, Inc. (''Better Markets''), to Elizabeth M. Murphy, Secretary, Commission, dated January 24, 2011 (''Better Markets II'').
- Letter from Kevin Gould, President, Markit North America, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated January 24, 2011 (''Markit I'').
- Letter from Jeff Gooch, Chief Executive Officer, MarkitSERV LLC, to Elizabeth M. Murphy, Secretary, Commission, dated January 24, 2011 (''MarkitSERV I'').
- Letter from Naphtali M. Hamlet, dated January 22, 2011 (''Hamlet Letter'').
- Letter from Dennis M. Kelleher, President and Chief Executive Officer, Wallace C. Turbeville, Derivatives Specialist, and Stephen W. Hall, Better Markets, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''Better Markets I'').
- Letter from Craig S. Donohue, Chief Executive Officer, CME Group, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''CME I'').
- Letter from Larry E. Thompson, General Counsel, DTCC, dated January 18, 2011 (''DTCC II'').
- Letter from Beckwith B. Miller, Chief Executive Officer, Ethics Metrics LLC, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''Ethics Metrics Letter'').
- Letter from Karrie McMillan, General Counsel, ICI, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''ICI I'').
- Letter from Robert Pickel, Executive Vice Chairman, ISDA, and Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''ISDA/SIFMA I''), and accompanying study, ''Block trade reporting for over-the-counter derivatives markets'' (''ISDA/SIFMA Block Trade Study'').
- Letter from Roger Liddell, Chief Executive, LCH.Clearnet Group Limited, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''LCH.Clearnet Letter'').
- Letter from Stuart J. Kaswell, Executive Vice President, Managing Director, and General Counsel, Managed Funds Association, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''MFA I'').
- Letter from Timothy W. Cameron, Managing Director, Asset Management Group, SIFMA, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''SIFMA I'').
- Letter from Lee H. Olesky, Chief Executive Officer, and Douglas L. Friedman, General Counsel, Tradeweb Markets LLC, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''Tradeweb Letter'').
- Letter from Gus Sauter, Managing Director and Chief Investment Officer, and John Hollyer, Principal and Head of Risk Management and Strategy Analysis, Vanguard, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''Vanguard Letter'').
- Letter from Julian Harding, Chairman, WMBAA, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''WMBAA II'').
- Letter from R. Martin Chavez, Managing Director, Goldman, Sachs & Co., David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''Goldman Sachs Letter'').
- Letter from R. Glenn Hubbard, Co-Chair, John L. Thornton, Co-Chair, and Hal S. Scott, Director, Committee on Capital Markets Regulation, David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''CCMR I'').
- Letter from Adam Litke, Bloomberg L.P., to Elizabeth M. Murphy, Secretary, Commission, dated January 14, 2011 (''Bloomberg Letter'').
- Letter from Laurel Leitner, Senior Analyst, Council of Institutional Investors, to Elizabeth M. Murphy, Secretary, Commission, dated January 13, 2011 (''CII Letter'').
- Letter from Jeremy Barnum, Managing Director, and Don Thompson, Managing Director and Associate General Counsel, J.P. Morgan, David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated January 12, 2011 (''J.P. Morgan Letter'').
- Letter from Davis Polk & Wardwell LLP on behalf of Barclays Bank PLC, PNP Paribas S.A., Deutsche Bank AG, Royal Bank of Canada, The Royal Bank of Scotland Group, PLC, Société Générale, UBS AG, to David A. Stawick, Secretary, CFTC, Elizabeth M. Murphy, Secretary, Commission, and Jennifer L. Johnson, Secretary, Federal Reserve Board, dated January 11, 2011 (''Davis Polk I'').
- Letter from Suzanne H. Shatto, dated January 1, 2011 (''Shatto Letter'').
- Letter from Spencer Bachus, Ranking Member, Committee on Financial Services, and Frank Lucas, Ranking Member, Committee on Agriculture, U.S. House of Representatives, to The Honorable Timothy Geithner, Secretary, Department of Treasury, the Honorable Gary Gensler, Chairman, CFTC, the Honorable Mary Schapiro, Chairman, Commission, and the Honorable Ben Bernanke, Chairman, Federal Reserve, dated December 16, 2010 (''Bachus/Lucas Letter'').
- Letter from Chris Barnard, dated December 3, 2010 (''Barnard I'').
- Letter from Laura J. Schisgall, Managing Director and Senior Counsel, Société Générale, to Ananda Radhakrishnan, Director, Division of Clearing and Intermediary Oversight, CFTC, John M. Ramsay, Deputy Director, Division of Trading and Markets, SEC, Mark E. Van Der Weide, Senior Associate Director, Federal Reserve Board, dated November 23, 2010 (''Société Générale Letter'').
- Letter from Julian Harding, WMBAA, David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated November 19, 2010 (''WMBAA I'').

Comments on Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act

[Release No. 34–67177; File No. S7–05–12[

http://www.sec.gov/comments/s7-05-12/s70512.shtml

- Letter from Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, to Elizabeth M. Murphy, Secretary, Commission, dated August 13, 2012 (''SIFMA II'').

Comments on Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants

[Release No. 34–69490; File No. S7–02–13]

http://www.sec.gov/comments/s7-02-13/s70213.shtml

- Letter from Karel Engelen, Senior Director, Head of Data, Reporting & FpML, ISDA, to Elizabeth M. Murphy, Secretary, Commission, dated November 14, 2014 (''ISDA IV'').
- Letter from Catherine T. Dixon, Chair, Federal Regulation of Securities Committee, American Bar Association, to Elizabeth M. Murphy, Secretary, Commission, dated October 2, 2013 (''ABA Letter'').
- Letter from Adam C. Cooper, Senior Managing Director and Chief Legal Officer,

Citadel LLC, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''Citadel Letter'').
- Letter from R. Glenn Hubbard, John L. Thornton, Co-Chairs, and Hal S. Scott, Director, Committee on Capital Markets Regulation, to Elizabeth M. Murphy, Secretary, Commission, and Gary Barnett, Director, CFTC, dated August 17, 2013 (''CCMR II'').
- Letter from Robert Pickel, ISDA, to Elizabeth M. Murphy, Secretary, Commission, dated August 14, 2013 (''ISDA II'').
- Letter from Masaaki Tanaka, Deputy President, Mitsubishi UFJ Financial Group, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated August 8, 2013 (''Mitsubishi Letter'').

Comments on Acceptance of Public Submissions for a Study on International Swap Regulation Mandated by Section 719(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act

[Release No. 34–64926; File No. 4–635]

http://www.sec.gov/comments/4-635/4-635.shtml

- Letter from Jiří Król, Director of Government and Regulatory Affairs, Alternative Investment Management Association Limited to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated September 26, 2011 (''AIMA Letter'').

Comments on Product Definitions Contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act

[Release No. 33–9204; File No. S7–16–11]

http://www.sec.gov/comments/s7-16-11/s71611.shtml

- Letter from Jacques Mirante-Péré, Chief Financial Officer, and Jan De Bel, General Counsel, Council of Europe Development Bank, dated July 22, 2011 (''CEB Letter'').
- Letter from A. Querejeta, Secretary General and General Counsel, and B. de Mazières, Director General, European Investment Bank, to David A Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, SEC, dated July 22, 2011 (''EIB Letter'').
- Letter from Günter Pleines, Head of Banking Department, and Diego Devos, General Counsel, Bank for International Settlements, to David A Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, SEC, dated July 20, 2011 (''BIS Letter'').

Real-Time Reporting: Title VII Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act

http://www.sec.gov/comments/df-title-vii/real-time-reporting/real-time-reporting.shtml

- Letter from FIA, the Financial Services Forum (''FSF''), ISDA, and SIFMA to David A Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, SEC, dated May 4, 2011 (''FIA/FSF/ISDA/SIFMA Letter'').
- Letter from Edward J. Rosen, Cleary Gottlieb Steen & Hamilton LLP on behalf of Bank of America Merrill Lynch, Barclays Capital, BNP Paribas, Citi, Credit Agricole Corporate and Investment Bank, Credit Suisse Securities (USA), Deutsche Bank AG, HSBC, Morgan Stanley, Nomura Securities International, Inc., PNC Bank, National Association, UBS Securities LLC, and Wells Fargo & Company, to David A Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, SEC, dated October 25, 2010 (''Cleary I'').
- Letter from James W. Toffey, Chief Executive Officer, Benchmark Solutions, to David A Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, SEC, dated October 1, 2010 (''Benchmark Letter'').

Comments on Reporting of Security-Based Swap Transaction Data

[Release No. 34–63094; File No. s7–28–10]

http://www.sec.gov/comments/s7-28-10/s72810.shtml

- Letter from Larry E. Thompson, General Counsel, DTCC, to Elizabeth M. Murphy, Secretary, Commission, dated December 20, 2010 (''DTCC I'').
- Letter from Robert Pickel, Executive Vice Chairman, ISDA, to Elizabeth Murphy, Secretary, Commission, dated December 10, 2010 (''ISDA I'').
- Letter from Ernest C. Goodrich, Jr., Managing Director—Legal Department, Deutsche Bank AG, and Marcel Riffaud, Managing Director, Legal Department, Deutsche Bank AG, to David A. Stawick, Secretary, CFTC, and to Elizabeth M. Murphy, Secretary, Commission, dated November 5, 2010 (''Deutsche Bank Letter'').

Comments on Proposed Rule: Registration and Regulation of Security-Based Swap Execution Facilities

[Release No. 34–63825; File No. S7–06–11]

http://www.sec.gov/comments/s70611/s70611.shtml

- Letter from the American Benefits Council to Elizabeth M. Murphy, Secretary, Commission, dated April 8, 2011 (''ABC Letter'').
- Letter from Joanne Medero, Richard Prager, and Supurna VedBrat, BlackRock, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated April 4, 2011 (''BlackRock Letter'').
- Letter from Kevin Gould, President, Markit North America, Inc., to Elizabeth Murphy, Secretary, Commission, dated April 4, 2011 (''Markit II'').
- Letter from Robert Pickel, Executive Vice Chairman, ISDA, and Kenneth E. Bentsen, Jr. Executive Vice President, Public Policy and Advocacy, SIFMA, to Elizabeth M. Murphy, Secretary, Commission, dated April 4, 2011 (''ISDA/SIFMA II'').
- Letter from Jeff Gooch, Chief Executive Officer, MarkitSERV, to Elizabeth Murphy, Secretary, Commission, dated April 4, 2011 (''MarkitSERV II'').
- Letter from Nancy C. Gardner, Executive Vice President and General Counsel, Markets Division, Thomson Reuters, to Elizabeth M. Murphy, Secretary, Commission, dated April 4, 2011 (''Thomson Reuters Letter'').
- Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, MFA, to Elizabeth M. Murphy, Secretary, Commission, dated April 4, 2011 (''MFA III'').
- Letter from Nicholas J. Stephan, Chief Executive Officer, Phoenix Partners Group LP to Elizabeth M. Murphy, Secretary, Commission, dated April 4, 2011 (''Phoenix Letter'').

Comments on Proposed Rule: Security-Based Swap Data Repository Registration, Duties, and Core Principles

[Release No. 34–63347; File No. S7–35–10]

http://www.sec.gov/comments/s73510/s73510.shtml

- Letter from Larry E. Thompson, General Counsel, DTCC, to Elizabeth M. Murphy, Secretary, Commission, dated January 24, 2011 (''DTCC III'').

Comments on Joint Public Roundtable on International Issues Relating to the Implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act

[Release No. 34–64939; File No. 4–636]

http://www.sec.gov/comments/4-636/4-636.shtml

- Letter from Edward J. Rosen, Cleary Gottlieb Steen & Hamilton LLP, on behalf of Bank of America Merrill Lynch, Barclays Capital, BNP Paribas, Citi, Creédit Agricole Corporate and Investment Bank, Credit Suisse Securities (USA), Deutsche Bank AG, HSBC, Morgan Stanley, Nomura Securities International, Inc., Société Générale, UBS Securities LLC, to David A. Stawick, Secretary, CFTC; Elizabeth M. Murphy, Secretary, SEC; Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve Board (''Federal Reserve Board''); Office of the Comptroller of the Currency; Robert E. Feldman, Executive Secretary, Federal Deposit Insurance Corporation (''FDIC''); Alfred M. Pollard, General Counsel, Federal Housing Finance Agency; and Gary K. Van Meter, Director, Office of Regulatory Policy, Farm Credit Administration, dated September 20, 2011 (''Cleary III'').
- Letter from Kevin Gould, President, Markit North America, Inc., to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated September 19, 2011 (''Markit III'').
- Letter from Jeff Gooch, Chief Executive Officer, MarkitSERV, to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated September 19, 2011 (''MarkitSERV III'').

[FR Doc. 2015–03124 Filed 3–18–15; 8:45 am]

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Part IV

Securities and Exchange Commission

17 CFR Part 242
Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–74245; File No. S7–03–15]

RIN 3235–AL71

Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; guidance.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is proposing certain new rules and rule amendments to Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information (''Regulation SBSR''). Specifically, proposed Rule 901(a)(1) of Regulation SBSR would require a platform (*i.e.,* a national securities exchange or security-based swap execution facility (''SB SEF'') that is registered with the Commission or exempt from registration) to report to a registered security-based swap data repository (''registered SDR'') a security-based swap executed on such platform that will be submitted to clearing. Proposed Rule 901(a)(2)(i) of Regulation SBSR would require a registered clearing agency to report to a registered SDR any security-based swap to which it is a counterparty. The Commission also is proposing certain conforming changes to other provisions of Regulation SBSR in light the proposed amendments to Rule 901(a), and a new rule that would prohibit registered SDRs from charging fees for or imposing usage restrictions on the users of the security-based swap transaction data that they are required to publicly disseminate. In addition, the Commission is explaining the application of Regulation SBSR to prime brokerage transactions and proposing guidance for the reporting and public dissemination of allocations of cleared security-based swaps. Finally, the Commission is proposing a new compliance schedule for the portions of Regulation SBSR for which the Commission has not specified a compliance date.

DATES: Comments should be received on or before May 4, 2015.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–03–15 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–03–15. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the SEC's Web site. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Michael Gaw, Assistant Director, at (202) 551–5602; Yvonne Fraticelli, Special Counsel, at (202) 551–5654; George Gilbert, Special Counsel, at (202) 551–5677; David Michehl, Special Counsel, at (202) 551–5627; Geoffrey Pemble, Special Counsel, at (202) 551–5628; all of the Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION:

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I. Introduction

Section 13A(a)(1) of the Exchange Act[1] provides that each security-based swap that is not accepted for clearing by any clearing agency or derivatives clearing organization shall be subject to regulatory reporting. Section 13(m)(1)(G) of the Exchange Act[2] provides that each security-based swap (whether cleared or uncleared) shall be reported to a registered SDR, and Section 13(m)(1)(C) of the Exchange Act[3] generally provides that transaction, volume, and pricing data of security-based swaps shall be publically disseminated in real time, except in the case of block trades.[4]

In a separate release, the Commission is adopting Regulation SBSR,[5] which contains several rules relating to regulatory reporting and public dissemination of security-based swap transactions. The Commission initially proposed Regulation SBSR in November 2010.[6] In May 2013, the Commission re-proposed the entirety of Regulation SBSR as part of the Cross-Border Proposing Release, which proposed rules and interpretations regarding the application of Title VII of the Dodd-Frank Act to cross-border security-based swap activities.[7] In this release, the Commission is proposing certain new rules of Regulation SBSR as well as amendments to, and guidance regarding Regulation SBSR, as adopted. The Commission also is proposing a compliance schedule for Regulation SBSR. The Commission seeks comment on all of the rules, rule amendments, and guidance proposed in this release.[8]

[1] 15 U.S.C. 78m–1(a)(1). All references in this release to the Exchange Act refer to the Securities Exchange Act of 1934.

[2] 15 U.S.C. 78m(m)(1)(G).

[3] 15 U.S.C. 78m(m)(1)(C).

[4] Section 13(m)(1)(E) of the Exchange Act, 15 U.S.C. 78m(m)(1)(E), provides that, with respect to cleared security-based swaps, the rule promulgated by the Commission related to public dissemination shall contain provisions, among others, that ''specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts'' and ''specify the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public.''

[5] Securities Exchange Act Release No. 74244 (February 11, 2015) (no **Federal Register** publication yet) (''Regulation SBSR Adopting Release'').

[6] *See* Securities Exchange Act Release No. 63346 (November 19, 2010), 75 FR 75207 (December 2, 2010) (''Regulation SBSR Proposing Release'').

[7] *See* Securities Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30967 (May 23, 2013) (''Cross-Border Proposing Release'').

[8] With these proposed rules, rule amendments, and guidance, the Commission is not re-opening comment on the rules adopted in Regulation SBSR Adopting Release. The Commission received 86 comments that were specifically directed to the comment file (File No. S7–34–10) for the Regulation SBSR Proposing Release, of which 38 were comments submitted in response to the re-opening of the comment period. Of the comments directed to the comment file (File No. S7–02–13) for the Cross-Border Proposing Release, six referenced Regulation SBSR specifically, while many others addressed cross-border issues generally, without specifically referring to Regulation SBSR. As discussed in the Regulation SBSR Adopting Release, the Commission also has considered other comments that are relevant to regulatory reporting and/or public dissemination of security-based swaps that were submitted in other contexts. The comments discussed in this release are listed in the Appendix. For ease of reference, this release

Continued

II. Reporting by Registered Clearing Agencies and Platforms—Proposed Amendments to Rule 901(a) and Conforming Changes

Section 13(m)(1)(F) of the Exchange Act[9] provides that parties to a security-based swap (including agents of parties to a security-based swap) shall be responsible for reporting security-based swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission. Section 13(m)(1)(G) of the Exchange Act[10] provides that each security-based swap (whether cleared or uncleared) shall be reported to a registered SDR. Section 13A(a)(3) of the Exchange Act[11] specifies the party obligated to report a security-based swap that is not accepted for clearing by any clearing agency or derivatives clearing organization. Consistent with these statutory provisions, Rule 901(a) of Regulation SBSR, as adopted, assigns the duty to report ''covered transactions,'' which include all security-based swaps except: (1) Clearing transactions;[12] (2) security-based swaps that are executed on a platform and that will be submitted to clearing; (3) transactions where there is no U.S. person, registered security-based swap dealer, or registered major security-based swap participant on either side; and (4) transactions where there is no registered security-based swap dealer or registered major security-based swap participant on either side and there is a U.S. person on only one side. This release proposes to assign the duty to report security-based swaps in categories (1) and (2) above. The Commission anticipates seeking additional public comment in the future on the reporting obligations for security-based swaps in categories (3) and (4) above.

Rule 901(a), as proposed and re-proposed, would have used a hierarchy to assign reporting obligations for all security-based swaps—including those in the four non-covered categories noted above—without regard to whether a particular security-based swap was cleared or uncleared. In the Regulation SBSR Proposing Release, the Commission expressed a preliminary view that cleared and uncleared security-based swaps should be subject to the same reporting hierarchy.[13] In addition, Rule 901(a), as proposed and as re-proposed, did not differentiate between security-based swaps that are executed on a platform and other security-based swaps. The Commission preliminarily believed that security-based swap dealers and major security-based swap participants generally should be responsible for reporting security-based swap transactions of all types, because they would be more likely than other persons to have appropriate systems in place to facilitate reporting.[14]

The Commission requested comment on a range of issues related to Rule 901(a), as proposed and as re-proposed. In particular, the Commission sought comment on whether platforms or clearing agencies should be required to report security-based swaps.[15] The Commission also asked whether counterparties to a security-based swap executed anonymously on a platform and subsequently cleared would have the information necessary to know which counterparty would incur the reporting obligation under Rule 901(a).[16] The comments that the Commission received in response are discussed below.

In light of comments received and upon additional consideration of the issues, the Commission is proposing two amendments to Rule 901(a) of Regulation SBSR. First, the Commission is proposing a new subparagraph (1) of Rule 901(a), which would provide that, if a security-based swap is executed on a platform and will be submitted to clearing, the platform on which the transaction was executed shall have the duty to report the transaction to a registered SDR. Second, the Commission is proposing a new subparagraph (2)(i) of Rule 901(a), which would assign the reporting duty for a clearing transaction to the registered clearing agency that is a counterparty to the security-based swap. In connection with these proposed rules, the Commission also is proposing several conforming rule amendments to Regulation SBSR. The Commission describes each of these proposed rules and rule amendments in more detail below, following a description of the process for central clearing of security-based swap transactions.

A. Clearing Process for Security-Based Swaps

As discussed in Section V of the Regulation SBSR Adopting Release, two models of clearing—an agency model and a principal model—are currently used in the swap markets. In the agency model, which predominates in the U.S. swap market, a swap that is accepted for clearing—often referred to in the industry as an ''alpha''—is terminated and replaced with two new swaps, known as ''beta'' and ''gamma.'' The Commission understands that, under the agency model, one of the direct counterparties to the alpha becomes a direct counterparty to the beta, and the other direct counterparty to the alpha becomes a direct counterparty to the gamma. The clearing agency would be a direct counterparty to each of the beta and the gamma.[17] This release uses the terms ''alpha,'' ''beta,'' and ''gamma'' in the same way that they are used in the agency model of clearing in the U.S. swap market.[18] The Commission notes

identifies commenters using the same naming convention as the Regulation SBSR Adopting Release, although it does not discuss all of the comment letters included in the Regulation SBSR Adopting Release. For example, this release refers to a letter identified as ''ISDA IV,'' but does not discuss ISDA I, ISDA II, or ISDA III because those letters are not relevant to the current release.

[9] 15 U.S.C. 78m(m)(1)(F).

[10] 15 U.S.C. 78m(m)(1)(G).

[11] 15 U.S.C. 78m–1(a)(3).

[12] Rule 900(g), as adopted, defines ''clearing transaction'' as ''a security-based swap that has a registered clearing agency as a direct counterparty.'' This definition describes security-based swaps that arise when a registered clearing agency accepts a security-based swap for clearing as well as security-based swaps that arise as part of a clearing agency's internal processes, such as security-based swaps used to establish prices for cleared products and security-based swaps that result from netting other clearing transactions of the same product in the same account into an open position. *See* Regulation SBSR Adopting Release, Section V(B)(2).

[13] *See* 75 FR 75211.

[14] *See id.*

[15] *See id.* at 75212.

[16] *See id.*

[17] If both direct counterparties to the alpha are clearing members, the direct counterparties would submit the transaction to the clearing agency directly and the resulting beta would be between the clearing agency and one clearing member, and the gamma would be between the clearing agency and the other clearing member. The Commission understands, however, that, if the direct counterparties to the alpha are a clearing member and a non-clearing member (a ''customer''), the customer's side of the trade would be submitted for clearing by a clearing member acting on behalf of the customer. When the clearing agency accepts the alpha for clearing, one of the resulting swaps—in this case, assume the beta—would be between the clearing agency and the customer, with the customer's clearing member acting as guarantor for the customer's trade. The other resulting swap—the gamma—would be between the clearing agency and the clearing member that was a direct counterparty to the alpha. *See, e.g.,* Byungkwon Lim and Aaron J. Levy, ''Contractual Framework for Cleared Derivatives: The Master Netting Agreement Between a Clearing Customer Bank and a Central Counterparty,'' 10 Pratt's J. of Bankr. Law 509, 515–517 (LexisNexis A.S. Pratt) (describing the clearing model for swaps in the United States).

[18] In the principal model of clearing, which the Commission understands is used in certain foreign swap markets, a customer is not a direct counterparty of the clearing agency. Under this model, a clearing member would clear a swap for a customer by entering into a back-to-back swap with the clearing agency: The clearing member would become a direct counterparty to a swap with the customer, and then would become a counterparty to an offsetting swap with the clearing agency. In this circumstance, unlike in the agency model of clearing, the swap between the direct counterparties might not terminate upon acceptance for clearing. The Commission notes that one

that, under Regulation SBSR, an alpha is not a ''clearing transaction,'' even though it is submitted for clearing, because it does not have a registered clearing agency as a direct counterparty.[19]

B. Summary of the Proposed Amendments to Rule 901(a) and Conforming Changes

In a separate release, the Commission is adopting Regulation SBSR under the Exchange Act. In light of comments received in response to both the Regulation SBSR Proposing Release and the Cross-Border Proposing Release (which re-proposed Regulation SBSR in its entirety), the Commission in this release is proposing to amend Rule 901(a) of Regulation SBSR to assign reporting duties for: (1) Platform-executed security-based swaps that will be submitted to clearing; and (2) clearing transactions.

1. Proposed Rule 901(a)(1)—Reporting by Platforms

The Commission is proposing a new subparagraph (1) of Rule 901(a), which would require a platform to report to a registered SDR any security-based swap that is executed on that platform and that will be submitted to clearing (*i.e.,* any alpha executed on the platform).[20] As the person with the duty to report the transaction, the platform would be able to select the registered SDR to which it reports.[21]

2. Proposed Reporting Obligations of Registered Clearing Agencies

The Commission is proposing a new subparagraph (2)(i) of Rule 901(a), which would designate a registered clearing agency as the reporting side for all clearing transactions to which it is a counterparty. In its capacity as the reporting side, the registered clearing agency would be permitted to select the registered SDR to which it reports a clearing transaction.

The Commission also is proposing certain rules to address reporting requirements for life cycle events arising from the clearing process. Subparagraph (i) of Rule 901(e)(1), as adopted, provides that the reporting side for a security-based swap must generally report a life cycle event of that swap, ''except that the reporting side shall not report whether or not a security-based swap has been accepted for clearing.'' The Commission is proposing a new subparagraph (ii) of Rule 901(e)(1), which would require a registered clearing agency to report whether or not it has accepted an alpha security-based swap for clearing.[22]

Rule 901(e)(2), as adopted, requires a life cycle event to be reported ''to the entity to which the original security-based swap transaction will be or has been reported.'' Thus, proposed Rule 901(e)(1)(ii) would require a registered clearing agency to report to the registered SDR that received or will receive the transaction report of the alpha (the ''alpha SDR'') whether or not it has accepted the alpha for clearing. As discussed in Section II(C)(3), *infra,* the Commission is proposing that this obligation to report whether or not it has accepted the alpha for clearing would cause the registered clearing agency to become a participant of the alpha SDR.

If the registered clearing agency does not know the identity of the alpha SDR, the registered clearing agency would be unable to report to the alpha SDR whether or not it accepted the alpha transaction for clearing, as would be required by proposed Rule 901(e)(1)(ii). Therefore, the Commission is proposing a new subparagraph (3) of Rule 901(a), which would require a platform or reporting side for a security-based swap that has been submitted to clearing to promptly provide the relevant registered clearing agency with the identity of the alpha SDR and the transaction ID of the alpha transaction that has been submitted to clearing.

C. Discussion of Comments and Further Explanation of the Proposal

The Commission requested and received comment on a wide range of issues related to Rules 901(a) and 901(e), as initially proposed in the Regulation SBSR Proposing Release and as re-proposed in the Cross-Border Proposing Release. For example, in the Regulation SBSR Proposing Release, the Commission asked commenters about the types of entities that should have the duty to report security-based swaps and the practicability of the proposed reporting hierarchy in certain cases where the counterparties might not know each other's identities.[23]

1. Reporting Clearing Transactions

Six commenters addressed the Commission's proposal to treat cleared security-based swaps the same as uncleared security-based swaps for purposes of assigning reporting obligations under Rule 901(a). Two commenters generally supported the Commission's proposal, noting that it would allow security-based swap counterparties, rather than clearing agencies, to choose the registered SDR that receives data about their security-based swaps.[24] However, three other commenters objected to the proposal on statutory or operational grounds.[25] One commenter argued that Title VII's security-based swap reporting provisions and Regulation SBSR should not extend to clearing transactions.[26] Two commenters stated that the reporting hierarchy in Regulation SBSR is appropriate for OTC bilateral markets, but that it should not be applied to cleared transactions because the clearing model substantially differs from OTC bilateral markets.[27] These commenters argued that, in the alternative, if the Commission requires clearing transactions to be reported to a registered SDR, the clearing agency that

commenter recommended that Regulation SBSR should clarify the applicable reporting requirements under each of the agency and principal clearing models. *See* ISDA IV at 6. Although this release focuses on the agency model of clearing, which predominates in the United States, the Commission is requesting comment regarding the application of the principal model.

[19] This release does not address the application of Section 5 of the Securities Act of 1933, 15 U.S.C. 77a *et seq.* (''Securities Act''), to security-based swap transactions that are intended to be submitted to clearing (*e.g.,* alphas, in the agency model of clearing). Rule 239 under the Securities Act, 17 CFR 230.239, provides an exemption for certain security-based swap transactions involving an eligible clearing agency from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provisions. This exemption does not apply to security-based swap transactions not involving an eligible clearing agency, including a transaction that is intended to be submitted to clearing, regardless of whether the security-based swaps subsequently are cleared by an eligible clearing agency. *See* Exemptions for Security-Based Swaps Issued By Certain Clearing Agencies, Securities Act Release No. 33–9308 (March 30, 2012), 77 FR 20536 (April 5, 2012).

[20] If the execution occurs otherwise than on a platform, or if the security-based swap is executed on a platform but will not be submitted to clearing, the reporting hierarchy in Rule 901(a)(2)(ii), as adopted, will apply to the transaction.

[21] This is consistent with the Commission's guidance in Section V(B) of the Regulation SBSR Adopting Release that, for transactions subject to Rule 901(a)(2)(ii), the reporting side may choose the registered SDR to which it makes the report required by Rule 901: ''The reporting side may select the registered SDR to which it makes the required report. However, with respect to any particular transaction, all information required to be reported by Rule 901(a)(2)(ii), as adopted, must be reported to the same registered SDR.''

[22] If the alpha security-based swap is not required to be reported to a registered SDR—which could occur if Rule 901(a) does not assign a reporting obligation for the transaction or if the person assigned under Rule 901(a) is not enumerated in Rule 908(b)—the registered clearing agency would have no duty to report whether or not it has accepted the alpha for clearing.

[23] *See* 75 FR 75212.

[24] *See* DTCC VI at 8–9; MarkitSERV III at 3–5.

[25] *See* CME/ICE Letter at 2–4; ICE Letter at 2–5; CME II at 4; ISDA IV at 5–6.

[26] *See* CME II at 5 (stating that ''a choice by the Commission to require that data on cleared SBS be reported to a third-party SDR would impose substantial costs on market participants which greatly outweigh the benefits (if any). . . . The Commission already has access to this data via the clearing agency.'')

[27] *See* ICE Letter at 2; CME/ICE Letter at 2.

clears the alpha should have the duty to report the associated clearing transactions to a registered SDR of its choice.[28] Another commenter expressed the view that a clearing agency is best-positioned to report cleared security-based swaps.[29]

a. Requirements for Reporting of Clearing Transactions to a Registered SDR

Two commenters argued that the Exchange Act does not require data on clearing transactions to be reported to a registered SDR for regulatory reporting purposes.[30] They noted that Section 13A(a)(1) of the Exchange Act [31] provides that ''[e]ach security-based swap that is not accepted for clearing by any clearing agency or derivatives clearing organization shall be reported'' to a registered SDR or the Commission. In the view of these commenters, Section 13A(a)(1) is intended to ensure that the Commission has access to data for *uncleared* security-based swaps. Section 13A(a)(1) does not, according to these commenters, apply to clearing transactions, because complete data for these security-based swaps already would be collected, maintained, and made available to the Commission by the relevant clearing agency.[32] Accordingly, these commenters contend that ''any system that would require a Clearing Agency to make duplicative reports to an outside third party regarding [security-based swaps] it clears would be costly and unnecessary.'' [33]

The Commission does not agree with the commenters' reading of the Exchange Act. While Section 13A(a) of the Exchange Act requires all uncleared security-based swaps to be reported to a registered SDR and specifies who must report an uncleared security-based swap, it does not address whether cleared security-based swaps must be reported to a registered SDR. However, Section 13(m)(1)(G) of the Exchange Act [34] provides that ''[e]ach security-based swap (whether cleared or uncleared) shall be reported to a registered security-based swap data repository.'' This section explicitly requires reporting of *each* security-based swap to a registered SDR, including a security-based swap that is a clearing transaction, because all security-based swaps necessarily are either cleared or uncleared.

Furthermore, the Commission preliminarily believes that having data for all security-based swaps reported to registered SDRs will provide the Commission and other relevant authorities with the most efficient access to security-based swap information.[35] If data for clearing transactions were not reported to registered SDRs, the Commission would have to obtain transaction information from multiple types of registered entities—*i.e.,* registered clearing agencies as well as registered SDRs—to obtain a complete picture of the security-based swap market. Obtaining transaction data separately from additional types of registrants would exacerbate concerns about fragmentation of the data that could be reduced by requiring all security-based swap transactions to be reported to registered SDRs. For example, registered clearing agencies might store, maintain, and furnish data to the Commission in a format different from the data provided by registered SDRs, which would force the Commission to expend greater resources harmonizing the data sets.

b. Determining the Reporting Side for Clearing Transactions

Two commenters supported the Commission's original proposal to assign reporting obligations for all security-based swaps, including clearing transactions, through the reporting hierarchy in all circumstances.[36] One of these commenters expressed the view that counterparty choice would ''ensure that a party to the transaction (instead of a platform or clearinghouse) can chose [*sic*] the most efficient manner of performing its reporting across all of the regions and asset classes that it is active in.'' [37] This commenter further stated that permitting a platform or clearing agency to report security-based swaps would impose costs on market participants by obligating them to establish connectivity to multiple trade repositories.[38]

Three other commenters objected to this aspect of Regulation SBSR, as proposed and re-proposed. Two of these commenters argued that, if clearing transactions are subject to Regulation SBSR, they should be reported by the clearing agency that clears the alpha: ''In contrast to uncleared [security-based swaps], the Clearing Agency is the sole party who holds the complete and accurate record of transactions and positions for cleared [security-based swaps] and in fact is the only entity capable of providing accurate and useful positional information on cleared [security-based swaps] for systemic risk monitoring purposes.'' [39] The other commenter stated that the clearing agency is best positioned to report cleared security-based swaps timely and accurately as an extension of the clearing process, and that the clearing agency should be the sole party responsible for reporting all the trade data for cleared swaps, including valuation data.[40]

After careful consideration of the comments, the Commission now preliminarily believes that a registered clearing agency should have the duty to report any clearing transaction to which it is a counterparty. The Commission believes that, because the registered clearing agency creates the clearing transactions to which it is a counterparty, the registered clearing agency is in the best position to provide complete and accurate information for the clearing transactions resulting from the security-based swaps that it clears.[41]

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[28] *See* CME II at 4–5; CME/ICE Letter at 2–4; ICE Letter at 2–3.

[29] ISDA IV at 5 (stating further that . . .''[I]f the Commission assigns responsibility to clearing agencies for the reporting of cleared [security-based swaps], the clearing agency should be the sole party responsible for reporting all the trade data for cleared swaps.'') *See also* ICE Letter at 2–3 (stating that ''The Clearing Agency is best positioned to have the sole responsibility to report . . . required swap data, including valuation data'').

[30] *See* CME/ICE Letter at 4; CME II at 4.

[31] 15 U.S.C. 78m–1(a)(1).

[32] *See* CME/ICE Letter at 2, 4; CME II at 4.

[33] CME/ICE Letter at 4.

[34] 15 U.S.C. 78m(m)(1)(G).

[35] Section 13(n)(5)(G) of the Exchange Act, 15 U.S.C. 78m(n)(5)(G), provides specified authorities other than the Commission with access to security-based swap data held by SDRs, but does not grant similar access to security-based swap data held by registered clearing agencies. If the Commission relied exclusively on registered clearing agencies to store data for clearing transactions, the ability of other relevant authorities to access the information could be impaired.

[36] *See* DTCC VI at 8–9; DTCC VIII (recommending that the Commission should not assign reporting obligations to clearing agencies because Regulation SBSR, as proposed and re-proposed, would not have required reporting by clearing agencies); MarkitSERV III at 4.

[37] MarkitSERV III at 4.

[38] *See id.*

[39] CME/ICE Letter at 3–4.

[40] ISDA IV at 5. The Commission notes that Regulation SBSR as adopted does not require the reporting of the market value of a security-based swap. *See* Regulation SBSR Adopting Release, Section II(B)(3)(e) and Section II(B)(3)(k).

[41] One commenter urged the Commission to be clear which party is responsible for reporting a clearing transaction in the event that reporting commences before security-based swap clearing agencies are required to register with the Commission or in the event that a security-based swap is cleared through a clearing agency that is not required to register, exempted from registration, or granted relief. *See* ISDA IV at 6. This commenter further recommended that the reporting requirement for a clearing agency should apply equally to clearing agencies required to register and those that may be exempted from the requirement but which clear security-based swaps subject to reporting. *See id.* The Commission believes that the proposed rules are clear as to which side would have the responsibility for reporting a clearing

The Commission understands that certain registered clearing agencies that offer central clearing in swaps currently report their clearing transactions to swap data repositories that are provisionally registered with the CFTC. These registered clearing agencies have adopted rules stating that they will comply with the CFTC's swap data reporting rules by reporting beta and gamma swaps to a swap data repository that is an affiliate or business unit of the registered clearing agency. These current swap market practices evidence the ability of registered clearing agencies to report clearing transactions. The Commission's proposal to assign to registered clearing agencies the duty to report clearing transactions is intended, in part, to promote efficiency in the reporting process under Regulation SBSR by leveraging these existing workflows.

The Commission has considered the following alternatives to proposed Rule 901(a)(2)(i):

(1) *Utilize the reporting hierarchy in Regulation SBSR, as re-proposed.* Under this approach, a registered clearing agency would occupy the lowest spot in the hierarchy, along with other persons who are neither registered security-based swap dealers nor registered major security-based swap participants. Thus, in the case of a beta or gamma transaction between a registered security-based swap dealer or registered major security-based swap participant and a registered clearing agency, the registered security-based swap dealer or registered major security-based swap participant would be the reporting side. In the case of a beta or gamma transaction between a non-registered person and a registered clearing agency, the outcome would depend on whether the non-clearing agency direct counterparty is guaranteed by a registered security-based swap dealer or registered major security-based swap participant. If the non-clearing agency direct counterparty is guaranteed by a registered security-based swap dealer or registered major security-based swap participant, that side would be the reporting side. If the non-clearing agency direct counterparty has no guarantor or is guaranteed by a person who is not a registered security-based swap dealer or registered major security-based swap participant, there would be a tie and the sides would be required to select the reporting side.

(2) *Modify the re-proposed hierarchy to place registered clearing agencies above other non-registered persons but below registered security-based swap dealers and registered major security-based swap participants.* Thus, in a transaction between a registered clearing agency and a registered security-based swap dealer (or a transaction between a registered clearing agency and a non-registered person who is guaranteed by a registered security-based swap dealer), the outcome would be the same as in Alternative 1: The side with the registered security-based swap dealer would have the duty to report. However, the outcome would be different from Alternative 1 in the case of a beta or gamma transaction between a registered clearing agency and a non-registered person who is not guaranteed by a registered security-based swap dealer or registered major security-based swap participant: Instead of the sides choosing, the registered clearing agency would have the duty to report.

(3) *Require the reporting side of the alpha to report both the beta and gamma transaction.* Under this approach, the reporting side of the alpha transaction also would be the reporting side for the beta and gamma transactions. Under this approach, the beta and gamma could be viewed as life cycle events of the alpha, and thus should be treated like other life cycle events of the alpha, which the reporting side of the alpha has the duty to report.

The Commission preliminarily believes that each of these three alternatives for assigning the reporting duty for clearing transactions would be less efficient and could result in less reliable reporting than assigning to registered clearing agencies the duty to report all clearing transactions. Two commenters have asserted that a clearing agency is the only party that has complete information about clearing transactions immediately upon their creation.[42] Each of the three alternatives could require a person who does not have information about the clearing transaction at the time of its creation to report that transaction. The only way such a person could discharge its reporting duty would be to obtain the information from the registered clearing agency or from the counterparty to the registered clearing agency. This extra and unnecessary step could introduce more opportunities for data discrepancies, errors, or delays in reporting. The Commission preliminarily believes instead that a more efficient way to obtain a regulatory report of each clearing transaction would be to require the registered clearing agency to report each clearing transaction to a registered SDR directly.

Under Alternative 1, applying the reporting hierarchy to a transaction between a registered clearing agency and a registered security-based swap dealer or registered major security-based swap participant would result in the side opposite the clearing agency being the reporting side for the security-based swap. This approach would comport with the suggestion of commenters who opposed placing reporting obligations on registered clearing agencies.[43] As discussed above, however, the Commission believes that it would be more efficient to require the registered clearing agency to report the transaction. Furthermore, applying the reporting hierarchy to a transaction between a registered clearing agency and another non-registered person (assuming it is not guaranteed by a registered security-based swap dealer or major security-based swap participant) would require the sides to select the reporting side. While it is likely that the counterparties in this case would select the registered clearing agency as the reporting side, the Commission preliminarily believes that it would be more efficient to obviate the need for registered clearing agencies and non-registered persons to negotiate reporting duties. As discussed in the Regulation SBSR Adopting Release, the Commission designed Rule 901(a), in part, to minimize the possibility of reporting obligations being imposed on non-registered counterparties.[44]

transaction. The Commission notes that proposed Rule 901(a)(2)(i) would impose the duty to report clearing transactions on *registered* clearing agencies. It is possible that a non-U.S. person could register with the Commission as a clearing agency under Section 17A of the Exchange Act, 15 U.S.C. 78q–1. The Commission generally believes that, if a person registers with the Commission as a clearing agency, it should assume the same obligations as all other persons that register as clearing agencies. Proposed Rule 901(a)(2)(i) would not apply to unregistered clearing agencies (*i.e.,* persons that act as clearing agencies outside the United States that are not required to, and choose not to, register with the Commission). If in the future the Commission contemplates a process for exempting clearing agencies from registration or considers an application for relief from clearing agency registration requirements, the Commission could at that time consider the issue of whether to extend the duty to report clearing transactions to an exempt clearing agency.

[42] *See* CME/ICE Letter at 3–4. Even the commenters who opposed reporting by clearing agencies did not suggest that a clearing agency lacks adequate information to report the beta and the gamma.

[43] *See* DTCC VI at 8–9; DTCC VIII (noting that Regulation SBSR, as proposed and re-proposed, would not have required reporting by clearing agencies); MarkitSERV III at 4.

[44] *See* Regulation SBSR Adopting Release, Section V. *See also* Vanguard Letter at 6 (noting that clearing agencies, platforms, security-based swap dealers, and major security-based swap participants would be better situated to report security-based

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Alternative 2 would assign the reporting obligation to a registered security-based swap dealer or registered major security-based swap participant when it is a counterparty to a registered clearing agency, while avoiding the need for non-registered persons to negotiate reporting obligations with registered clearing agencies. The Commission preliminarily believes, however, that this alternative—like Alternatives 1 and 3—would be less efficient than requiring the registered clearing agency to report the transaction information directly to a registered SDR, because the registered clearing agency is the only person who has complete information about a clearing transaction immediately upon its creation.

Under Alternative 3, the reporting side for the alpha also would be the reporting side for the beta and gamma. Alternative 3 would require the reporting side for the alpha also to report information about a security-based swap—the clearing transaction between the registered clearing agency and the non-reporting side of the alpha—to which it is not a counterparty. The Commission could require the non-reporting side of the alpha to transmit information about its clearing transaction to the reporting side of the alpha. In theory, this would allow the reporting side of the alpha to report both the beta and the gamma. The Commission believes, however, that this result could be difficult to achieve operationally and, in any event, could create confidentiality concerns, as an alpha counterparty may not wish to reveal information about its clearing transactions except to the registered clearing agency (and, if applicable, its clearing member). Moreover, all other things being equal, having more steps in the reporting process—*e.g.,* more data transfers between execution and reporting—introduces greater opportunity for data discrepancies and delays than having fewer steps. Also, because the reporting side of the alpha would have the duty to report the beta and gamma, Alternative 3 is premised on the view that the beta and gamma are life cycle events of the alpha. The Commission, however, considered and rejected this approach in the Regulation SBSR Adopting Release.[45]

In sum, having considered these alternatives, the Commission preliminarily believes that the most direct and efficient way of reporting clearing transactions to a registered SDR is to assign to a registered clearing agency the duty to report all clearing transactions to which it is a counterparty. Therefore, the Commission is proposing new subparagraph (i) of Rule 901(a)(2) to achieve this result. A registered clearing agency has complete information about all clearing transactions to which it is a counterparty, including betas and gammas that arise from clearing alpha security-based swaps. The alternative reporting regimes discussed above could result in less efficiencies in reporting, and thus greater costs, because persons that are less likely to have established infrastructure for reporting or that do not possess the same degree of direct and complete access to the relevant data as the registered clearing agency could have the duty to report. Furthermore, these non-clearing agency counterparties would first have to obtain information about executed clearing transactions from the registered clearing agency before they, in turn, could provide the transaction information to a registered SDR. This extra step in reporting could result in delays, or create opportunities for errors that could lead to a loss of data integrity. The Commission preliminarily believes that data discrepancies, errors, and delays are less likely to occur if the duty to report information about clearing transactions were assigned to registered clearing agencies directly.

c. Choice of Registered SDR for Clearing Transactions

The Commission has carefully considered how registered clearing agencies would fulfill their reporting obligations under proposed Rule 901(a)(2)(i), including whether registered clearing agencies could choose the registered SDR to which they report or whether they should be required to report clearing transactions to the registered SDR that received the report of the associated alpha transaction. Regulation SBSR allows the reporting side to choose the registered SDR to which it reports, subject to the requirement that reports of life cycle events must be made to the same registered SDR that received the initial report of the security-based swap.[46]

As noted in the Regulation SBSR Adopting Release, a clearing transaction is an independent security-based swap and not a life cycle event of an alpha security-based swap that is submitted to clearing.[47] As discussed in the Regulation SBSR Adopting Release, the Commission believes that, in general, the person with the duty to report a security-based swap under Rule 901(a) should be permitted to discharge this duty by reporting to a registered SDR of its choice.[48] This approach is designed to promote efficiency by allowing the person with the reporting duty to select the registered SDR that offers it the greatest ease of use or the lowest fees. Under proposed Rule 901(a)(2)(i), a registered clearing agency would be the reporting side for all clearing transactions to which it is a counterparty; because the registered clearing agency would have the duty to report, it also would have the ability to choose the registered SDR. The Commission considered proposing that reports of betas and gammas go to the same registered SDR that received the report of the associated alpha, but has declined to do so, for the reasons discussed below.

If Regulation SBSR were to require registered clearing agencies to report betas and gammas to the registered SDR that received the report of the associated alpha, the registered clearing agency would be required to report to a registered SDR that might not offer it the greatest ease of use or the lowest fees. As such, this result could be less efficient for the registered clearing agency than the alternative approach of permitting the registered clearing agency to choose the registered SDR to which it reports the beta and gamma. Moreover, the Commission preliminarily believes that it would have sufficient tools to be able to track related transactions across SDRs,[49] and thus that it would be appropriate to allow a registered clearing agency to choose where to report the beta and gamma, even if it chooses to report to

swaps than other types of market participants, such as buy-side firms).

[45] *See* Regulation SBSR Adopting Release, Section V(B)(2) at note 267 (''Under Rule 900(g), a security-based swap that results from clearing is an independent security-based swap and not a life cycle event of a security-based swap that is submitted to clearing. Thus, Rule 901(e), which addresses the reporting of life cycle events, does not address what person has the duty to report the clearing transactions that arise when a security-based swap is accepted for clearing'').

[46] *See* Regulation SBSR Adopting Release, Section V(B)(2) (''The reporting side may select the registered SDR to which it makes the required report'').

[47] *See* Regulation SBSR Adopting Release, Section V(B). However, the determination by a registered clearing agency of whether or not to accept the alpha for clearing is a life cycle event of the alpha. Proposed Rule 901(e)(1)(ii) would require registered clearing agencies to report these life cycle events to the alpha SDR.

[48] *See* Regulation SBSR Adopting Release, Section V(B).

[49] *See* Regulation SBSR Adopting Release, Section II(B)(3)(j) (explaining that Rule 901(d)(10), as adopted, will facilitate the Commission's ability to link transactions using the transaction ID); Regulation SBSR Adopting Release, Section VIII (further describing the ability of the Commission to link related transactions using the transaction ID).

a registered SDR other than the alpha SDR.

One commenter asserted that allowing a registered clearing agency to report betas and gammas to a registered SDR of the clearing agency's choice, rather than to the alpha SDR, would impose substantial costs on security-based swap counterparties because the non-clearing agency counterparties would have to establish connectivity to multiple SDRs.[50] This comment appears premised on the idea that non-clearing agency counterparties would have ongoing obligations to report subsequent information—such as life cycle events or a daily mark of the security-based swap—to registered SDRs not of their choosing, which could force them to establish connections to multiple registered SDRs. However, proposed Rule 901(a)(2)(ii) would assign the reporting duty for a clearing transaction to the registered clearing agency, and Regulation SBSR, as adopted, does not impose any duty on a non-reporting side to report life cycle events or a daily mark.[51] Therefore, the Commission does not believe that any duty under Regulation SBSR, as adopted, or the amendments to Regulation SBSR proposed herein, would cause non-clearing agency counterparties to incur significant costs resulting from the ability of a registered clearing agency to select the registered SDR to which it reports clearing transactions.[52]

d. Reporting Whether an Alpha Transaction is Accepted for Clearing

One commenter expressed the view that a clearing agency would be well-positioned to issue a termination report for the alpha and subsequently report the beta, gamma, and, if necessary, open positions to a registered SDR.[53] The Commission agrees with this commenter and is therefore proposing a new subparagraph (ii) of Rule 901(e)(1), which would require a registered clearing agency to report to the alpha SDR whether or not it has accepted the alpha for clearing. Rule 901(e)(1)(i), as adopted, requires the reporting side of a security-based swap to report—to the same entity to which it reported the original transaction—any life cycle event (or adjustment due to a life cycle event) except for whether or not the security-based swap has been accepted for clearing. Proposed Rule 901(e)(1)(ii) would address the reporting of whether or not the security-based swap has been accepted for clearing, and would assign that duty to the registered clearing agency to which the transaction is submitted for clearing, rather than to the reporting side of the original transaction. Proposed Rule 901(e)(1)(ii) would ensure that all potential life cycle events (and adjustments due to life cycle events) would be subject to regulatory reporting, and that Regulation SBSR would specify the person who has the duty to report each kind of life cycle event (or adjustment).

When an alpha is submitted for clearing, the registered clearing agency will review the trade and decide whether or not to accept it. Acceptance for clearing can result in the termination of the alpha and the creation of the beta and gamma. Furthermore, rejection from clearing is an important event in the life of the alpha—because rejection could result in the voiding of the transaction or the activation of credit support provisions that would alter the character of the transaction—and thus is the kind of event that Rule 901(e) is designed to capture for regulatory purposes. Accordingly, proposed Rule 901(e)(1)(ii) would require a registered clearing agency to report whether or not it has accepted a security-based swap for clearing.

The Commission preliminarily believes that requiring a registered clearing agency, rather than the reporting side of the alpha, to report whether or not the registered clearing agency has accepted an alpha for clearing is consistent with the Commission's approach of assigning reporting obligations to the person with the most complete and efficient access to the required information. The registered clearing agency would have the most complete and efficient access to information about whether a particular alpha has been accepted for clearing because the registered clearing agency determines whether to accept a submitted alpha and knows the precise moment when the transaction is cleared. Although it would be possible for the reporting side for the alpha transaction to report whether a registered clearing agency has accepted the alpha for clearing, the reporting side would need to learn this information from the clearing agency. The Commission preliminarily believes it is more efficient to require the registered clearing agency to report to the alpha SDR whether or not the registered clearing agency has accepted the alpha for clearing.

Rule 901(e)(2), as adopted, requires whoever has the duty to report a life cycle event to include in the report of the life cycle event the transaction ID of the original transaction. If the Commission ultimately adopts proposed Rule 901(e)(1)(ii), a registered clearing agency that accepts or rejects an alpha transaction from clearing would incur this duty under existing Rule 901(e)(2). The transaction ID of the alpha transaction is information that the registered clearing agency might not have, because the registered clearing agency is not involved in the execution or reporting to a registered SDR of the alpha transaction. Therefore, the Commission also is proposing a new subparagraph (3) of Rule 901(a), which would provide that ''a person who, under [Rule 901(a)(1) or 901(a)(2)(ii)] has a duty to report a security-based swap that has been submitted to clearing at a registered clearing agency shall promptly provide that registered clearing agency with the transaction ID of the submitted security-based swap and the identity of the registered security-based swap data repository to which the transaction will be reported or has been reported.'' Proposed Rule 901(a)(3) would ensure that the registered clearing agency knows the identity of the alpha SDR and the transaction ID of the alpha, so that the registered clearing agency knows where to report whether or not it accepts the alpha for clearing—as required under existing Rule 901(e)(2)—and so that this report can be linked to the alpha report.

The Commission recognizes the potential for proposed Rules 901(e)(1)(ii) and 901(a)(3) to result in the registered clearing agency reporting whether or not it accepted the alpha for clearing to the alpha SDR before the alpha transaction itself has been reported to the alpha SDR. This could occur during the interim phase for regulatory reporting and public dissemination, which the Commission discussed in Section VII of the Regulation SBSR Adopting Release. Rule 901(j), as adopted, generally permits the person with the duty to report a security-based swap up to 24 hours after the time of execution to report to a registered SDR the transaction information required by Rules 901(c) and 901(d). Accordingly,

[50] *See* MarkitSERV III at 4, n. 11.

[51] Nor does Regulation SBSR require a non-reporting side to alert a registered SDR if it becomes aware that any security-based swap information has been reported erroneously. Under the proposed amendments to Rule 905(a) discussed below, if an error is discovered by a person other than the person having the duty to report a security-based swap, the person who discovered the error would report such error to the person who had the duty to report the transaction, rather than to the registered SDR directly.

[52] Non-clearing agency counterparties to clearing transactions might incur modest costs associated with reporting certain unique identification code (''UIC'') information required by Rule 906(a), *e.g.,* their branch ID, broker ID, trader ID, and trading desk ID, as applicable. *See* Regulation SBSR Adopting Release, Section XXII(C)(6)(c) (discussing the costs of complying with Rule 906(a), as adopted).

[53] *See* ICE Letter at 2–5.

an alpha could be submitted for clearing immediately after execution, but not reported to a registered SDR for up to 24 hours (or, if 24 hours after the time of execution would fall on a day that is not a business day, by the same time on the next day that is a business day). If the registered clearing agency accepts the alpha for clearing, the registered clearing agency might, pursuant to proposed Rule 901(e)(1)(ii), submit a report of this life cycle event to the alpha SDR before the alpha SDR has received the transaction report of the alpha transaction itself.[54]

To account for this possibility, the Commission is proposing a minor amendment to Rule 901(e)(2). Rule 901(e)(2), as adopted, states in relevant part that a life cycle event must be reported ''to the entity to which the original security-based swap transaction *was reported''* (emphasis added). Under the proposed amendment to Rule 901(e)(2), a life cycle event would have to be reported ''to the entity to which the original security-based swap transaction will be reported or has been reported.'' This amendment mirrors the language in proposed Rule 901(a)(3), which would require a person who reports an alpha to provide the registered clearing agency to which the alpha is submitted the transaction ID of the alpha and the identity of the registered SDR to which the alpha ''will be reported or has been reported.''

A registered SDR should consider—in formulating its policies and procedures under Rule 907(a), as adopted—whether those policies and procedures should address the situation where it receives a report from a registered clearing agency stating whether or not it has accepted an alpha (with a particular transaction ID) for clearing before the registered SDR has received a transaction report of the alpha. For example, the policies and procedures could provide that the registered SDR would hold a report from a registered clearing agency that it accepted the alpha for clearing in a pending state until it receives the transaction report of the alpha, and then disseminate the security-based swap transaction information and the fact that the alpha has been terminated as a single report.

2. Reporting by a Platform

Some commenters, responding to Rule 901(a) as initially proposed, suggested that the Commission require a platform to report security-based swaps executed on or through its facilities.[55] One of these commenters stated that a platform would have the technology to report a security-based swap executed on its facilities and would be in the best position to ensure that the transaction was reported accurately and on a real-time basis.[56] This commenter also stated that the counterparties to a transaction executed on a platform should be relieved of any reporting obligations because they would not be in a position to control or confirm the accuracy of the information reported or to control the timing of the platform's reporting.[57] Another commenter expressed the view that having platforms report security-based swaps would facilitate economies in the marketplace because fewer entities, including end users, would be required to build the systems necessary to support security-based swap reporting.[58] Four commenters, however, raised concerns about imposing reporting requirements on platforms.[59]

After carefully considering these comments, the Commission is proposing to require a platform to report any security-based swap that is executed on the platform, but only if the security-based swap will be submitted to clearing. Proposed Rule 901(a)(1) provides that, if a security-based swap is executed on a platform and will be submitted to clearing, the platform on which the transaction was executed shall report to a registered SDR the information required by Rules 901(c) (the primary trade information), 901(d)(1) (the participant ID or execution agent ID for each counterparty, as applicable), and 901(d)(9) (the platform ID). If the security-based swap will not be submitted to clearing, the platform would have no reporting obligations under Regulation SBSR. Instead, the reporting hierarchy in Rule 901(a)(2)(ii), as adopted, will determine which side is the reporting side for such a platform-executed transaction.[60] As discussed below, proposed subparagraph (1) of Rule 901(a) is intended to maximize the accuracy and completeness of data reported to registered SDRs, while continuing to align the reporting duty with persons that are best able to carry it out.

The Commission understands that each counterparty to a platform-executed transaction that will be submitted to clearing intends to assume the credit risk of the clearing agency rather than any of the other platform participants, so there is no need to have credit and other documentation in place between itself and its counterparty. Thus, such a transaction could be executed anonymously, as there might be no mechanism by which one counterparty would learn the identity of the other.[61] The direct counterparties to such an alpha might not know which side would be the reporting side (if the hierarchy in Rule 901(a)(2), as adopted,

[54] To submit the report contemplated by proposed Rule 901(e)(1)(ii), the registered clearing agency would need to know the transaction ID of the alpha. The person with the duty to report the alpha might know the transaction ID of the alpha before it reports the transaction to a registered SDR. Under Rules 903(a) and 907(a)(5), as adopted, there is no requirement that a registered SDR itself assign a transaction ID. Under those rules, a registered SDR may allow third parties—such as reporting sides or platforms—to assign a transaction ID using a methodology endorsed by the registered SDR. If the registered SDR allows third parties to assign the transaction ID, the reporting side or platform could tell the registered clearing agency the transaction ID, which in turn could allow the registered clearing agency to report to the alpha SDR whether or not the alpha has been accepted for clearing before the alpha has been reported to the registered SDR. If, however, the person with the duty to report the alpha does not obtain the transaction ID until it reports the alpha to a registered SDR, the person could not provide the transaction ID of the alpha to the registered clearing agency, and the registered clearing agency could not report whether or not it accepts the alpha for clearing until after it received alpha's transaction ID.

[55] *See* ICI I at 5; Tradeweb Letter at 3–4; Vanguard Letter at 2, 7.

[56] *See* Tradeweb Letter at 3.

[57] *See id.* at 3–4. The commenter also noted that the CFTC's proposed swap data reporting rules would require a SEF or designated contract market to report a swap executed on its facilities. *See id.* at 4. The CFTC has subsequently adopted a final rule that requires SEFs and designated contract markets to report swaps executed on their facilities. *See* 17 CFR 45.3.

[58] *See* Vanguard Letter at 7; ICI I at 5 (arguing that because investment funds would need to spend significant time and resources to build security-based swap reporting systems, platforms and security-based swap dealers should be obligated to report security-based swap data).

[59] *See* ISDA/SIFMA I at 18; ISDA IV at 7; MarkitSERV III at 4; WMBAA II at 6.

[60] *See* Regulation SBSR Adopting Release, Section V.

[61] The Commission notes that the offer and sale of security-based swaps, even if affected anonymously on a platform, must either be registered under the Securities Act or be made pursuant to an exemption from registration. The registration exemption in Section 4(a)(2) of the Securities Act, 15 U.S.C. 77d(a)(2), generally is available for transactions by an issuer not involving any public offering. One factor in determining the availability of the Section 4(a)(2) exemption is that the purchasers of the securities in the transaction must be sophisticated investors. As previously noted by the Commission, Congress determined that eligible contract participants are sophisticated investors for purposes of security-based swap transactions. *See* Exemptions for Security-Based Swaps Issued By Certain Clearing Agencies, Securities Act Release No. 9308 (March 30, 2012), 77 FR 20536 (April 5, 2012); Exemptions for Security-Based Swaps, Securities Act Release No. 9231 (July 1, 2011), 76 FR 40605 (July 11, 2011). The Commission believes that Congressional determination of eligible contract participants as sophisticated investors for purposes of security-based swap transactions applies as well for purposes of Section 4(a)(2) of the Securities Act. In addition, the exemption in Rule 240 under the Securities Act, 17 CFR 230.240, also may be available for security-based swap transactions involving eligible contract participants, to the extent applicable.

applied) and there might be no mechanism for them to learn this information because they would not be assuming each other's credit risk.[62] Even if the direct counterparties could agree that one side—for example, the side selling protection in a single-name credit default swap—would report the trade, the reporting side might not learn the identity of its counterparty even though Rule 901(d)(1), as adopted, requires the reporting side to report all counterparty IDs.[63]

Although some platform-executed transactions that will be submitted to clearing might not be executed anonymously, the Commission preliminarily believes that it would be more efficient to require the platform to report all security-based swaps executed on that platform that will be submitted to clearing, regardless of whether the counterparties are, in fact, anonymous to each other. The Commission preliminarily believes that assigning the duty to report to the platform minimizes the number of reporting steps and thus minimizes the possibility of data corruption and delays in reporting the transaction to a registered SDR. Thus, the Commission preliminarily believes that all platform-executed transactions that will be submitted to clearing should be reported by the platform. This approach would be more efficient than if the platform had to assess on a transaction-by-transaction basis whether or not the counterparties are in fact unknown to each other.

As noted above,[64] four commenters generally opposed assigning to platforms the duty to report security-based swap transactions. One commenter stated generally that ''the reporting party should be able to choose which SDR to report to, while being allowed to delegate the actual reporting to qualified third parties where it sees fit.'' [65] The commenter appeared to suggest that a platform could be a qualified third party acting as an agent for a reporting side.[66] The Commission agrees with the commenter that the platform is well-placed to carry out the act of reporting, but, unlike the commenter, the Commission preliminarily believes that the platform itself should have the legal duty to report for the reasons discussed above.

Three other commenters argued generally that platforms should not be assigned the duty to report because they lack certain information that would have to be reported. One of these commenters stated, for example, that ''the SB SEF or national securities exchange may not itself have access to all of the information required, such as whether the trade has been accepted for clearing.'' [67] The other commenter argued that ''[t]he SB SEF would likely not be privy to all of the terms required to be reported in accordance with proposed Regulation SBSR, such as, but not limited to: (i) Contingencies of the payment streams of each counterparty to the other; (ii) the title of any master agreement or other agreement governing the transaction; (iii) data elements necessary to calculate the market value of the transaction; and (iv) other details not typically provided to the SB SEF by the customer, such as the actual desk on whose behalf the transaction is entered. Moreover, and quite critical, an SB SEF would not be in a position or necessarily have the capabilities to report life cycle event information. Indeed, even if an SB SEF were required to report the transaction details as the proposed regulation requires, something we do not think advisable, it would likely take at least 30 minutes to gather and confirm the accuracy of that information.'' [68]

The Commission shares the commenters' concern that it would not be appropriate to require platforms to report information that they do not have or that would be impractical to obtain. However, a close examination of the data elements that must be reported under Rules 901(c) and 901(d), as adopted, suggests that a platform would not be put in this position:

- Rule 901(c)(1) requires reporting of the product ID, if available, or else other information that identifies the security-based swap. Proposed Rule 901(a)(1) would apply only to platform-executed security-based swaps submitted to clearing, which suggests that these are products that would have a product ID. Even if these security-based swaps did not have a product ID, the platform would have sufficient information to identify a security-based swap traded on its facilities to allow its subscribers to trade it; this same information would be sufficient for the platform to report the information required by Rule 901(c)(1) to a registered SDR.
- Rules 901(c)(2), 901(c)(3), and 901(c)(4) require reporting of the date and time of execution, the price, and the notional amount, respectively, of the security-based swap. The platform will know these data elements because they were determined on the platform's facilities.
- Rule 901(c)(5) requires reporting of whether both sides of the transaction include a registered security-based swap dealer. The Commission anticipates that this information will be publicly available, or the platform could easily obtain it from a platform participant.
- Rule 901(c)(6) requires reporting of whether the direct counterparties intend that the security-based swap will be submitted to clearing. Rule 901(d)(6) requires reporting of the name of the clearing agency to which the security-based swap will be submitted to clearing. The fact that the transaction is intended to be cleared may be implicit in the product ID (*e.g.,* if the security-based swap traded has a product ID of a ''made available to trade'' product). Alternatively, the counterparties may inform the platform that the security-based swap will be submitted to clearing; in some cases, the platform may provide the mechanism for reporting the transaction to a clearing agency. The Commission presumes that, if the platform knows that the security-based swap will be submitted to clearing, the platform will also know the name of the clearing agency. If the platform has no knowledge that the transaction will be submitted to clearing, the platform would have no duty to report it under proposed Rule 901(a)(1).
- Rule 901(c)(7) requires reporting, if applicable, of any flags pertaining to the

[62] *Cf.* Cross-Border Adopting Release, 79 FR 47325 (creating an exception, from having to be counted against the *de minimis* thresholds, for certain security-based swap transactions that a non-U.S. person enters into anonymously on a platform and that are cleared through a clearing agency, because each counterparty would not be in a position to know whether the other is a U.S. person).

[63] Rule 901(d)(1) requires the reporting side to provide the counterparty ID or execution agent ID for each counterparty, as applicable. If the execution occurs anonymously, neither side would know the counterparty ID or execution agent ID of the other side.

[64] *See supra* note 59.

[65] MarkitSERV III at 4.

[66] *See id.* (stating that counterparties should be able to choose the registered SDR ''regardless of whether the transaction is executed on a SEF'').

[67] ISDA/SIFMA I at 18. *See also* ISDA IV at 7 (stating that the clearing agency should be responsible for reporting the alpha trade once it has been accepted for clearing, and that one of the counterparties should be responsible per the reporting hierarchy for reporting a bilateral transaction that is not intended for clearing). The last commenter also stated that certain aspects of the CFTC regime for reporting bilateral swaps executed on a facility have been challenging due to the difficulty for SEFs to know and report certain trade data that is not essential to trade execution, and because of the shared responsibility for reporting since the SEF/DCM is responsible for the initial creation data reporting and the SD/MSP is responsible for continuation data reporting. *See id.* The Commission notes that Regulation SBSR, as adopted, applies the reporting hierarchy in Rule 901(a) to a security-based swap executed on a platform that is not intended to be cleared. *See* Regulation SBSR Adopting Release, Section V(C)(4).

[68] WMBAA II at 6.

transaction that are specified in the policies and procedures of the registered SDR to which the transaction will be reported. The Commission preliminarily believes that, because the transaction occurs on the platform's facilities, the platform would have knowledge of any circumstances that would require application of a flag.

- Rule 901(d)(1) requires reporting of the counterparty ID or the execution agent ID of each counterparty, as applicable. A platform will know the identity of each direct counterparty or the execution agent for each direct counterparty because those market participants will be using the platform's facilities to execute the alpha transaction. To the extent that such alphas have an indirect counterparty, the Commission presumes that the platform will be able to obtain this information from the participant that is a direct counterparty to the alpha.
- Rule 901(d)(2) requires the reporting side to report the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID ''of the direct counterparty on the reporting side.'' Regardless of whether a platform has these UICs for the counterparties to a security-based swap executed on its facilities, the platform would not be the reporting side for such a transaction because it is not a counterparty to the security-based swap.[69] Thus, when a platform has the duty to report a transaction, there is no reporting side, and the registered SDR to which the platform reports the security-based swap would be required to obtain the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID, as applicable, from each direct counterparty using the process in Rule 906(a), as adopted.[70]
- Rules 901(d)(3) and 901(d)(5) require reporting of the terms of any fixed or floating rate payments and any other elements included in the agreement necessary to calculate the value of the contract, respectively, but only ''[t]o the extent not provided pursuant to [Rule 901(c)].'' The Commission believes that all of the identifying information would be contained in the product ID or otherwise available to the platform and reported by the platform pursuant to Rule 901(c).[71] Therefore, the Commission preliminarily believes that the information required under Rules 901(d)(3) and 901(d)(5) would be a null set for a transaction executed on a platform that is submitted to clearing.
- Rule 901(d)(4) requires reporting of the titles and dates of agreements that are ''incorporated by reference into the security-based swap contract.'' The terms of the alpha security-based swap will be established according to the rules of the platform and, potentially, the rules of the registered clearing agency to which the security-based swap will be submitted, and likely will not be written. Therefore, the Commission presumes that there will be no agreements incorporated by reference to such contracts, and the information required under Rule 901(d)(4) would be a null set for a transaction executed on a platform that will be submitted to clearing.
- Rule 901(d)(7) would apply only if the direct counterparties do *not* intend to submit the security-based swap to clearing. Rule 901(d)(8) would apply only if the transaction is *not* submitted to clearing. Because a platform would be required to report a security-based swap executed on its facilities only if the transaction will be submitted to clearing, Rules 901(d)(7) and 901(d)(8) would not be applicable.
- Rule 901(d)(9) requires reporting of the platform ID. The platform can provide this information.
- Rule 901(d)(10) would apply only if the security-based swap arises from the allocation, termination, novation, or assignment of one or more existing security-based swaps. To the extent that platforms facilitate allocations, terminations, novations, or assignments of existing security-based swaps, the platform participants engaging in such exercises could provide the platform with the transaction IDs of those existing security-based swaps,[72] which the platform would need to report pursuant to Rule 901(d)(10).

Two commenters who raised general issues about platforms having the duty to report questioned, in particular, a platform's ability to report subsequent events affecting the initial alpha transaction. One commenter stated that ''an SB SEF would not be in a position or necessarily have the capabilities to report life cycle event information.'' [73] The second commenter noted that ''the SB SEF or national securities exchange may not itself have access to . . . whether the trade has been accepted for clearing.'' [74] This commenter further noted that ''the relevant clearing agency . . . could report the missing data in parallel.'' [75] The Commission broadly agrees with that suggestion and therefore is proposing a new subparagraph (ii) of Rule 901(e)(1), which would require a registered clearing agency to report whether or not it has accepted a security-based swap for clearing. Proposed Rule 901(e)(1)(ii) reflects the Commission's preliminary view that the registered clearing agency—and not a platform or any other person—has the most direct access to that information and, therefore, should have the duty to report it to the alpha SDR.[76] Similarly, the Commission generally agrees with the first commenter that a platform is not in a good position to know about life cycle events of security-based swaps executed on their facilities. However, the Commission preliminarily believes that the only life cycle event of a platform-executed security-based swap that will be submitted to clearing will be whether the security-based swap is accepted for clearing. Proposed Rule 901(e)(1)(ii) would require the registered clearing

[69] Under Rule 900(hh), as adopted, the sides are counterparties to the security-based swap. Thus, the platform would not be one of the sides (except possibly in unusual circumstances) and thus could not be the reporting side.

[70] *See* Regulation SBSR Adopting Release, Section XIII (describing Rule 906(a), as adopted). The Commission preliminarily believes that relying on the Rule 906(a) process to obtain UIC information from both sides to a platform-executed security-based swap that will be submitted to clearing would not cause counterparties to such transactions to incur significant additional costs. *See* Regulation SBSR Adopting Release, Section XXII(C)(6)(c) (estimating the costs of complying with Rule 906(a), as adopted, for reporting sides). As noted above, assigning the reporting duty to the platform should minimize the number of reporting steps and thus the possibility of data corruption and delays in reporting the transaction to a registered SDR because a platform will have superior access to the economic terms of security-based swaps that are executed on its facilities and will be submitted to clearing. The Commission further notes that the platform could report the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID, as applicable, as agent for a direct counterparty, if the direct counterparty provided this information to the platform. *See* Regulation SBSR Adopting Release, Section V(C)(2) (discussing use of agents to carry out reporting duties).

[71] For a platform to make a security-based swap eligible for trading on its facilities, it must display a product in specific enough detail for the platform participants to reach a meeting of the minds about what they are trading. In other words, the platform must provide information that identifies the security-based swap, the effective date, the scheduled termination date, and the terms of any standardized fixed or floating rate payments and the frequency of such payments. The platform would be required to report these elements, or a product ID that incorporates these elements, to a registered SDR pursuant to Rule 901(c).

[72] For a platform to facilitate allocations, terminations, novations, or assignments of existing security-based swaps, the platform participants necessarily must provide a significant amount of information to the platform regarding those existing security-based swaps. Given that the platform participants must provide a significant amount of information about the existing transactions to the platform, the Commission preliminarily believes that the platform participants also could provide the platform with the transaction IDs of those existing security-based swaps.

[73] WMBAA II at 6.

[74] ISDA/SIFMA I at 18.

[75] *Id.*

[76] *See supra* Section II(C)(2)(d).

agency to report that information, not the platform.

The Commission notes that proposed Rule 901(a)(1) would require a platform to report a security-based swap only if the security-based swap will be submitted to clearing. If the platform-executed transaction will not be submitted to clearing, Rule 901(a)(2)(ii), as adopted, already requires the counterparties to apply the reporting hierarchy to determine which side will have the duty to report the transaction, as well as any life cycle event of that transaction. This result is consistent with Section 13A(a)(3) of the Exchange Act,[77] which sets out a reporting hierarchy under which one of the counterparties, but not a platform, will have the duty to report a security-based swap that is not accepted by any clearing agency.

3. Additional Amendments To Account for Platforms and Registered Clearing Agencies Incurring Duties To Report

Under Rule 901(h), as adopted, ''a reporting side'' must electronically transmit the information required by Rule 901 in a format required by the registered SDR.[78] The Commission is now proposing to replace the term ''reporting side'' in Rule 901(h) with the phrase ''person having a duty to report'' because, under the proposed amendments to Rule 901(a), platforms and registered clearing agencies would have duties to report certain transaction information, in addition to reporting sides. The Commission believes that all persons who have a duty to report under Regulation SBSR—*i.e.,* platforms, registered clearing agencies, and reporting sides—should electronically transmit the information required by Rule 901 in a format required by the registered SDR.

Under Rule 900(u), as adopted, platforms and registered clearing agencies would not be participants of registered SDRs solely as a result of reporting security-based swap transaction information pursuant to proposed Rule 901(a)(1) or 901(e)(1)(ii), respectively.[79] However, consistent with the proposed amendment to Rule 901(h) described immediately above, the Commission believes that platforms and registered clearing agencies should be participants of any registered SDR to which they report security-based swap transaction information. Imposing participant status on platforms and registered clearing agencies would explicitly require those entities to report security-based swap transaction information to a registered SDR in a format required by that registered SDR. If platforms and registered clearing agencies were not participants of the registered SDR and were permitted to report data in a format of their own choosing, it could be difficult or impossible for the registered SDR to understand individual transaction reports or aggregate them with other reports in a meaningful way. This could adversely affect the ability of the Commission and other relevant authorities to carry out their oversight responsibilities and could interfere with the ability of a registered SDR to publicly disseminate security-based swap transaction information as required by Rule 902, as adopted. Therefore, the Commission is proposing to amend the definition of ''participant'' in Rule 900(u) to mean: (1) A person that is a counterparty to a security-based swap, provided that the security-based swap is subject to regulatory reporting under Regulation SBSR and is reported to a registered SDR pursuant to Regulation SBSR; (2) a platform that is required to report a security-based swap pursuant to Rule 901(a)(1); or (3) a registered clearing agency that is required to report a life cycle event pursuant to Rule 901(e).[80]

4. Examples

The following examples illustrate the proposed reporting process for alpha, beta, and gamma security-based swaps, assuming an agency model of clearing under which a non-clearing member counterparty becomes a direct counterparty to a clearing transaction: [81]

- *Example 1.* A registered security-based swap dealer enters into a security-based swap with a private fund. The transaction is not executed on a platform. The counterparties intend to clear the transaction (*i.e.,* the transaction is an alpha). Neither side has a guarantor with respect to the alpha, and both direct counterparties are U.S. persons.
  - The registered security-based swap dealer is the reporting side under Rule 901(a)(2)(ii), as adopted, and must report this alpha transaction to a registered SDR (and may choose the registered SDR).
  - Proposed Rule 901(a)(3) would require the registered security-based swap dealer, as the reporting side of the alpha transaction, to promptly provide to the registered clearing agency the transaction ID of the alpha and the identity of the alpha SDR.
  - If the registered clearing agency accepts the alpha for clearing and terminates the alpha, two clearing transactions—a beta (between the registered security-based swap dealer and the registered clearing agency) and a gamma (between the registered clearing agency and the private fund)—take its place.
  - Proposed Rule 901(e)(1)(ii) would require the registered clearing agency to report to the alpha SDR that it accepted the transaction for clearing.
  - Under proposed Rule 901(a)(2)(i), the registered clearing agency would be the reporting side for each of the beta and the gamma. Therefore, the registered clearing agency would be required to report the beta and gamma to a registered SDR and could choose the registered SDR to which it reports the beta and gamma. The report for each of the beta and the gamma must include the transaction ID of the alpha, as required by Rule 901(d)(10), as adopted.
- *Example 2.* Same facts as Example 1, except that the private fund and the registered security-based swap dealer transact on a SB SEF.
  - Proposed Rule 901(a)(1) would require the SB SEF to report the alpha transaction (and allow the SB SEF to choose the registered SDR).
  - Upon submission of the alpha for clearing, proposed Rule 901(a)(3) would require the SB SEF to promptly report to the registered clearing agency the transaction ID of the alpha and the identity of the alpha SDR.
  - Once the alpha is submitted to clearing, the reporting workflows are the same as in Example 1.

D. Request for Comment

The Commission requests comment on all aspects of the proposed new Rules 901(a)(1), 901(a)(2)(i), and 901(a)(3), as well as the proposed amendment to Rule 901(e).

1. Is the Commission's discussion of how Regulation SBSR—under the amendments proposed in this release—would apply to different steps or actions in the clearing process under the agency

[77] 15 U.S.C. 78mA(a)(3).

[78] Rule 907, as adopted, requires a registered SDR to establish and maintain written policies and procedures to govern various aspects of the registered SDR's operations, including the manner and format in which the registered SDR will accept data from its participants.

[79] Rule 900(u), as adopted, provides that a ''[p]articipant, with respect to a registered security-based swap data repository, means a counterparty, that meets the criteria of [Rule 908(b)], of a security-based swap that is reported to that registered security-based swap data repository to satisfy an obligation under [Rule 901(a)].''

[80] A registered clearing agency that is required to report a clearing transaction pursuant to proposed Rule 901(a)(2)(i) would be a counterparty to a security-based swap and covered by the first prong of the proposed definition of ''participant.''

[81] As noted in Section II(A), *supra,* because clearing of security-based swaps in the United States is still evolving, other models of clearing might emerge where customers would not become direct counterparties of a registered clearing agency.

model sufficiently clear and complete? If not, please provide detail about the operation of the agency model of clearing (*e.g.,* particular steps or actions in the clearing process) that you believe the Commission has not adequately addressed and how you believe they should be treated under Regulation SBSR.

2. Do you believe that the principal model of clearing is or is likely to become sufficiently prevalent in the U.S. market that the Commission should address how Regulation SBSR would apply to different steps in the clearing process under the principal model? If so, do you think that further guidance is necessary to apply Regulation SBSR effectively to the principal model? What aspects of the principal model should the Commission focus on for purposes of providing further guidance?

3. At the time that a security-based swap is accepted for clearing, will any person other than the registered clearing agency have complete information about the beta and the gamma that result from clearing?

4. Do you agree with the Commission's preliminary assessment of the data elements under Rules 901(c) and 901(d) that will be available to a platform and required to be reported for a platform-executed security-based swap that will be submitted to clearing? If not, what information would the platform find difficult to obtain? For example, could a platform reasonably be expected to know of guarantors of direct counterparties transacting on its facilities (if the guarantors are clearing members who guarantee platform participants who are not themselves direct members of the clearing agency)?

5. If the Commission were to adopt the basic requirement that a platform must report transactions executed on its facilities that are submitted to clearing but, as discussed above, would not require the platform to report certain data elements in Rule 901(c) or 901(d), what data elements should be excepted? Can you suggest an alternate mechanism—besides requiring the platform to report—for such data elements to be reported to the registered SDR?

6. Would a platform have knowledge of any special circumstances of a transaction executed on its facilities that might have to be flagged pursuant to the policies and procedures of the registered SDR to which the platform reports the transaction? Are there any special circumstances that it would be difficult or impossible for a platform to know? If so, please discuss and suggest how the transaction could be appropriately flagged if the platform does not do so.

7. Are there any potential life cycle events of a platform-executed security-based swap that will be submitted to clearing, other than acceptance or rejection from clearing? If so, what are they and who do you think should have the duty of reporting such life cycle events to a registered SDR? Why?

8. What costs might platforms incur to report security-based swap transactions pursuant to proposed Rule 901(a)(1)? Could other market participants report these transactions more efficiently or cost effectively?

9. Would a registered clearing agency have the information necessary to report a platform-executed alpha that will be submitted to clearing? If so, should the registered clearing agency, rather than the platform, be required to report the transaction? Why or why not? How long does it typically take between the execution of a security-based swap on a platform and submission to clearing? How long does it typically take between submission to clearing and when the registered clearing agency determines whether to accept or reject the transaction?

10. Rule 901(d)(2), as adopted, requires the reporting side to report—''as applicable''—the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID with respect to the direct counterparty on the reporting side. As described above, the Commission is proposing that the registered clearing agency would be the reporting side for all clearing transactions to which it is a counterparty. Would the branch ID, broker ID, execution agent ID, trader ID, or trading desk ID ever be applicable to a registered clearing agency? Why or why not?

11. Rule 906(a), as adopted, provides a mechanism for a registered SDR to obtain the branch ID, broker ID, execution agent ID, trading ID, and trading desk ID—''as applicable''—for the non-reporting side of a security-based swap. Thus, mechanisms exist under Regulation SBSR, as adopted, for the Commission to learn the UICs, as applicable, for both sides of the alpha transaction. Would these UICs be applicable to the non-clearing agency side of a clearing transaction? Why or why not? If not, do you believe that the Commission should provide guidance that there is no requirement under Rule 906(a) to report the UICs for the non-clearing agency counterparty of a clearing transaction?

12. Will registered clearing agencies be able to leverage existing reporting processes to report data to registered SDRs? What additional reporting processes might registered clearing agencies need to develop to ensure accurate reporting in accordance with the proposed amendments to Rule 901? What costs might registered clearing agencies incur to adopt these processes?

13. Would other market participants be able to report clearing transactions or terminations of transactions submitted to clearing more efficiently or cost effectively than the registered clearing agency? What costs might counterparties incur if one of the sides of the alpha were assigned the duty to report a clearing transaction rather than the registered clearing agency?

14. Should the proposed reporting requirements for registered clearing agencies apply only to registered clearing agencies having their principal place of business in the United States rather than to all registered clearing agencies (which could include registered clearing agencies having their principal place of business outside the United States)? Why or why not? Would U.S. persons, registered security-based swap dealers, and registered major security-based swap participants be in a better position to report transactions with non-U.S. person registered clearing agencies? Why or why not?

15. Under proposed Rule 901(e)(1)(ii), a registered clearing agency would be required to report whether or not it has accepted a security-based swap for clearing. Should this information be required to be reported to the same registered SDR that receives the transaction report of the alpha? If not, how would the Commission and other relevant authorities be able to ascertain whether or not the alpha had been cleared? If so, what costs would be imposed on registered clearing agencies for having to report this transaction information to a registered SDR not of their choosing?

16. Is it appropriate to require a registered clearing agency to become a participant of the alpha SDR solely as a result of reporting whether or not it has accepted an alpha for clearing? What costs would be imposed on registered clearing agencies as a result of this requirement? If a registered clearing agency did not become a participant of the alpha SDR solely by virtue of reporting the disposition of an alpha, in what other way should the registered clearing agency be required to report the disposition of an alpha such that the systems of the alpha SDR can accept and understand that report?

17. What costs might platforms and reporting sides incur to comply with proposed Rule 901(a)(3), which would require the person with the duty to report a security-based swap that has been submitted to clearing at a

registered clearing agency to promptly provide that registered clearing agency with the transaction ID of the submitted security-based swap and the identity of the alpha SDR? Is there a more efficient way of ensuring that registered clearing agencies know the transaction ID of the alpha and the identity of the alpha SDR? If so, please discuss.

18. Should platforms and registered clearing agencies be participants of the registered SDRs to which they report? If not, how would a registered SDR ensure that these persons provide data in a format required by the registered SDR?

19. How might the policies and procedures of a registered SDR address the circumstance where the registered SDR receives a termination report of an alpha pursuant to proposed Rule 901(e)(1)(ii) before it receives the initial report of the alpha? What costs would registered SDRs incur to implement policies and procedures addressing this scenario?

20. Can anonymous trading occur on any other type of trading venue besides a platform? If so, please describe where and how such activity occurs and provide your view as to how Regulation SBSR should, if necessary, be amended to require reporting of such transactions.

III. Reporting and Public Dissemination of Security-Based Swaps Involving Allocation

The Regulation SBSR Adopting Release provides guidance for the reporting of certain security-based swaps executed by an asset manager on behalf of multiple clients—transactions involving what are sometimes referred to as ''bunched orders.'' [82] Specifically, the Regulation SBSR Adopting Release explains how Regulation SBSR applies to executed bunched orders that are reported pursuant to the reporting hierarchy in Rule 901(a)(2)(ii), as adopted, including bunched order alphas. That release also explains how Regulation SBSR applies to the security-based swaps that result from allocation of that executed bunched order, if the resulting security-based swaps are uncleared. This section explains how the Commission preliminarily believes Regulation SBSR, as adopted and as proposed to be amended by this release, would apply to a platform-executed bunched order that will be submitted to clearing, and the security-based swaps that result from the allocation of any bunched order execution, if the resulting security-based swaps are cleared.

As described in the Regulation SBSR Adopting Release, to execute a bunched order, an asset manager negotiates and executes a security-based swap with a counterparty, typically a security-based swap dealer, on behalf of multiple clients. The bunched order could be executed on- or off-platform. After execution of the bunched order, the asset manager would allocate a fractional amount of the aggregate notional amount of the transaction to each of several clients, thereby creating several new security-based swaps and terminating the bunched order execution.[83] By executing a bunched order, the asset manager avoids having to negotiate the client-level transactions individually, and obtains exposure for each client on the same terms (except, perhaps, for size).

In the Regulation SBSR Adopting Release, the Commission explained that a bunched order execution and the security-based swaps resulting from the allocation of the bunched order execution, if they are not cleared, must be reported like other security-based swaps. Regulation SBSR provides that the registered SDR to which the initial bunched order execution is reported must disseminate a report of the bunched order execution, including the full notional amount of the transaction. The Commission observed that publicly disseminating bunched order executions in this manner would allow the public to ''know the full size of the bunched order execution and that this size was negotiated at a single price.'' [84] Rule 902(c)(7), as adopted, provides that the registered SDR shall not publicly disseminate any information regarding the allocation of a bunched order execution, which would include the smaller security-based swaps resulting from the allocation of the initial transaction as well as the fact that the initial transaction is terminated following this allocation.

A. Examples

The following examples illustrate how Regulation SBSR would apply to platform-executed bunched order alphas, and security-based swaps that result from allocation of bunched order alphas, if the resulting security-based swaps are cleared. The examples specify which actions are addressed by Regulation SBSR, as adopted, and which actions would be addressed by the new provisions of Regulation SBSR that are being proposed in this release. The Commission notes that the proposed amendments to Rule 901(a) and the conforming changes discussed in Section II, *supra,* would not affect the examples describing the reporting of bunched orders and the security-based swaps that result from their allocation that the Commission provided in the Regulation SBSR Adopting Release. Furthermore, the examples assume that the bunched order alpha would be cleared using the agency model of clearing.[85] In the case of a bunched order alpha, the final placement of risk will take the form of clearing transactions between: (1) The client accounts of the asset manager and the registered clearing agency that clears the bunched order alpha; and (2) the registered security-based swap dealer and the registered clearing agency.

The Commission understands that market participants may use a variety of workflows for allocating a bunched order alpha. Regulation SBSR, as adopted, provides that, regardless of the workflow employed, a bunched order alpha that is executed off-platform shall be reported and publicly disseminated as a single transaction, showing the full notional amount.[86] The proposed interpretation discussed below would take the same approach to bunched order alphas that are executed on a platform. Regulation SBSR, as adopted, further provides that the security-based swaps that result from allocation of a bunched order execution are subject to regulatory reporting but not public dissemination, if these resulting security-based swaps are uncleared. The proposed interpretation discussed below would take the same approach to cleared security-based swaps that result from the allocation of a bunched order alpha.[87]

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[82] *See* Regulation SBSR Adopting Release, Section VIII. The Commission recognizes that market participants may use a variety of other terms to refer to such transactions, including ''blocks,'' ''parent/child'' transactions, and ''splits.'' The Commission has determined to use a single term, ''bunched orders,'' for purposes of this release, as this appears to be a widely accepted term. *See, e.g.,* ''Bunched orders challenge SEFs,'' MarketsMedia (March 25, 2014), available at *http://marketsmedia.com/bunched-orders-challenge-sefs/,* (last visited September 22, 2014); ''Cleared bunched trades could become mandatory rule,'' *Futures and Options World* (October 31, 2013), available at *http://www.fow.com/3273356/Cleared-bunched-trades-could-become-mandatory-rule.html,*(last visited September 22, 2014).

[83] In aggregate, the notional amount of the security-based swaps that result from the allocation is the same as the notional amount of the executed bunched order.

[84] Regulation SBSR Adopting Release, Section VIII.

[85] As noted in Section II(A), *supra,* the agency model of clearing predominates in the United States.

[86] *See* Regulation SBSR Adopting Release, Section VIII(A).

[87] *See* ISDA IV at 10 (recommending that bunched order executions be subject to public dissemination instead of the transactions resulting from the allocation).

1. Example 1: Off-Platform Cleared Transaction

Assume that an asset manager, acting on behalf of several advised accounts, executes a bunched order alpha with a registered security-based swap dealer. The execution does not occur on a platform, and there are no indirect counterparties on either side of the bunched order alpha. The transaction is submitted to a registered clearing agency.

a. Reporting the Bunched Order Alpha

The reporting hierarchy of Rule 901(a)(2)(ii), as adopted, applies to the bunched order alpha because the execution does not occur on a platform and the bunched order alpha is not a clearing transaction. Under Rule 901(a)(2)(ii)(B), as adopted, the registered security-based swap dealer is the reporting side for the bunched order alpha because its side includes the only registered security-based swap dealer. As the reporting side, the registered security-based swap dealer must report the primary and secondary trade information for the bunched order alpha to a registered SDR (the ''alpha SDR'') of its choice within 24 hours after the time of execution. Rule 902(a), as adopted, requires the alpha SDR to publicly disseminate a transaction report of the bunched order alpha immediately upon receiving the report from the registered security-based swap dealer.[88]

When the registered security-based swap dealer submits the bunched order alpha to a registered clearing agency for clearing, proposed Rule 901(a)(3) would require the registered security-based swap dealer promptly to provide the registered clearing agency with the transaction ID of the bunched order alpha and the identity of the alpha SDR. This requirement would facilitate the registered clearing agency's ability to report whether or not it accepts the bunched order alpha for clearing pursuant to proposed Rule 901(e)(1)(ii).

b. Reporting the Security-Based Swaps Resulting From Allocation

Proposed Rule 901(a)(2)(i) would require the registered clearing agency to report all clearing transactions that arise as a result of clearing the bunched order alpha, regardless of the workflows used to clear the bunched order alpha.[89]

If the asset manager provides allocation instructions prior to or contemporaneous with the clearing of the bunched order alpha, clearing could result in the creation of a beta (*i.e.,* the clearing transaction between the registered clearing agency and the security-based swap dealer) and a ''gamma series'' (*i.e.,* the gammas between the registered clearing agency and each of the client funds selected by the asset manager to receive a portion of the initial notional amount). The beta and each security-based swap that comprises the gamma series would not be treated differently under Regulation SBSR than any other clearing transactions.[90]

If the asset manager does not provide allocation instructions until after the bunched order alpha is cleared, clearing could result in the creation of a beta (*i.e.,* the clearing transaction between the registered clearing agency and the security-based swap dealer) and an ''intermediate gamma'' (*i.e.,* the clearing transaction between the clearing agency and the side representing the clients of the asset manager). The beta would be the same—and would be treated the same—as any other clearing transaction, while the intermediate gamma would continue to exist until the registered clearing agency receives the allocation information, which could come from the asset manager or its clearing member and would allow for the creation of the gamma series. As the registered clearing agency receives the allocation information, it would terminate the intermediate gamma and create new security-based swaps as part of the gamma series. The partial terminations of the intermediate gamma would be life cycle events of the intermediate gamma that the registered clearing agency must report under Rule 901(e)(1)(i), as adopted. Rule 901(e)(2), as adopted, would require the registered clearing agency to report these life cycle events to the same registered SDR to which it reported the intermediate gamma. Under proposed Rule 901(a)(2)(i), the registered clearing agency also would be required to report to a registered SDR each new security-based swap comprising part of the gamma series. Because these security-based swaps arise from the termination (or partial termination) of an existing security-based swap (*i.e.,* the gamma series), Rule 901(d)(10), as adopted, requires the registered clearing agency to link each new transaction in the gamma series to the intermediate gamma by including the transaction ID of the intermediate gamma as part of the report of each new security-based swap in the gamma series.

2. Example 2: Cleared Platform Transaction

Assume the same facts as Example 1, except that the registered security-based swap dealer and asset manager execute the bunched order alpha on a SB SEF.

a. Reporting the Bunched Order Alpha

Because the initial transaction is executed on a platform and will be submitted to clearing, the platform would have the duty, under proposed Rule 901(a)(1), to report the bunched order alpha to a registered SDR. To satisfy this reporting obligation, the platform would be required to provide all of the applicable information required by proposed Rule 901(a)(1). Commission staff understands from discussions with market participants that, even if the platform does not know and thus cannot report the counterparty IDs of each account that will receive an allocation, the platform would know the identity of the execution agent who executed the bunched order alpha on behalf of its advised accounts. The platform, therefore, could report the execution agent ID of the execution agent, even though it might not know the intended counterparties of the security-based swaps that will result from the allocation.[91] Rule 902(a), as adopted, requires the registered SDR that receives the report of the bunched order alpha from the platform to publicly disseminate a report of the bunched order alpha. Then, pursuant to Rule 906(a), as adopted, the registered SDR would be required to obtain any missing UICs from its participants.

b. Reporting the Security-Based Swaps Resulting From Allocation

If the asset manager provides allocation instructions prior to or contemporaneous with the clearing of the bunched order alpha, clearing would (under the agency model of clearing) result in the creation of a beta (*i.e.,* the clearing transaction between the registered clearing agency and the registered security-based swap dealer)

[88] Pursuant to Rule 906(a), as adopted, the registered SDR also would be required to obtain any missing UICs from the counterparties.

[89] Like other clearing transactions that arise from the acceptance of a security-based swap for clearing, these security-based swaps would not be subject to public dissemination. *See* Rule 902(c)(6). *See also* Rule 902(c)(7) (exempting from public dissemination any ''information regarding the allocation of a security-based swap''); Regulation SBSR Adopting Release, Section VI(D)(1) (describing final Rule 902(c)(7)).

[90] *See supra* Section II(C)(1) (explaining the reporting process for clearing transactions).

[91] *See* Rule 901(d)(1) (requiring reporting of the counterparty ID ''or the execution agent ID of each counterparty, if applicable''). If the counterparties—*i.e.,* the specific accounts who will receive allocations—are not yet known, the requirement to report the execution agent ID instead of the counterparty ID would apply. Similarly, if the asset manager uses an execution agent to access the platform, the platform would report the identity of the asset manager's execution agent.

and a ''gamma series'' (*i.e.,* the gammas between the clearing agency and each of the asset manager's clients). The beta and each security-based swap that comprises the gamma series would be no different—and would not be treated differently under Regulation SBSR—from other clearing transactions.[92]

If the asset manager does not provide allocation instructions until after the bunched order alpha is cleared, clearing (under the agency model) would result in the creation of a beta (between the registered clearing agency and the security-based swap dealer) and an intermediate gamma (between the registered clearing agency and the side representing the clients of the asset manager). The registered clearing agency would then be required to report the termination of the bunched order alpha and the creation of the beta and intermediate gamma, pursuant to proposed Rules 901(e)(1)(ii) and 901(a)(2)(i), respectively. From this point on, the beta would be treated the same as any other clearing transaction, while the intermediate gamma would be decremented and replaced by the gamma series, as described in Example 1.

B. Request for Comment

The Commission requests comment on all aspects of its preliminary views regarding how the proposed amendments to Regulation SBSR would apply to various allocation scenarios involving cleared security-based swaps.

21. Is the Commission's discussion of how Regulation SBSR—under the amendments proposed in this release—would apply to different steps in the process for reporting the betas and gammas that result from clearing a bunched order alpha sufficiently clear and complete? If not, please provide detail about particular steps that you believe the Commission has not adequately addressed and how you believe they should be treated under Regulation SBSR.

22. Are there additional processes or workflows related to the clearing of bunched order alphas for which market participants need guidance? If so, please describe these situations and your recommendation for how Regulation SBSR should address them.

23. Do asset managers identify the clients that will receive allocations from a bunched order alpha before the bunched order alpha is submitted to clearing? If so, when is allocation of the bunched order alpha complete? If the bunched order alpha is allocated prior to clearing, would the information provided to the registered clearing agency allow the registered clearing agency to recognize that it is clearing a bunched order alpha? If a registered clearing agency is unable to recognize that it is clearing a bunched order alpha, would the registered clearing agency be able to fulfill its reporting duties under the proposed amendments to Regulation SBSR?

IV. Reporting and Public Dissemination of Prime Brokerage Transactions

Commission staff understands from discussions with market participants that, under a prime brokerage arrangement, a customer of a prime broker will negotiate and agree to the economic terms of a security-based swap with a registered security-based swap dealer (the ''executing dealer'') but both the customer and the executing dealer ultimately will face the prime broker, rather than each other.[93] Before negotiating with one or more executing dealers, the customer will first enter into a prime brokerage arrangement with a prime broker.[94] The terms of this arrangement typically will, among other things, set out the types of transactions eligible for prime brokerage treatment, enumerate the executing dealers with whom the customer may negotiate, and establish terms for the credit support and other transaction-related services provided by the prime broker to the customer. A prime brokerage arrangement allows a customer to negotiate transactions with a range of executing dealers without having to negotiate credit documentation with each dealer individually. This is because both the customer and the executing dealer know that the transaction between them will be replaced by separate transactions between each of them and the prime broker, thus obviating the need for credit documentation between the two original counterparties.[95]

Through the prime brokerage arrangement, the prime broker permits the customer to negotiate and agree to the terms of security-based swaps with approved executing dealers, subject to specified limits and parameters.[96] If the terms of the transaction agreed to by the customer and the executing dealer are within those parameters, the prime broker would replace the initial transaction between the customer and the executing dealer with two separate transactions—one between the prime broker and the customer and the second between the prime broker and the executing dealer—having substantially the same terms as the original transaction between the customer and the executing dealer. Thus, a prime brokerage arrangement in the security-based swap market typically results in the following three transactions:

- *Transaction 1.* The customer and the executing dealer negotiate and agree to the terms of a security-based swap transaction (the ''customer/executing dealer transaction'') and notify the prime broker of these terms.
- *Transaction 2.* The prime broker will accept the transaction and face the executing dealer in a security-based swap with the same economic terms agreed to by the executing dealer and the customer, if the terms are within the parameters established by the prime brokerage arrangement (the ''prime broker/executing dealer transaction'').
- *Transaction 3.* Upon executing the security-based swap with the executing dealer, the prime broker will enter into an offsetting security-based swap with the customer (the ''prime broker/customer transaction'').[97]

A. Application of Regulation SBSR as Adopted to Prime Brokerage Transactions

The Commission understands that prime brokerage arrangements involve credit intermediation offered by the prime broker, rather than a registered clearing agency. Thus, prime brokerage transactions are not cleared. Therefore, Rule 901(a)(2)(ii), as adopted, assigns the reporting duty for Transaction 1,

[92] *See supra* Section II(C)(1) (explaining the reporting process for clearing transactions).

[93] *See* The Financial Markets Lawyers Group, CFTC No-Action Letter No. 12–53 at 2–3 (December 17, 2012) (''CFTC NAL No. 12–53''); Division of Swap Dealer and Intermediary Oversight, CFTC No-Action Letter at 3–4 (April 30, 2013) (''CFTC NAL No. 13–11''). These no-action letters describe the CFTC's understanding of prime brokerage arrangements in the swap market. It is the Commission's understanding that prime brokerage arrangements in the security-based swap market are similar to those in the swap market.

[94] For purposes of this release, the Commission assumes that both the prime broker and the executing dealer would be registered security-based swap dealers.

[95] The agreement between the customer and the executing dealer would constitute a contract for the sale of a security for purposes of the federal securities laws. *See* Securities Offering Reform, Securities Act Release No. 33–8591 (July 19, 2005), 70 FR 44722, 44767 (August 3, 2005) (discussing the determination of the time of sale with respect to a contract of sale for securities and noting that ''a contract of sale under the federal securities laws can occur before there is an unconditional bilateral contract under state law'').

[96] *See* ISDA, 2005 Master Give-Up Agreement (providing standard terms that market participants can use to document prime brokerage arrangements). *See also* CFTC NAL No. 12–53, *supra* note 93, at 2–3 (describing a typical prime brokerage arrangement in the swap market).

[97] *See* CFTC NAL No. 12–53, *supra* note 93, at 2–3; CFTC NAL No. 13–11, *supra* note 93, at 3–4 (describing typical prime brokerage arrangements in the swap market).

because Transaction 1 is not a clearing transaction.

If the prime broker determines that Transaction 1 meets the terms of the prime brokerage arrangement, the prime broker would initiate Transactions 2 and 3, which would have the effect of terminating Transaction 1. The termination would be a life cycle event of Transaction 1, and the reporting side for Transaction 1 (likely the executing dealer) would be required by Rule 901(e)(i), as adopted, to report the life cycle event to the same SDR to which it reported the transaction initially.[98] If the reporting side for Transaction1 did not report whether Transaction 1 was terminated, the Commission and market observers might incorrectly conclude that the counterparties to Transaction 1 (the customer and executing dealer) continue to have exposure to each other.

Transactions 2 and 3 (*i.e.,* the prime broker/executing dealer transaction and the prime broker/customer transaction, respectively) also are security-based swaps that must be reported pursuant to Rule 901(a)(2)(ii), as adopted. Because both sides of Transaction 2 likely include a registered security-based swap dealer, the sides are required to select the reporting side. In the case of Transaction 3, however, the prime broker is likely to be the only registered security-based swap dealer involved in the transaction, in which case the prime broker would be the reporting side.[99]

[98] If the prime broker determines that Transaction 1 does not meet the terms of the prime brokerage arrangement, the executing dealer also would be required to report this fact to the registered SDR to which it reported the transaction initially pursuant to Rule 901(e)(2), as adopted. Rule 901(e)(2) requires, in relevant part, reporting a life cycle event to the entity to which the original security-based swap was reported. Pursuant to commonly used industry documentation for prime brokerage trades, the rejection by the prime broker could cause the initial transaction to be void or, in some cases, the customer and executing dealer could agree to revise their initial agreement and preserve their contract without the involvement of the prime broker. *See* ISDA, 2005 ISDA Compensation Agreement, at Section 2. In either case, a life cycle event of Transaction 1 would result, because the terms of Transaction 1 would change.

[99] If, however, both sides of Transaction 3 include a registered security-based swap dealer, the sides would be required to select the reporting side. One commenter recommended that, in accordance with current industry practice under the CFTC rules, Regulation SBSR assign the reporting duty for the prime broker/executing broker transaction (Transaction 2) to the executing broker, and responsibility for reporting the prime broker/client transaction (Transaction 3) to the prime broker. *See* ISDA IV at 5. Under the application of the rules as adopted, as just discussed, if both sides of the prime broker/executing broker transaction include a registered security-based swap dealer, the sides are required to choose who has the reporting duty and can choose the executing broker. Likewise, with respect to the prime broker/client transaction, it is likely that the prime broker is the only registered security-based swap dealer involved in the transaction, and thus application of the reporting hierarchy would result in the side with the prime broker being the reporting side.

Furthermore, because each of these transactions is a security-based swap that arises from the termination of another security-based swap (*i.e.,* the Transaction 1), Rule 901(d)(10), as adopted, requires the reporting of Transaction 1's transaction ID as part of the secondary trade information for both Transaction 2 and Transaction 3. As the Commission stated in the Regulation SBSR Adopting Release, Rule 901(d)(10) is designed to ensure that the Commission and other relevant authorities have an accurate picture of counterparty exposures. In the case of prime brokerage transactions, Rule 901(d)(10) should enable the Commission and other relevant authorities to link the three prime brokerage transactions together for surveillance purposes and to identify the parties that ultimately assume the risks of these transactions.

Rule 902(a), as adopted, requires public dissemination of each security-based swap, unless it falls within a category enumerated in Rule 902(c). Each prime brokerage transaction (*i.e.,* the customer/executing dealer transaction, the prime broker/executing dealer transaction, and the prime broker/customer transaction) is subject to Rule 902(a). The statutory provisions relating to the reporting of security-based swap transactions state that ''each'' security-based swap shall be reported; these statutory provisions do not by their terms limit the reporting requirement to transactions having particular characteristics,[100] and Rule 902(c), as adopted, does not contain an exclusion from public dissemination for prime brokerage transactions.

One commenter requested that the Commission exempt the prime broker/customer leg of a prime broker transaction from public dissemination, stating its belief that dissemination of this transaction would not increase price transparency, and a concern that dissemination of this transaction may confuse the market and undermine the value of the data made public.[101] The Commission believes that publicly disseminating reports of prime brokerage transactions could provide market observers with useful information about the cost of the prime broker's credit intermediation services, because prime brokers may charge for these services by pricing Transaction 2 or 3 differently than Transaction 1. This differentiates Transactions 2 and 3 from clearing transactions that are excepted from public dissemination under Rule 902(c)(6), because a registered clearing agency is compensated for its credit intermediation services through clearing fees that are publicly disclosed. With prime brokerage transactions, however, the only mechanism for ascertaining the charge for the credit intermediation service offered by the prime broker would be to compare the prices of Transaction 1 with the prices of the two subsequent transactions. Thus, market observers could discern useful information by comparing reports of the related prime brokerage transactions, and the Commission does not believe at this time that an exception from public dissemination is warranted for any prime brokerage transactions. If a report of each prime brokerage transaction is publicly disseminated, price discovery would be enhanced. The published transaction reports would be required to consist of all the information reported pursuant to Rule 901(c), as adopted, plus any condition flags required by the registered SDR's policies and procedures, such as a flag indicating that the three transactions are related.

Rule 907(a)(4), as adopted, requires each registered SDR to establish and maintain written policies and procedures for, among other things, establishing flags to denote special characteristics of a security-based swap, or special circumstances associated with the execution or reporting of a security-based swap. Rules 907(a)(4)(i) and (ii) require the registered SDR to identify those characteristics or circumstances that could, in the fair and reasonable estimation of the registered SDR, cause a person without knowledge of those characteristic(s) or circumstance(s), to receive a distorted view of the market and establish flags to denote such characteristic(s) or circumstance(s). In the Regulation SBSR Adopting Release, the Commission noted several conditions that registered SDRs generally should consider including in their list of condition flags.[102] The fact that all three transactions in a prime brokerage arrangement are related, the Commission generally believes, is a special circumstance of the type that registered SDRs should consider in developing the condition flags required by Rule 907(a)(4). Absent such flags, market observers might interpret the three transaction reports as three separate pricing events and incorrectly infer the existence of more market

[100] *See* Section 13(m)(1)(G) of the Exchange Act, 15 U.S.C. 78m(m)(1)(G).

[101] *See* ISDA IV at 13.

[102] *See* Regulation SBSR Adopting Release, Section VII(G).

activity than actually exists, which could distort their view of the market.

B. Example of Application of the Adopted Rules

The following example explains how Regulation SBSR, as adopted, would apply to the steps in a prime brokerage transaction described above. For purposes of this example, assume that the customer is a private fund and both the executing dealer and the prime broker are registered security-based swap dealers.[103]

Transaction 1: The Customer/Executing Dealer Transaction

- The executing dealer would be the reporting side under Rule 901(a)(2)(ii) and would be required to report the customer/executing dealer transaction (Transaction 1) to a registered SDR.[104]
- The executing dealer would have up to 24 hours after the time of execution to report to the registered SDR the applicable primary and secondary trade information of Transaction 1.
- Immediately upon receiving the report of Transaction 1, the registered SDR would be required to publicly disseminate a transaction report with all the information required by Rule 902(a).
- When the customer and the executing dealer agree to the terms of Transaction 1, each party would typically report the terms to the prime broker. The Commission understands that, if the terms of Transaction 1 fall within the prime brokerage arrangement, the prime broker would be obligated to face the executing dealer with substantially the same terms agreed upon by the customer and the executing dealer in Transaction 1.
- If the prime broker determines that Transaction 1 meets the terms of the prime brokerage arrangement and accepts the transaction, Transaction 1 would terminate. The executing dealer, as the reporting side for Transaction 1, would be required to report this life cycle event pursuant to Rule 901(e), as adopted, to the same registered SDR that received the initial report of Transaction 1. Immediately upon receiving this report, the registered SDR would be required to publicly disseminate the termination information.
- If the prime broker does not accept the terms agreed to by the customer and executing dealer, the executing dealer, in its capacity as reporting side for Transaction 1, would notify the registered SDR that the prime broker had rejected the transaction pursuant to Rule 901(e)(1)(i), as adopted.

Transaction 2: The Prime Broker/Executing Dealer Transaction

- The executing dealer and prime broker would enter into a prime broker/executing dealer transaction (Transaction 2).
- The prime broker and executing dealer would be required by Rule 901(a)(2)(ii)(A), as adopted, to select the side that would be the reporting side for Transaction 2.
- The reporting side of Transaction 2 would have up to 24 hours after the time of execution to report to the registered SDR the applicable primary and secondary trade information of the transaction. Because Transaction 2 arises from the termination, novation, or assignment of Transaction 1, the reporting side of Transaction 2 would need to report the transaction ID of Transaction 1 pursuant to Rule 901(d)(10), as adopted.[105]
- Immediately upon receiving the report of Transaction 2, the registered SDR would be required to publicly disseminate a transaction report with all the information required by Rule 902(a) and with any flags required by the registered SDR's policies and procedures under Rule 907.

Transaction 3: The Prime Broker/Customer Transaction

- The prime broker would execute the prime broker/customer transaction (Transaction 3) to ''step into'' the position that the executing dealer established against the customer in Transaction 1.
- The prime broker would be the reporting side for Transaction 3 under Rule 901(a)(2)(ii), as adopted.[106]
- The prime broker would have up to 24 hours after the time of execution to report to the registered SDR the applicable primary and secondary trade information of Transaction 3. Because Transaction 3 arises from the termination, novation, or assignment of Transaction 1, the prime broker would need to report the transaction ID of Transaction 1 as part of the report of Transaction 3, pursuant to Rule 901(d)(10), as adopted.[107]
- Immediately upon receiving the report of Transaction 3, the registered SDR would be required to publicly disseminate a transaction report with all the information required by Rule 902(a) and with any flags required by the registered SDR's policies and procedures under Rule 907.

C. Request for Comment

The Commission requests comment on its discussion above of the application of Regulation SBSR to security-based swaps that are part of a prime brokerage arrangement. In particular:

24. Does the description of prime brokerage arrangements above adequately describe prime brokerage arrangements in the security-based swap market? Do market participants employ other types of prime brokerage arrangements? If so, how do these prime brokerage arrangements differ from the arrangements discussed above?

25. Should the prime broker/customer and/or prime broker/executing dealer transactions be exempted from public dissemination? Why or why not?

26. Would market observers benefit from being able to observe any difference in price between the customer/executing dealer transaction and the prime broker/customer and prime broker/executing dealer transactions?

27. Should public reports of related prime brokerage transactions include condition flags to indicate a relationship between the transactions? Would a market participant receive a distorted view of the market if condition flags are not used? Why or why not?

28. Rule 901(e), as adopted, requires the executing dealer to report the termination of the customer/executing dealer transaction, because the executing dealer was the reporting side of that transaction. Should the duty to report the termination of the customer/

[103] One commenter requested that Regulation SBSR specify that the time of execution for the prime broker/executing dealer transaction is the time of commitment to economic terms with the prime broker's client, and that for the prime broker/customer transaction, the prime broker may use the time of acceptance as the time of execution for reporting purposes. *See* ISDA IV at 9. The Commission notes that the time of execution for all security-based swaps is defined in Rule 900(ii), as adopted, as the point at which the counterparties to a security-based swap become irrevocably bound under applicable law. *See* Regulation SBSR Adopting Release, Section II(A)(2)(c). The Commission sees no reason at this time to have a different standard for prime brokerage transactions.

[104] *See* Rule 901(a)(2)(ii)(B) (''If only one side of the security-based swap includes a registered security-based swap dealer, that side shall be the reporting side'').

[105] If the executing dealer is the reporting side for both Transaction 1 and Transaction 2, the executing dealer will know the transaction ID of Transaction 1 and can include it in the report of Transaction 2. However, if the prime broker is the reporting side for Transaction 2, the Commission anticipates that the prime broker will obtain from the executing dealer the transaction ID of Transaction 1, along with all of the other information regarding Transaction 1 that will permit the prime broker to determine whether to accept Transaction 1.

[106] *See* Rule 901(a)(2)(ii)(B) (''If only one side of the security-based swap includes a registered security-based swap dealer, that side shall be the reporting side'').

[107] The Commission anticipates that the prime broker (the reporting side for Transaction 3) will obtain the transaction ID of Transaction 1 from the executing dealer. *See supra* note 104 and associated text.

executing dealer transaction be shifted to the prime broker? Why or why not? As between the executing dealer and the prime broker, which person do you believe is better placed to report the termination? Why?

29. Should the time of execution for any leg of a prime brokerage transaction be defined differently than as provided for in Rule 900(ii)? If so, why?

V. Additional Proposed Amendments

A. Amendments to Rule 905(a)

Rule 905(a), as adopted, establishes a mechanism for reporting corrections of previously submitted security-based swap transaction information. Rule 905(a) applies to any counterparty to a security-based swap that discovers an error in the information reported with respect to that security-based swap. Under Rule 905(a)(1), as adopted, if the non-reporting side discovers the error, the non-reporting side must promptly notify the reporting side of the error. Under Rule 905(a)(2), as adopted, once the reporting side receives notification of the error from the non-reporting side, or if the reporting side discovers the error on its own, the reporting side must promptly submit an amended report—containing the corrected information—to the registered SDR that received the erroneous transaction report. The reporting side must submit the report required by Rule 905(a) in a manner consistent with the policies and procedures of the registered SDR.

As discussed in Section II, *supra,* the Commission is proposing to amend Rule 901(a) to require a platform to report a security-based swap that is executed on the platform and that will be submitted to clearing. Accordingly, to preserve the principle in adopted Rule 905(a) that the person responsible for reporting a security-based swap also should be responsible for submitting a correction if it discovers an error, the Commission is proposing a conforming amendment to Rule 905(a) to account for the possibility that a person who is not a counterparty and is thus not on either side[108] of the transaction (*i.e.,* a platform) could have the original duty to report the transaction. Thus, under the proposed amendment to Rule 905(a)(1), a non-reporting side that discovers an error in the information reported with respect to a security-based swap would be required to promptly notify ''the person having the duty to report'' that security-based swap of the error. The Commission is proposing a similar change to Rule 905(a)(2). Under the proposed amendment to Rule 905(a)(2), the person having the duty to report a security-based swap, whether a side or a platform, would be required to correct previously reported erroneous information with respect to that security-based swap if it discovers an error or if it receives notification of an error from a counterparty.

B. Amendments to Rules 906(b) and 907(a)(6)

Under the proposed amendment to Rule 900(u) described above,[109] the definition of ''participant'' would be expanded to include platforms that are required to report platform-executed security-based swaps that are submitted to clearing and registered clearing agencies that are required to report whether or not an alpha is accepted for clearing. Rule 906(b), as adopted, requires each participant of a registered SDR to provide the registered SDR information sufficient to identify any affiliate(s) of the participant that also are participants of the registered SDR and any ultimate parent(s) of the participant.[110] By itself, the proposed amendment to Rule 900(u) would subject platforms and registered clearing agencies that are required to report whether or not they accept alpha transactions for clearing to the requirements of Rule 906(b).[111]

The Commission preliminarily believes that the purposes of Rule 906(b)—namely, facilitating the Commission's ability to measure derivatives exposure within the same ownership group—would not be advanced by requiring platforms and registered clearing agencies to report parent and affiliate information to a registered SDR. To the extent that a platform has an affiliate that transacts in security-based swaps, the positions of any such affiliate can be derived from other transaction reports indicating that affiliate as a counterparty. There would be no need for the Commission to aggregate the platform's positions with those of its affiliates, because a platform would not assume any position in security-based swaps executed on its facilities. Furthermore, the risk management of a registered clearing agency is directly overseen by the Commission, and the Commission believes that it has adequate tools to carry out this function without subjecting the registered clearing agency to Rule 906(b). Accordingly, the Commission proposes to amend Rule 906(b) to state that reporting obligations under Rule 906(b) do not apply to participants that are platforms or registered clearing agencies.

The Commission proposes to make a similar amendment to Rule 907(a)(6). This rule, as adopted, requires a registered SDR to have policies and procedures ''[f]or periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any participant(s) with which the participant is affiliated, using ultimate parent IDs and counterparty IDs.'' The Commission proposes to amend Rule 907(a)(6) to require a registered SDR to obtain this information only from a participant that is not a platform or a registered clearing agency. Thus, under the proposed amendment, Rule 907(a)(6) would require registered SDR to have policies and procedures ''[f]or periodically obtaining from each participant other than a platform or a registered clearing agency information that identifies the participant's ultimate parent(s) and any participant(s) with which the participant is affiliated, using ultimate parent IDs and counterparty IDs.'' [112]

C. Extending the Applicability of Rule 906(c)

Rule 906(c), as adopted, requires each participant of a registered SDR that is a registered security-based swap dealer or registered major security-based swap participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that the participant complies with any obligations to report information to a registered SDR in a manner consistent with Regulation SBSR. As the

[108] Under Rule 900(hh), as adopted, a ''side'' is a direct counterparty and any guarantor of that direct counterparty's performance who meets the definition of ''indirect counterparty'' in connection with the security-based swap. Under the proposed amendments described above, there would be no ''reporting side'' for a security-based swap for a platform-executed security-based swap that is submitted to clearing. While the platform would have the duty to report, it would not be a counterparty to the security-based swap and thus would not be a side. Furthermore, neither side would have the duty to report, and thus both sides would be non-reporting sides.

[109] *See supra* Section II(B)(3).

[110] *See* Regulation SBSR Adopting Release, Section XIII(B).

[111] The Commission notes that proposed Rule 901(a)(2)(i) and the proposed amendment to Rule 908(b) would have the effect of making a registered clearing agency a participant—under Rule 900(u), as adopted—of any registered SDR to which it reports clearing transactions. Under Rule 900(u), as adopted, a counterparty of a security-based swap that is reported to a registered SDR becomes a participant of that registered SDR (assuming that the counterparty also falls within Rule 908(b), as adopted). The proposed amendment to the definition of ''participant'' also would make a registered clearing agency a participant of any alpha SDR to which it would be required to report whether it had accepted the alpha for clearing.

[112] The Commission notes that, once a participant reports parent and affiliate information to a registered SDR, Rule 906(b) requires the participant to ''promptly notify the registered [SDR] of any changes'' to its parent and affiliate information.

Commission stated in the Regulation SBSR Adopting Release, the policies and procedures required by Rule 906(c) are intended to promote complete and accurate reporting of security-based swap information by SDR participants that are registered security-based swap dealers or registered major security-based swap participants.[113] Rule 906(c) also requires each registered security-based swap dealer and registered major security-based swap participant to review and update its policies and procedures at least annually.

Because the Commission is proposing amendments to Rule 901(a) to assign reporting obligations to platforms and registered clearing agencies, the Commission preliminarily believes that such registered clearing agencies and platforms, like registered security-based swap dealers and major security-based swap participants, should be required to establish and maintain written policies and procedures designed to promote compliance with their reporting obligations. Accordingly, the Commission proposes to amend Rule 906(c) to extend the requirements of Rule 906(c) to registered clearing agencies and platforms that are participants of a registered SDR.

The Commission preliminarily believes that the proposed amendment to Rule 906(c) should result in greater accuracy and completeness of the security-based swap transaction data reported to registered SDRs. Without written policies and procedures, compliance with reporting obligations might depend too heavily on key individuals or unreliable processes. For example, if knowledge of the reporting function was not reflected in written policies and procedures but existed solely in the memories of one or a few individuals, compliance with applicable reporting requirements by the firm might suffer if these key individuals depart the firm. The Commission preliminarily believes, therefore, that requiring participants that are platforms and registered clearing agencies to establish, maintain, and enforce written policies and procedures should promote clear, reliable reporting that can continue independent of any specific individuals. The Commission further believes that requiring such participants to establish, maintain, and enforce written policies and procedures relevant to their reporting responsibilities, as would be required by the proposed amendment to Rule 906(c), would help to improve the degree and quality of overall compliance with the reporting requirements of Regulation SBSR.

D. Rule 908(b)—Limitations on Counterparty Reporting Obligations

Rule 908(b) is designed to help further the cross-border application of Regulation SBSR by specifying what types of counterparties would and would not be subject to any duties under Regulation SBSR. Rule 908(b), as adopted, provides that ''[n]otwithstanding any other provision of [Regulation SBSR], a person shall not incur any obligation under [Regulation SBSR] unless it is: (1) A U.S. person; or (2) A registered security-based swap dealer or registered major security-based swap participant.'' Thus, unregistered non-U.S. persons are not among the kinds of persons listed in Rule 908(b) as having any duties under Regulation SBSR.[114]

Under the proposed amendments described above, platforms and registered clearing agencies would have the duty to report security-based swap transactions to registered SDRs in certain circumstances. Under Rule 908(b), as adopted, U.S. persons are among the types of persons that may incur duties under Regulation SBSR. Therefore, platforms and registered clearing agencies that are U.S. persons already fall within Rule 908(b). The Commission preliminarily believes that all platforms and registered clearing agencies should incur the duties specified in the proposed amendments to Rule 901(a),[115] even if they are not U.S. persons. If the Commission does not propose to amend Rule 908(b) to include all platforms and registered clearing agencies, non-U.S.-person platforms and registered clearing agencies would be able to avoid duties to which U.S.-person platforms and registered clearing agencies would be subject. Therefore, the Commission proposes to amend Rule 908(b) to specifically include platforms and registered clearing agencies as entities that may incur duties under Regulation SBSR. Rule 908(b), as amended, would provide: ''Notwithstanding any other provision of [Regulation SBSR], a person shall not incur any obligation under [Regulation SBSR] unless it is: (1) A U.S. person; (2) A registered security-based swap dealer or registered major security-based swap participant; (3) A platform; or (4) A registered clearing agency.''

E. Request for Comment

The Commission requests comment on all aspects of the proposed amendments to Rules 905, 906(b), 906(c), 907(a)(6), and 908 described above. In particular:

30. Do you believe that Rule 905(a) should be amended to include platforms? Why or why not? Would any other conforming changes to Rule 905 be advisable on account of the proposal to extend reporting duties to platforms?

31. Do you agree with the Commission's proposal to exclude platforms and registered clearing agencies from Rule 906(b)? Why or why not?

32. Should Rule 906(c) be expanded to include platforms and registered clearing agencies? Why or why not?

33. Do you agree with the proposed conforming amendment to Rule 908(b) to include platforms and registered clearing agencies? Why or why not?

34. Do you believe any other conforming amendments to Regulation SBSR are necessary or desirable in light of the Commission's proposal to extend reporting duties to platforms and registered clearing agencies as discussed above? If so, please describe.

VI. Proposed Rule Prohibiting a Registered SDR From Charging Fees for or Imposing Usage Restrictions on Publicly Disseminated Data

A. Background

In addition to implementing the Title VII mandate for regulatory reporting of all security-based swaps, Regulation SBSR also implements the Title VII mandate for public dissemination of all security-based swaps. Section 13(m)(1)(B) of the Exchange Act[116] authorizes the Commission ''to make security-based swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.'' Section 13(m)(1)(C) of the Exchange Act[117] identifies four categories of security-based swaps and directs the Commission to require ''real-time public reporting'' of transaction, volume, and pricing data for each category. Section 13(m)(1)(D) of the Exchange Act[118] authorizes the Commission to require registered entities (such as registered SDRs) to publicly disseminate the security-based swap transaction and

[113] *See* Regulation SBSR Adopting Release, Section XIII(C).

[114] In the Regulation SBSR Adopting Release, however, the Commission stated that it anticipates soliciting additional public comment on whether regulatory reporting and/or public dissemination requirements should be extended to transactions occurring within the United States between non-U.S. persons and which non-U.S. persons should incur reporting duties under Regulation SBSR. *See* Regulation SBSR Adopting Release, Section XV(D).

[115] *See supra* Section II(B).

[116] 15 U.S.C. 78m(m)(1)(B).

[117] 15 U.S.C. 78m(m)(1)(C).

[118] 15 U.S.C. 78m(m)(1)(D).

pricing data required to be reported under Section 13(m) of the Exchange Act. Finally, Section 13(n)(5)(D)(ii) of the Exchange Act [119] requires SDRs to provide security-based swap information ''in such form and at such frequency as the Commission may require to comply with public reporting requirements.''

Accordingly, Rule 902(a), as adopted, requires a registered SDR to publicly disseminate a transaction report of a security-based swap, or a life cycle event or adjustment due to a life cycle event, immediately upon receipt of information about the security-based swap, with certain exceptions noted in Rule 902(c). Rule 900(cc), as adopted, defines ''publicly disseminate'' to mean ''to make available through the Internet or other electronic data feed that is widely accessible and in machine-readable electronic format.''

Four commenters on Regulation SBSR, as originally proposed, raised issues that bear on whether—and, if so, under what terms—a registered SDR would be able to charge for the security-based swap data that Regulation SBSR requires it to publicly disseminate.[120] One of these commenters stated that security-based swap transaction data ''should be made available on reasonable commercial terms.'' [121] Another commenter, which currently operates a trade repository, believed that registered SDRs should make ''data available to value added providers on a non-discriminatory basis'' and that the public utility function of an SDR should be separated from potential commercial use of the data.[122] A third commenter stated that, consistent with reporting practices in other markets, ''the reporting of SBS transaction information to a registered SDR should not bestow the SDR with the authority to use the security-based swap transaction data for any purpose other than those explicitly enumerated in the Commission's regulations.'' [123] A fourth commenter believed that ''market information must be made available . . . on an equal basis, in terms of time of availability and content, to all market participants.'' [124] Finally, a fifth commenter, responding to Regulation SBSR as re-proposed, stated that publicly disseminated data ''should be freely available and readily accessible to the public.'' [125]

In adopting its own rules for public dissemination of swap transactions, the CFTC addressed the issue of whether a swap data repository could charge for its publicly disseminated data. In Section 43.2 of those rules,[126] the CFTC defined ''public dissemination'' and ''publicly disseminate'' to mean ''to publish and make available swap transaction and pricing data in a non-discriminatory manner, through the Internet or other electronic data feed that is widely published and in machine-readable electronic format.'' The CFTC also defined ''widely published'' to mean ''to publish and make available through electronic means and *in a manner that is freely available and readily accessible to the public.''* [127] Furthermore, the CFTC adopted Section 43.3(d)(2), which provides: ''Data that is publicly disseminated . . . shall be available from an Internet Web site in a format that is freely available and readily accessible to the public.'' In doing so, the CFTC noted that ''implicit in this mandate [of public dissemination] is the requirement that the data be made available to the public at no cost'' [128] and that ''Section 43.3(d)(2) reflects the [CFTC]'s belief that *data must be made freely available to market participants and the public,* on a nondiscriminatory basis.'' [129] However, the CFTC's rules permit a swap data repository to offer, for a fee, value-added data products derived from the freely available regulatorily mandated public data and to charge fair and reasonable fees to providers of swap transaction and pricing data.[130]

After consideration of the comments received and the CFTC's requirement that swap data repositories must publish and make available swap transaction data through electronic means and in a manner that is freely available and readily accessible to the public, the Commission now preliminarily believes that a registered SDR should not be permitted to charge fees for the security-based swap transaction data that it is required to publicly disseminate pursuant to Regulation SBSR. Therefore, the Commission is proposing new Rule 900(tt), which would define the term ''widely accessible'' as used in the definition of ''publicly disseminate'' in Rule 900(cc), as adopted, to mean ''widely available to users of the information on a non-fee basis.'' As discussed below, this proposed definition would have the effect of prohibiting a registered SDR from charging fees for, or imposing usage restrictions on, the security-based swap transaction data that it is required to publicly disseminate under Regulation SBSR.

Title VII contains numerous provisions directing the Commission to establish a regime for post-trade transparency in the security-based swap market, which will allow the public to obtain pricing, volume, and other relevant information about all executed transactions.[131] In the Commission's preliminary view, the statutory requirement to make this transaction information publicly available would be frustrated if third parties could charge members of the public for the right to access that disseminated data.

The Commission furthermore believes that Title VII's public dissemination requirements should be interpreted in light of the current structure of the security-based swap market, which developed as an over-the-counter market without transparent volume and pricing information.[132] In the current market, large dealers and certain other large market participants are able to observe their own order flow and executions to develop a better view of the market than smaller market participants. Because of this greater amount of private order flow, larger market participants are better able to assess current market values and have a negotiating advantage over smaller, less informed counterparties. The Commission is concerned that, to the extent that the amount or structure of the fee deters use by smaller market participants, information asymmetries in the security-based swap market would persist and there would be less efficiency and competition in the

[119] 15 U.S.C. 78m(n)(5)(D)(ii).

[120] *See* Better Markets II at 2; DTCC II at 27; DTCC III at 2; Markit I at 2; WMBAA II at 8.

[121] Markit I at 2.

[122] DTCC II at 27 (also stating that it is ''good public policy that the aggregating entity not itself use the data for commercial purposes, particularly where data is required to be reported to an aggregator serving a regulatory purpose, and make such data available to value added providers on a non-discriminatory basis, consistent with restrictions placed on the data by the data contributors themselves''); DTCC III at 2 (stating that the mandatory reporting regime ''creates an opportunity for the SDR to improperly commercialize the information it receives'' and that it is ''important that regulators ensure that the public utility function of SDRs, which . . . support regulatory oversight and supervisory functions, as well as regulator-mandated public reporting, is separated from potential commercial uses of the data'').

[123] WMBAA II at 8. *See also* SDR Adopting Release, Section VI(D)(3) (discussing commercial use of information by SDRs).

[124] Better Markets II at 2.

[125] ISDA IV at 17.

[126] 17 CFR 43.2.

[127] *Id.* (emphasis added).

[128] Commodity Futures Trading Commission, Real-Time Public Reporting of Swap Transaction Data (Final Rule), 77 FR 1182, 1207 (January 9, 2012) (emphasis added).

[129] *Id.* at 1202.

[130] *See id.*

[131] *See supra* notes 116 to 119 and accompanying text.

[132] *See* Cross-Border Proposing Release, 78 FR 31126.

market than if pricing and volume data were available to all market participants for free.

The Commission has considered the alternative of allowing registered SDRs to charge users fees, on a cost-recovery basis, for receiving the security-based swap transaction data that the registered SDR is required to publicly disseminate. However, the Commission is not proposing that alternative. A person that registers with the Commission as an SDR is also likely to be registered with the CFTC as a swap data repository. A dually registered SDR would likely use the same infrastructure to support public dissemination of swap transaction data as well as security-based swap transaction data. The Commission preliminarily believes that it would be difficult if not impossible to allocate the overhead and ongoing costs of a dually registered SDR to support mandated public dissemination between its swap-related functions and security-based-swap-related functions. As a result, it is unlikely that any such fee imposed on users by the SDR would go exclusively to offsetting the costs of publicly disseminating the regulatorily mandated security-based swap transaction data, rather than the costs associated with publicly disseminating swap data or other SDR functions. Therefore, the Commission preliminarily believes that permitting SEC-registered SDRs to impose fees on users for receiving the security-based swap transaction data that the SDR is required to publicly disseminate, even on a cost-recovery basis, while the CFTC prohibits swap data repositories from doing the same could result in a cross-subsidy for the public dissemination of swap data.

The Commission recognizes that establishing and operating registered SDRs so that they can carry out the duties assigned to them under Title VII entails various costs. However, the Commission preliminarily believes that prohibiting registered SDRs from imposing fees on users for receiving the security-based swap transaction data that the SDR is required to publicly disseminate would not impede their ability to carry out their functions. Another means exists for registered SDRs to obtain funds for their operations that the Commission preliminarily believes is more appropriate: Imposing fees on those persons who are required to report transactions. Under such an approach, fees imposed by a registered SDR for reporting would increase in direct proportion to the number of transactions that a market participant is required to report. The Commission notes that CFTC-registered swap data repositories, some of which are likely to apply for registration with the Commission as SDRs for security-based swaps, currently disseminate regulatorily mandated public swap data for free pursuant to the CFTC's rules, and obtain funds for their operations through other means, including reporting fees.[133] Thus, the Commission preliminarily believes that—the proposed definition of ''widely accessible'' notwithstanding—SEC-registered SDRs would have adequate sources for their funding even if they are prohibited from charging users fees for receiving the security-based swap transaction data that the SDR is required to publicly disseminate.

In addition, the Commission preliminarily believes that it is necessary to prohibit a registered SDR from charging users of regulatorily mandated security-based swap transaction data for public dissemination of the data to reinforce Rule 903(b), as adopted. Rule 903(b) provides that a registered SDR may disseminate information using UICs (such as product IDs or other codes—*e.g.,* reference entity identifiers—embedded within the product IDs) or permit UICs to be used for reporting by its participants only if the information necessary to interpret such UICs is widely available on a non-fee basis. The Commission is concerned that a registered SDR that wished to charge (or allow others to charge) users for the information necessary to understand these UICs—but could not, because of Rule 903(b)—might seek to do so indirectly by recharacterizing the charge as being for public dissemination. Under these circumstances, the economic benefit to the registered SDR would be the same, but how the registered SDR characterizes the fee—*i.e.,* whether as a charge to users for public dissemination or as a charge of accessing the UICs within the publicly disseminated data—would be the difference between the fee being permissible or impermissible under Rule 903(b). Thus, permitting a registered SDR to charge users for receiving the publicly disseminated transaction data could undermine the purpose of Rule 903(b). Accordingly, the Commission is proposing a definition of ''widely accessible'' to mean ''widely available to users of the information on a non-fee basis.'' The language of the proposed definition echoes the language of Rule 903(b), as adopted, which requires a registered SDR to permit information to be reported or publicly disseminated using codes in place of certain data elements only if the information necessary to interpret such codes is ''widely available to users of the information on a non-fee basis.''

Similar to the Commission's statement regarding Rule 903(b) in the Regulation SBSR Adopting Release,[134] the proposed requirement that information be ''widely available to users of the information on a non-fee basis'' necessarily implies that a registered SDR would not be permitted to impose—or allow to be imposed—any usage restrictions on the security-based swap transaction information that it is required to publicly disseminate, including restrictions on access to or further distribution of the regulatorily mandated public security-based swap data. Market data usage restrictions typically take the form of an agreement between the provider and the users of the data. If a registered SDR could deny or limit access to a user based solely on the user's violation of a usage restriction, the registered SDR would not be in compliance with Rule 902(a), which requires the registered SDR to publicly disseminate the information in a manner that is ''widely available.'' The Commission preliminarily believes that public dissemination would not satisfy the ''widely available'' standard if the registered SDR could deny access to users who do not agree to limit their use of the data in any manner directed by the registered SDR. Here, the Commission notes the asymmetric bargaining strength of the parties: A registered SDR might effectively have a monopoly position over the security-based swap transaction data that the registered SDR is required to publicly disseminate. If a registered SDR could impose usage restrictions with which a user does not wish to comply, there would be no other source from which the user could freely obtain these transaction data.

[133] *See* BSDR Fee Schedule at *http://www.bloombergsdr.com/assets/img/BSDR%20-%20Exhibit%20O%20(Fees).pdf* (last visited on October 24, 2014); CME Swap Data Repository Fee Schedule at *http://www.cmegroup.com/market-data/files/cme-repository-service-fee-schedule.pdf* (last visited on October 24, 2014); DTCC Derivatives Repository US Fee Schedule at *http://www.dtcc.com/~/media/Files/Downloads/Data-and-Repository-Services/GTR/US-DDR/DDR_Fees.pdf* (last visited on October 24, 2014); ICE Trade Vault Service and Pricing Schedule at *https://www.theice.com/publicdocs/ICE_Trade_Vault_Fee_Schedule.pdf* (last visited on October 24 2014).

[134] *See* Regulation SBSR Adopting Release, Section X(B)(3) (noting that the ''Commission does not believe that access to [publicly disseminated] information should be impeded by having to pay fees or agree to usage restrictions in order to understand any coded information that might be contained in the transaction data'').

The proposed prohibition on usage restrictions would have the effect of prohibiting a restriction on bulk redistribution by third parties of the regulatorily mandated transaction data that the registered SDR publicly disseminates. The Commission preliminarily believes that it could prove useful to the public for intermediaries to collect, consolidate, and redistribute the regulatorily mandated transaction data to the public. Users of the data might, instead of obtaining data directly from each of several SDRs, find it preferable to obtain the data from a single person who itself obtains the data directly from the multiple registered SDRs and consolidates it. The Commission preliminarily believes that allowing unencumbered redistribution would be more consistent with the policy goals of wide availability of the data and minimization of information asymmetries in the security-based swap market. If the Commission prohibits registered SDRs from imposing a restriction on bulk redistribution, third parties would be able to take in the full data set and scrub, reconfigure, aggregate, analyze, repurpose, or otherwise add value to those data, and potentially sell that value-added product to others.

Rule 902(a), as adopted, and the proposed definition of ''widely available'' would not prohibit a registered SDR from creating and charging fees for a value-added data product that incorporates the regulatorily mandated transaction data, provided that the registered SDR has first satisfied its duty under Rule 902(a) and effected public dissemination of each security-based swap transaction in accordance with the proposed definition of ''widely available.'' [135] In other words, a registered SDR could make publicly available both a regulatorily mandated and value-added data product. However, to comply with Rule 902(a), as adopted, a registered SDR is required to publicly disseminate a transaction report of a security-based swap (assuming that the transaction does not fall within Rule 902(c), as adopted) immediately upon receipt of information about the security-based swap. Thus, the registered SDR could not make the value-added product available before it publicly disseminated the regulatorily mandated transaction report. If a registered SDR makes a fee-based, value-added product available more quickly than the required transaction report, the registered SDR would not be acting consistent with Rule 902(a) because it would not be disseminating the required transaction report immediately.

This approach is consistent with parallel requirements under CFTC rules that require regulatorily mandated data be freely available to the public, but do not prohibit a CFTC-registered swap data repository from making commercial use of such data subsequent to its public dissemination.[136] This approach also is designed to promote competition in the market for value-added security-based swap data products. Other potential competitors in this market will necessarily have to obtain the regulatorily mandated transaction information from a registered SDR, because the SDR has a monopoly on this information until it is made widely accessible to the public. Potential competitors could be at a disadvantage if, needing to obtain the raw material for their own services, they had to purchase a value-added data product from the registered SDR or could obtain the regulatorily mandated transaction data only on a delayed basis. The Commission believes that the transparency goals of Title VII will be furthered by reducing impediments to competition in the market for value-added post-trade data products relating to security-based swaps.

B. Request for Comment

The Commission requests comment on the proposed definition of ''widely accessible'' as applied to the public dissemination requirement of Rule 902(a), as adopted. In particular:

35. Do you believe that registered SDRs should be prohibited from charging users fees for or imposing usage restrictions on the security-based swap transaction information that registered SDRs are required to publicly disseminate under Rule 902(a)? Why or why not?

36. What effects would result if registered SDRs were permitted to charge users fees for regulatorily mandated public dissemination even though CFTC-registered SDRs are prohibited from doing so?

37. Do means exist for registered SDRs to recoup their operating costs other than by imposing fees on users for receiving and using the publicly disseminated transaction data? If so, please describe those means.

38. Should a registered SDR be prohibited from imposing any usage restrictions on the regulatorily mandated security-based swap transaction data that it publicly disseminates? Why or why not? What kinds of usage restrictions are typically included in user agreements for other types of market data? What would be the effect of prohibiting such usage restrictions from being imposed on the regulatorily mandated security-based swap transaction information that is publicly disseminated by registered SDRs?

39. Should a registered SDR be permitted to impose a prohibition against bulk re-dissemination of the regulatorily mandated transaction data that it publicly disseminates? Why or why not?

40. Do you believe that the proposed definition of ''widely accessible'' as applied to the public dissemination requirement of Rule 902(a), as adopted, would impact the market for value-added post-trade data products in the security-based swap market? Why or why not? If so, how would it affect the market?

VII. Proposed Compliance Schedule for Regulation SBSR

In the Regulation SBSR Proposing Release, the Commission proposed Rule 910, which would have set forth various compliance dates under Regulation SBSR and, in general, was designed to clarify the implementation process. The Commission did not adopt Rule 910 in the Regulation SBSR Adopting Release. Although the Commission received comment on its proposed compliance schedule, the Commission now believes that a new compliance schedule for most of the rules in Regulation SBSR should be proposed in light of the fact that industry infrastructure and capabilities have changed since the initial proposal. Most notably, the CFTC regime for swap data reporting and dissemination is operational. The Commission understands that persons who are likely to apply for registration with the Commission as SDRs are already CFTC-registered swap data repositories, and many swap market participants are also active in the security-based swap market. Thus, these SDRs and many security-based swap market participants already have made substantial investments in compliance and reporting systems that will likely also be utilized to support Regulation SBSR compliance.

Finally, the Commission now believes that it is not necessary to include compliance dates within the text of

[135] The SDR Adopting Release discusses generally the commercial use of security-based swap data. *See* SDR Adopting Release, Section VI(D)(3)(c)(iii).

[136] *See* ''Real-Time Public Reporting of Swap Transaction Data'' (December 20, 2011), 77 FR 1182, 1207 (January 9, 2012) (adopting rules for the public dissemination of swaps).

Regulation SBSR.[137] Not including a compliance schedule in the text of Regulation SBSR would prevent portions of Regulation SBSR from becoming obsolete soon after adoption while still providing affected persons with guidance about when they are required to comply with the various provisions of Regulation SBSR.

A. Initial Proposal

1. Rule 910

In the Regulation SBSR Proposing Release, the Commission proposed Rule 910 to provide clarity as to security-based swap reporting and dissemination timelines and to establish a phased-in compliance schedule for Regulation SBSR.[138] As initially proposed, Rule 910 would have required reporting of pre-enactment security-based swaps by January 12, 2012, and would have implemented a compliance schedule for Regulation SBSR in four phases. Each registered SDR and its participants would have been required to comply with the requirements of each phase by set periods of time measured from the registration date of that registered SDR, as described in more detail below:

- *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).
- *Phase 2,* nine months after the registration date: The registered SDR would have been required to disseminate transaction reports and corrected transaction reports for 50 security-based swap instruments.
- *Phase 3,* 12 months after the registration date: The registered SDR would have been required to disseminate transaction reports and corrected transaction reports for an additional 200 security-based swap instruments.
- *Phase 4,* 18 months after the registration date: The registered SDR would have been required to disseminate transaction reports and corrected transaction reports for all security-based swaps reported to the registered SDR.

2. Rule 911

The Regulation SBSR Proposing Release included proposed Rule 911, which was designed to prevent evasion of the public dissemination requirement during a period when two or more SDRs had registered with the Commission but were operating under different compliance dates. Rule 911, as re-proposed, would have provided that a reporting side shall not report a security-based swap to a registered SDR in a phase-in period described in Rule 910 during which the registered SDR is not yet required to publicly disseminate transaction reports for that security-based swap instrument unless: (1) The security-based swap also is reported to a registered SDR that is disseminating transaction reports for that security-based swap instrument, consistent with proposed Rule 902; or (2) no other registered SDR is able to receive, hold, and publicly disseminate transaction reports regarding that security-based swap instrument.

B. New Proposed Compliance Schedule

The Commission is proposing a new compliance schedule for Rules 901, 902, 903, 904, 905, 906, and 908 of Regulation SBSR[139] that is designed to provide affected persons, especially registered SDRs and persons with a duty to report security-based swap transactions to registered SDRs, with time to develop, test, and implement reporting and dissemination systems.[140] The proposed compliance schedule is tied to the commencement of operations of a registered SDR in an asset class.[141] Registered SDRs will need time to make the necessary technological and other preparations needed, including implementing policies and procedures,[142] to begin receiving and disseminating security-based swap information. Persons with a duty to report transactions will need time to analyze the policies and procedures of registered SDRs to which they wish to connect, make necessary changes to their internal systems, policies and procedures, and processes to conform to the requirements of the SDR's policies and procedures, and establish and test their linkages to the SDRs.

In light of these activities that must occur before full compliance with

[137] Therefore, the Commission did not adopt the defined terms ''effective reporting date,'' ''phase-in period,'' and ''registration date'' that were included in Rule 900, as originally proposed, which terms appeared only in proposed Rule 910.

[138] As part of the Cross-Border Proposing Release, the Commission re-proposed Rule 910 with only minor changes. Rule 910(b)(4) was re-proposed to reflect that certain cross-border security-based swaps would be subject to regulatory reporting but not public dissemination. *See* Cross-Border Proposing Release, 78 FR 31067. As originally proposed, Rule 910(b)(4) would have provided that all security-based swaps reported to a registered SDR would be subject to real-time public dissemination as specified in Rule 902. *See* Regulation SBSR Proposing Release, 75 FR 75244. The Commission also replaced the term ''reporting party'' with ''reporting side'' in re-proposed Rule 910.

[139] For Rules 900, 907, and 909 of Regulation SBSR, the compliance date is the effective date of Regulation SBSR. *See* Regulation SBSR Adopting Release, Section I(F).

[140] As discussed in the Cross-Border Proposing Release, re-proposed Rule 908(a) would have provided an exception to public dissemination for transactions executed by a non-U.S. person who is guaranteed by a U.S. person, where there is no U.S. person or security-based swap dealer on the other side and the transaction is not cleared through a clearing agency having its principal place of business in the United States. As discussed in the Regulation SBSR Adopting Release, the Commission did not adopt this proposed exception. Rather, Rule 908(a)(1), as adopted, requires public dissemination of a security-based swap if one side consists of a non-U.S.-person direct counterparty and a U.S.-person guarantor, where neither is a registered security-based swap dealer or registered major security-based swap participant, and the other side includes no counterparties that are U.S. persons, registered security-based swap dealers, or registered major security-based swap participants (a ''covered cross-border transaction''). *See* Cross-Border Proposing Release, 78 FR 31062–63. The Commission anticipates seeking additional comment on whether or not to except covered cross-border transactions from public dissemination. Therefore, the Commission also is proposing to defer the compliance date for Rule 908(a)(1)(i) with respect to the public dissemination of covered cross-border transactions until such time as the Commission receives and considers public comment on such an exception or establishes a separate compliance date for these transactions.

[141] Rule 13n–1(c)(3) under the Exchange Act provides that the Commission shall grant registration of an SDR if ''the Commission finds that such security-based swap data repository is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as a security-based swap data repository, comply with any applicable provision of the federal securities laws and the rules and regulations thereunder, and carry out its functions in a manner consistent with the purposes of Section 13(n) of the Act (15 U.S.C. 78m(n)) and the rules and regulations thereunder.'' Although a registered SDR will have demonstrated its operational capability during the registration process, a registered SDR is not required to and likely will not formally commence operations as a registered SDR on the same day that it is approved for registration.

[142] As part of the SDR registration process, a potential registrant must provide all of the policies and procedures required by Rule 907; the Commission will review those policies and procedures in assessing whether to approve the registration. *See* Form SDR (requiring applicants to attach as Exhibit GG all of the policies and procedures required under Regulation SBSR). In connection with its registration as an SDR, the potential registrant also must register as a securities information processor (''SIP'') as required by Rule 909. Rule 907 provides, among other things, that a registered SDR must establish certain policies and procedures relating to the receipt, reporting, and dissemination of security-based swap data. Rule 909, as adopted, provides that a registered SDR must also register with the Commission as a SIP. The compliance date for Rules 907 and 909 will be 60 days after publication of the Regulation SBSR Adopting Release in the **Federal Register**. *See* Regulation SBSR Adopting Release, Section I(F).

Regulation SBSR can be expected, the Commission is proposing the following phased-in compliance schedule for Regulation SBSR:

1. Proposed Compliance Date 1

Proposed Compliance Date 1 relates to the regulatory reporting of newly executed security-based swaps as well pre-enactment and transitional security-based swaps. On the date six months after the first registered SDR that accepts reports of security-based swaps in a particular asset class commences operations as a registered SDR, persons with a duty to report security-based swaps under Regulation SBSR would be required to report all newly executed security-based swaps in that asset class to a registered SDR. Furthermore, after Compliance Date 1, persons with a duty to report security-based swaps also would have a duty to report any life cycle events of any security-based swaps that previously had been required to be reported.

The Commission recognizes that market participants will need adequate time to analyze and understand the policies and procedures of registered SDRs, to establish reporting connections to registered SDRs, and to develop new systems for capturing and reporting transaction information. The Commission preliminarily believes that this time period is an appropriate amount of time for market participants to do so. Any registered SDR that has commenced operations will have established policies and procedures that are consistent with Rule 907. Therefore, six months should allow adequate time for market participants to make the preparations necessary to connect with and report to a registered SDR, including analyzing and complying with the policies and procedures of the registered SDR and performing systems testing.

Also, by proposed Compliance Date 1, to the extent the information is available, persons with a duty to report pre-enactment security-based swaps and transitional security-based swaps in the relevant asset class would be required to report these transactions, in accordance with Rule 901(i), to a registered SDR that accepts reports of security-based swap transactions in that asset class.[143] The Commission is proposing to require that all historical security-based swaps in that asset class be reported by Compliance Date 1, not on Compliance Date 1. Thus, a registered SDR that has commenced operations and that accepts reports of transactions in that asset class could allow persons with a duty to report to report such transactions on a rolling basis before Compliance Date 1. However, if it does so, the registered SDR would then be required to comply with the requirements of Regulation SBSR that are not subject to the phased compliance (*i.e.,* those requirements that are immediately effective). Therefore, a registered SDR would need to comply with Rule 901(f) and time stamp, to the second, any security-based swap data that it receives pursuant to Rule 901(i). The registered SDR also would be required to comply with Rule 901(g) and assign a transaction ID to each historical security-based swap that is reported to it on or before proposed Compliance Date 1.

As participants begin reporting historical security-based swaps to a registered SDR in the days leading up to Compliance Date 1, participants and registered SDRs would be required to comply with Rules 901(e) and 905 (except with respect to public dissemination) regarding any historical security-based swaps that are so reported. Thus, if historical security-based swap X is reported to a registered SDR 30 days before Compliance Date 1, the counterparties to transaction X and the registered SDR that holds the mandatory report of transaction X would immediately become subject to the life cycle event reporting and error-correction requirements of Rules 901(e) and 905, respectively with respect to transaction X. However, if transaction Y has not yet been reported to a registered SDR (and assuming that Compliance Date 1 has not yet arrived), the counterparties and the registered SDR would not yet incur any duties under Rules 901(e) or 905 with respect to transaction Y.

Finally, by proposed Compliance Date 1, registered security-based swap dealers, registered major security-based swap participants, registered clearing agencies, and platforms would be required to comply with Rule 906(c); participants (except for platforms and registered clearing agencies) would be required to comply with Rules 906(a) and 906(b); and registered SDRs also would be required to comply with Rule 906(a).

The Commission preliminarily believes that a six-month compliance phase-in would provide sufficient time for registered security-based swap dealers, registered major security-based swap participants, registered clearing agencies, and platforms to establish their own policies and procedures for reporting transactions in a particular asset class and to implement the systems changes needed to comply with Regulation SBSR. Participants would not be required to report to the first SDR that accepts security-based swaps in that asset class that registers with the Commission; participants could report to any SDR that accepts transactions in that asset class that has been registered by the Commission and has commenced operations by Compliance Date 1. Registered SDRs would not be required to publicly disseminate any transaction reports until Compliance Date 2, as described below.

Registered SDRs also would be required to comply with Rule 904 beginning on proposed Compliance Date 1, with the exception of Rule 904(d). Rule 904 requires a registered SDR to have systems in place to continuously receive and disseminate security-based swap information, with certain exceptions. Under final Rule 904(a), a ''registered SDR may establish normal closing hours when, in its estimation, the U.S. market and major foreign markets are inactive.'' Under final Rule 904(b), a registered SDR ''may declare, on an *ad hoc* basis, special closing hours to perform system maintenance that cannot wait until normal closing hours.'' In each case, the registered SDR must provide participants and the public with reasonable advance notice of its normal closing hours and special closing hours. Rule 904 also requires a registered SDR to have the ability to hold in queue any transaction data that it receives during normal and special closing hours or, if the registered SDR does not have the ability to received and hold data in queue, the registered SDR must immediately notify participants that it has resumed operations and any participant with a duty to report would be required to promptly re-report security-based swap information to the registered SDR.

Also beginning on proposed Compliance Date 1, registered SDRs would be required to comply with the requirement in Rule 906(a) to provide to each participant a report of any missing UICs, and any participant receiving such a report would be required to comply with the requirement in Rule 906(a) to provide the missing UICs to the registered SDR. The registered SDR and its participants also would be

[143] The Commission notes that, for some transitional security-based swaps, there might be only a short period between the date of execution and the date on which they must be reported to a registered SDR. For example, assume that Compliance Date 1 with respect to a particular asset class is July 14, 2016; if a security-based swap in that asset class is executed on July 10, 2016, the person with the duty to report that transaction would be required to report it to a registered SDR within four days of execution (*i.e.,* on or before July 14, 2016).

subject to the error correction requirements of Rule 905, except that the registered SDR would not yet be required to publicly disseminate any corrected transaction reports (because it would not yet be required to publicly disseminate a report of the initial transaction). Participants (except for platforms and registered clearing agencies) also would be required to comply with the requirement in Rule 906(b) to provide the registered SDR information sufficient to identity its ultimate parent(s) and any affiliate(s) that also are participants of the registered SDR. The Commission preliminarily believes that these requirements will facilitate accurate and complete reporting of transaction information.

2. Proposed Compliance Date 2

Proposed Compliance Date 2 relates to the public dissemination of security-based swap transaction data. Within nine months after the first registered SDR that accepts security-based swaps in a particular asset class commences operations as a registered SDR (*i.e.,* three months after Compliance Date 1), each registered SDR in that asset class that has registered and commenced operation would be required to comply with Rules 902 (regarding public dissemination), 904(d) (requiring dissemination of transaction reports held in queue during normal or special closing hours), and 905 (with respect to public dissemination of corrected transaction reports) for all security-based swaps in that asset class—except for ''covered cross-border transactions,'' as that term is described in the immediately following section. The Commission preliminarily believes that nine months after the first registered SDR that accepts security-based swaps in a particular asset class commences operations as a registered SDR is a sufficient amount of time for registered SDRs to begin disseminating security-based swap transaction data, including corrected transaction reports. This will allow registered SDRs a period of three months after they begin receiving reports of individual security-based swap transactions to identify and resolve any issues related to trade-by-trade reporting by participants and further test their data dissemination systems.

3. Effect of Registration of Additional SDRs

As discussed immediately above, the first SDR that is registered by the Commission and commences operations as a registered SDR starts the countdown to proposed Compliance Dates 1 and 2 for any asset class in which that SDR chooses to accept transaction reports. A subsequent SDR that is approved by the Commission, can accept reports of security-based swaps in that asset class, and commences operations would be subject to the same proposed Compliance Dates, as shown in the following examples:

- *Example 1.* SDR A registers with the Commission and, subsequently, commences operations as a registered SDR on June 1, 2015. Therefore, Compliance Date 1 (with respect to transactions in any asset class that can be accepted by SDR A) is December 1, 2015. SDR B, which accepts security-based swaps in the same asset class, registers and subsequently commences operations as a registered SDR on November 2, 2015. Mandatory transaction-by-transaction reporting pursuant to Rule 901 still begins on December 1, 2015. However, persons with the duty to report may report to either SDR A or SDR B, even though SDR B would have been registered for less than one month.
- *Example 2.* Again, SDR A registers with the Commission and, subsequently, commences operations as a registered SDR on June 1, 2015. Therefore, Compliance Date 1 (with respect to transactions in any asset class that can be accepted by SDR A) is December 1, 2015, and Compliance Date 2 is March 1, 2016. SDR C registers and, subsequently, commences operations as a registered SDR on February 15, 2016. (There is no SDR B in this example.) Mandatory transaction-by-transaction reporting pursuant to Rule 901 began on December 1, 2015. As of the first day on which it operates, SDR C must be prepared to accept transaction-by-transaction reports, as required by Rule 901. Both SDR A and SDR C must begin publicly disseminating last-sale reports, as required by Rule 902, on March 1, 2016.
- *Example 3.* Again, SDR A registers with the Commission and, subsequently, commences operations as a registered SDR on June 1, 2015. Therefore, Compliance Date 1 (with respect to transactions in any asset class that can be accepted by SDR A) is December 1, 2015, and Compliance Date 2 is March 1, 2016. SDR D registers and, subsequently, commences operations as a registered SDR on June 15, 2017. SDR D must be prepared to accept transaction-by-transaction reports, as required by Rule 901, and to publicly disseminate last-sale reports, as required by Rule 902, as of the first day on which it operates as a registered SDR. SDR D's registration would not create a new set of compliance timeframes.

4. Proposed Changes to Certain Exemptions Related to the Proposed Compliance Schedule

In connection with Compliance Date 1, the Commission is also proposing to extend its exemption related to the reporting of pre-enactment security-based swaps in order to ensure consistency between the proposed compliance schedule and the exemption. In June 2011, the Commission exercised its authority under Section 36 of the Exchange Act [144] to exempt any person from having to report any pre-enactment security-based swaps pursuant to Section 3C(e)(1) of the Exchange Act [145] until six months after an SDR that is capable of receiving security-based swaps in that asset class is registered by the Commission.[146] At the time, the Commission noted that the exemption was consistent with Rule 910, as proposed.[147] Because Compliance Date 1 is tied to the commencement of operations of a registered SDR and because some time may elapse between the date on which the Commission approves an SDR's registration and the date on which it commences operations as a registered SDR, the Commission is proposing to modify the reporting exemption to harmonize it with the proposed compliance schedule. The Commission is therefore proposing to exercise its authority under Section 36 of the Exchange Act to exempt any person from having to report any pre-enactment security-based swaps pursuant to Section 3C(e)(1) of the Exchange Act until six months after an SDR that is capable of receiving security-based swaps in that asset class is registered by the Commission and has commenced operations as a registered SDR.[148] The Commission preliminarily believes that this exemption is necessary or appropriate in the public

[144] 15 U.S.C. 78mm.

[145] 15 U.S.C. 78c–3(e)(1).

[146] *See* Securities Exchange Act Release No. 64678 (June 15, 2011), 76 FR 36287, 36291 (June 22, 2011) (Temporary Exemptions and Other Temporary Relief, Together With Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps) (''Effective Date Release'').

[147] *See id.*

[148] Thus, as proposed, this exemption would expire on proposed Compliance Date 1 with respect to persons having a duty to report pre-enactment security-based swap transactions in the asset class of the first SDR to register with the Commission and commence operations as a registered SDR with respect to that asset class. For persons having a duty to report pre-enactment security-based swaps in any other asset class, the exemption would remain in force until six months after the first registered SDR that can accept reports of security-based swaps in that asset class has commenced operations as a registered SDR with respect to that asset class.

interest, and is consistent with the protection of investors because such action would prevent the existing exemption from expiring before persons with a duty to report pre-enactment security-based swaps can report them to a registered SDR, taking into account that an SDR may require some time between the date on which the Commission approves its registration and the date on which it is able to commence operations as a registered SDR with respect to a particular asset class.

In addition, in the Effective Date Release, the Commission also exercised its authority under Section 36 of the Exchange Act to temporarily exempt any security-based swap contract entered into on or after July 16, 2011, from being void or considered voidable by reason of Section 29(b) of the Exchange Act,[149] because any person that is a party to the security-based swap contract violated a provision of the Exchange Act that was amended or added by Subtitle B of Title VII of the Dodd Frank Act and for which the Commission has taken the view that compliance will be triggered by registration of a person or by adoption of final rules by the Commission, or for which the Commission has provided an exception or exemptive relief, until such date as the Commission specifies.[150] In relevant part, Section 29(b) of the Exchange Act provides that ''[e]very contract made in violation of any provision of this title or of any rule or regulation thereunder, and every contract . . . heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this title or any rule or regulation thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, or regulation, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of much the making or performance of such contract was in violation of any such provision rule or regulation . . .'' [151] The Commission is proposing that, with respect to security-based swaps in a particular asset class, the exemption from Section 29(b) of the Exchange Act, in connection with Section 3C(e)(1), would terminate on proposed Compliance Date 1 (*i.e.,* six months after the first registered SDR in that asset class commences operations with respect to that asset class).

C. Discussion of Comments Received in Response to the Initial Proposal

Commenters responding to the Regulation SBSR Proposing Release generally recommended that the Commission implement Regulation SBSR in phases, but their detailed suggestions varied.[152] Several commenters emphasized the need to provide adequate time for the development and implementation of reporting and compliance systems and procedures.[153] One of these commenters stated, for example, that ''virtually all existing systems would have to be significantly overhauled to satisfy the real-time reporting obligations'' of Regulation SBSR.[154] Another commenter emphasized that ''market infrastructure must be in place prior to requiring market participant compliance'' and that many financial entities that are not swap dealers or major swap participants may need additional time to comply.[155] A third commenter noted that requiring reporting prior to the registration of security-based swap dealers and major security-based swap participants would complicate reporting and the determination of the reporting counterparty because ''parties entering into security-based swaps . . . may be expected . . . to report ahead of the point their obligation becomes certain.'' [156] A fourth commenter stated that any implementation timeline ''must recognize the practical challenges that security-based swap data repositories and market participants will face in defining and implementing industry-wide collection and dissemination mechanisms and internal data collection systems, respectively.'' [157] A fifth commenter stated that, although much of the existing infrastructure of DTCC's Trade Information Warehouse could form the core of the processes required by Regulation SBSR, substantial new industry-wide processes requiring significant coordination, testing, and development would have to be implemented, particularly around real-time reporting.[158] One commenter believed that, given the complexity and novelty of the proposed reporting framework, a pilot program would allow the Commissions to evaluate the operational integrity of the infrastructure implementing the reporting rules.[159] One commenter recommended a ''relatively thorough phase-in period'' during which only regulators would receive security-based swap information because of the potential for disseminating misleading real-time pricing information, which potentially could result in market disruptions and economic damage.[160]

One commenter also noted that a phased-in implementation would allow regulators to assess the impact of transparency on the security-based swap market and make adjustments, if necessary, to the timing of dissemination and the data that is disseminated.[161] Other commenters echoed the belief that a phased-in approach would allow the Commission to assess the impact of public dissemination on liquidity in the security-based swap market, monitor changes in the market, and adjust the reporting rules, if necessary.[162] One of these commenters believed that, without staged implementation, the new security-based swap transparency requirements could cause market disruptions if some dealers withhold capital until they were able to determine whether the reporting requirements would adversely impact their ability to manage risk.[163] Another commenter agreed with the phased-in approach initially proposed by the Commission and believed that the obligations on

[149] 15 U.S.C. 78cc(b).

[150] *See* Effective Date Release, 76 FR 36305.

[151] 15 U.S.C. 78cc(b).

[152] *See* Bachus/Lucas Letter at 3; Barnard I at 4; CCMR I at 2; Cleary I at 17–21; DTCC I at 24–25; DTCC III at 8–9; DTCC IV at 8; FINRA Letter at 4–5; Institutional Investors Letter at 3; ISDA III at 2 (suggesting a phase-in for reporting of historical security-based swaps); ISDA/SIFMA I at 9–10; ISDA/SIFMA Block Trade Study at 2; MarkitSERV I at 10; MFA I at 6; MFA Recommended Timeline at 1; Morgan Stanley Letter at 6; Roundtable Letter at 4–9; UBS Letter at 2–3; ISDA IV at 2–3.

[153] *See* CCMR I at 2; Cleary I at 19–21; DTCC II at 24–25; ISDA/SIFMA I at 9.

[154] ISDA/SIFMA I at 9.

[155] Institutional Investors Letter at 3.

[156] *See* ISDA IV at 2.

[157] Cleary I at 19. *See also* WMBAA II at 4 (stating that ''[i]t is necessary that any compliance period or registration deadline provides sufficient opportunity for existing trade execution systems or platforms to modify and test systems, policies and procedures to ensure that its operations are in compliance with the final rules'').

[158] *See* DTCC II at 25.

[159] *See* Cleary I at 20.

[160] DTCC IV at 9. This commenter also stated that a phased-in implementation of Regulation SBSR would allow time for extensive testing and preparation needed to avoid systemic risk and the dissemination of inaccurate information. *See* DTCC I at 2.

[161] *See* FINRA Letter at 5. *See also* ISDA/SIFMA Block Trade Study at 2 (stating that phased-in implementation would provide regulators with time to test and refine preliminary standards).

[162] *See* CCMR I at 2; Cleary I at 19; ISDA/SIFMA Block Trade Study at 2; UBS Letter at 2. Another commenter believed that the reporting requirements could apply first to products that are cleared and executed on a trading platform, then to products that are cleared, but not executed on a trading platform, and finally to uncleared products. *See* Morgan Stanley Letter at 6.

[163] *See* CCMR I at 2.

affected parties were clear, sufficient, and achievable.[164] Another commenter recommended the adoption of an incremental approach to reporting that would begin with ''macro'' reporting followed by more comprehensive reporting at a later time.[165]

Several commenters also recommended that the Commission utilize a gradual implementation approach similar to that of the TRACE trade reporting system. One commenter—the Financial Industry Regulatory Association (''FINRA''), which operates the TRACE trade reporting system for fixed income securities—supported proposed Rule 910's approach of staggered implementation of various requirements under Regulation SBSR, noting that it had implemented TRACE reporting in phases based on product liquidity, beginning with the largest and most liquid issues.[166] FINRA stated that phased-in implementation would facilitate a more orderly transition that minimizes the likelihood of market disruptions and an unintended loss of liquidity, and would provide market participants with time to adjust to a market in which security-based swap transaction data were publicly known.[167] Other commenters also expressed the view that TRACE is a useful model of a phased-in approach to implementation.[168] One of these commenters stated, for example, that the ''TRACE experience demonstrates the length of time required to study, review and assess the effects of real-time reporting on market liquidity, as well as the need to provide adequate lead time for market participants to build a common infrastructure for reporting.'' [169] Another commenter believed that Regulation SBSR would require, at a minimum, an implementation period similar to the four years required to implement TRACE, ''given that the swap markets are significantly more complex and varied and less developed infrastructurally than the corporate bond markets.'' [170]

While one participant at the Implementation Roundtable suggested that certain asset classes could need less than six months for implementation,[171] several others stated that the time needed for implementation depended on the complexity of the asset class and believed that more time than the implementation schedule in Regulation SBSR, as initially proposed, would likely be necessary.[172] Another participant believed that it could take up to two years following the adoption of final rules to implement the new rules because of ''the substantial effort required to conduct the renegotiation of tens of thousands of contracts between customers and counterparties.'' [173] However, several participants at the Implementation Roundtable suggested that six to nine months would be needed for implementation following adoption of final rules by the SEC and CFTC.[174] Similarly, two commenters indicated that market participants would require an implementation period of at least six months following the adoption of final rules.[175]

Several commenters also discussed general and specific implementation issues that might arise in the context of implementing Regulation SBSR. Some commenters,[176] along with several participants at the Implementation Roundtable,[177] supported phasing in implementation by asset class. Because different asset classes use different and often incompatible booking systems, one commenter recommended that both reporting to SDRs and public dissemination be phased in by asset class to allow market participants to work within the current market set-up.[178] Other Roundtable participants did not specify the amount of time that they believed would be required for implementation and instead noted various implementation concerns.[179] One commenter stated that the CFTC and SEC should synchronize compliance dates for their respective reporting rules as much as possible.[180] Another commenter, noting that the CFTC and the Commission are undertaking a Dodd-Frank mandated study regarding the feasibility of standardized computer-readable algorithmic descriptions for derivatives, believed that it would be premature to adopt reporting rules before the completion of this study and consideration of its results.[181] One Roundtable participant recommended setting an implementation date and establishing consequences for failure to meet the implementation date.[182]

The Commission notes the concerns about implementation expressed by commenters. However, it is the Commission's understanding that the industry has made considerable progress in improving reporting capability, which will facilitate compliance with Regulation SBSR. The CFTC already has adopted final rules for swap data repository registration, regulatory reporting, and public dissemination of swaps, and market

[164] *See* Barnard I at 4. The commenter also believed that the suggested numbers of security-based swaps included in each of the initially proposed phases of implementation were reasonable. *See id.*

[165] *See* Roundtable Letter at 4 (stating that market participants could prepare reports indicating the aggregate notional amount of swaps outstanding, subdivided by major category, and the identity of any counterparty representing 5% or more of their open positions by notional amount in that major category).

[166] *See* FINRA Letter at 4.

[167] *See id.* at 5.

[168] *See* CCMR I at 2; Cleary I at 19–20; DTCC II at 10; ISDA/SIFMA I at 10; UBS Letter at 2–3.

[169] UBS Letter at 3.

[170] Cleary I at 20. *See also* ISDA/SIFMA I at 10 (stating that the reporting requirements for security-based swaps are significantly more complex than for TRACE, and the phase-in should reflect this degree of complexity); CCMR I at 2 (noting that TRACE took a ''cautious approach'' to implementation, even though it was implemented initially for a single asset class, corporate bonds).

[171] *See* Implementation Roundtable, Day 2 at 170–71 (Cummings).

[172] *See* Implementation Roundtable, Day 1 at 299, 301 (Gooch); Implementation Roundtable, Day 2 at 177–8 (Joachim).

[173] Institutional Investors Letter at 3. *See also* Roundtable Letter at 4 (stating that there could be a '' 'bottleneck' both in the document negotiation process and in the move to clearing'').

[174] *See* Implementation Roundtable, Day 1 at 264 (Levi), 298 (Gooch); Implementation Roundtable, Day 2 at 174–8 (Collazo, Cummings, Joachim).

[175] *See* DTCC II at 24 (''A six month period seems appropriate''); ISDA IV at 2 (expressing support for a six-month implementation period, provided that Regulation SBSR aligns closely with the CFTC's swap data reporting rules and requesting a nine-month implementation period if Regulation SBSR deviates from the CFTC's swap data reporting rules).

[176] *See* DTCC II at 25 (noting that because credit products' operational processes are more highly automated, credit products are more reporting-ready than equities products); SIFMA II at 5; UBS Letter at 2 (stating that the initial phase of public security-based swap reporting for single-name CDS be limited to CDS on the top 125 most actively traded reference entities).

[177] *See* Implementation Roundtable, Day 1 at 32 (unidentified speaker), 43 (Thompson). *See also* Implementation Roundtable, Day 2 at 168, 173 (Collazo) (suggesting implementation in the following order: CDS, interest rate swaps, FX swaps, equity swaps, then commodity-based swaps).

[178] *See* Barclays I at 4.

[179] *See* Implementation Roundtable, Day 2 at 159 (Okochi) (stating that implementation will vary based on clearing of trades, customization of trades based on the business segment they are in, asset class, and volume); 183–84 (Thum) (stating that reporting by non-dealers will require additional work), 192–94 (Gooch) (stating that inclusion of timestamps, place of execution, subfund allocations will require additional configurations to existing systems and processes to support real-time reporting).

[180] *See* Implementation Roundtable, Day 1 at 77 (Olesky).

[181] *See* Cleary I at 20. The Commission notes that the referenced study was completed on April 7, 2011. *See* Securities Exchange Act Release No. 63423 (December 2, 2010), 75 FR 76706 (December 9, 2010). *See also http://www.sec.gov/news/studies/2011/719b-study.pdf* (noting that current technology is capable of representing derivatives using a common set of computer-readable descriptions).

[182] *See* Implementation Roundtable, Day 1 at 51 (Cawley).

participants have been reporting to CFTC-registered SDRs since year-end 2012.[183] The Commission preliminarily believes that much of the established infrastructure that supports swap reporting and dissemination can be modified to support security-based swap reporting and dissemination. At the same time, the Commission recognizes that there are certain differences in the reporting requirements of the SEC and the CFTC; therefore, entities subject to Regulation SBSR will need time to meet the regulation's specific requirements.

The Commission preliminarily agrees with those commenters who suggested that the Commission generally model the implementation of Regulation SBSR after the implementation of TRACE, and has designed the newly proposed compliance schedule to allow participants and registered SDRs the benefit of phased-in compliance. The Commission also is aware of the need for extensive testing and preparation in the implementation of the systems necessary to meet the requirements of Regulation SBSR and has developed the proposed compliance schedule with such needs in mind. The proposed schedule, discussed above, provides for a six-month period from the date on which the first registered SDR that accepts security-based swaps in a particular asset class commences operations as a registered SDR. By the end of that six-month period, to the extent such information is available, all pre-enactment and transitional security-based swaps in that asset class would be required to be reported.[184] Furthermore, market participants would have six months from the commencement of operations of the first registered SDR that can accept security-based swaps in a particular asset class as a registered SDR before reporting of newly executed transactions in that asset class would be required. Although a registered SDR may already be operational as swap data repository under CFTC rules, to the extent there is a gap between the Commission's grant of registration and the SDR's commencement of operations as a registered SDR, the Commission wants to ensure that reporting parties have six months after a registered SDR commences operations as a registered SDR in a particular asset class to further test and implement processes for reporting security-based swap transaction information in that asset class. The Commission preliminarily believes that six months would provide affected persons with sufficient time to resolve any potential issues related to the reporting of security-based swap transactions on an individual basis. Under the proposed compliance schedule, there would then be an additional three months before transactions must be publicly disseminated. This period is designed to give registered SDRs and persons having a duty to report an opportunity to resolve any reporting issues before transactions must be publicly disseminated.

Although several commenters advocated for longer timeframes, the Commission preliminarily believes that six months between the commencement of operations of the first registered SDR in an asset class as a registered SDR and the commencement of mandated trade-by-trade reporting is sufficient. The Commission bases this view on the existence of market infrastructure that supports swap data reporting pursuant to CFTC rules. Several commenters noted that challenges related to the implementation of the reporting and dissemination requirements of proposed Regulation SBSR were related to lack of appropriate industry infrastructure and processes.[185] As noted above, the Commission understands that persons seeking to register as SDRs are likely to be registered and operating as swap data repositories under CFTC rules, and that many swap market participants subject to CFTC reporting rules may also be security-based swap market participants. Therefore, the Commission preliminarily believes that these persons and market participants would be able to leverage existing infrastructure to report and disseminate security-based swap data.

The Commission also preliminarily believes that it is unnecessary to delay the implementation of Regulation SBSR until registration requirements take effect for security-based swap dealers and major security-based swap participants, as suggested by one commenter.[186] As described in Section V(B)(1) of the Regulation SBSR Adopting Release, the Commission has adopted a modified version of the security-based swap reporting hierarchy in Rule 901(a)(2) to ensure that no person will need to evaluate whether it meets the definition of ''security-based swap dealer'' or ''major security-based swap participant'' solely in connection with identifying which counterparty must report a security-based swap under Regulation SBSR.[187] Under the reporting hierarchy as adopted, until registration requirements come into effect, there will be no registered security-based swap dealers or major security-based swap participants, so the sides will be required to select the reporting side. The Commission preliminarily believes that having the sides choose who reports should not complicate reporting.

The Commission preliminarily believes that it is not necessary or appropriate to establish multiple or phased compliance dates for reporting security-based swaps within the same

[183] The CFTC phased in compliance requirements for swap data reporting (depending on the reporting party and asset class) beginning on December 31, 2012. *See* CFTC Division of Market Oversight Advisory (March 8, 2013) at 2–3, available at *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/dmoadvisory030813.pdf* (last visited on October 30, 2014).

[184] One commenter recommended that pre-enactment and transitional security-based swaps should be reported on the same timeline, as firms' systems cannot easily distinguish between the two categories. *See* ISDA IV at 18. The Commission notes that the proposed compliance schedule would provide for this outcome. This commenter further stated that reporting entities have found it practical to report ''live'' historical security-based swaps in advance of the effective reporting date applicable to new transactions and life cycle reporting, and recommended an aligned reporting effective date for historical security-based swaps that are still live, or expected to be live, as of the reporting effective date. However, the commenter recommended that historical security-based swaps that are no longer live should have a later reporting effective date than reporting for other security-based swaps, and recommends a year delay. *See id.* Under the proposed compliance schedule, all historical security-based swaps in an asset class would be required to be reported in the same timeframe as for new security-based swaps going forward—*i.e.,* by six months from the date of operation of the first registered SDR that can accept security-based swaps in the asset class. The Commission is not proposing a longer reporting period for historical security-based swaps that are not ''live,'' but requests comment on the issue.

[185] *See* Institutional Investors Letter at 3 (''market infrastructure must be in place prior to requiring market participant compliance''); Cleary I at 19 (any implementation timeline ''must recognize the practical challenges that security-based swap data repositories and market participants will face in defining and implementing industry-wide collection and dissemination mechanisms and internal data collection systems, respectively.''); DTCC II at 25 (noting that although much of the existing infrastructure of DTCC's Trade Information Warehouse could form the core of the processes required by Regulation SBSR, substantial new industry-wide processes requiring significant coordination, testing, and development would have to be implemented, particularly around real-time reporting).

[186] *See* ISDA IV at 2–3.

[187] In the Cross-Border Adopting Release, the Commission estimated the assessment costs for making such evaluations. *See* Cross-Border Adopting Release, 79 FR 47330–34. The Commission's approach in Regulation SBSR is consistent with the approach described in the Cross-Border Adopting Release, where the Commission noted that security-based swap dealers and major security-based swap participants ''will not be subject to the requirements applicable to those dealers and major participants until the dates provided in the applicable final rules.'' 79 FR 47368. *See also* Intermediary Definitions Adopting Release, 77 FR 30700.

asset class to registered SDRs.[188] Preliminarily, the Commission seeks to have all regulatory reports of security-based swaps reported to registered SDRs in the manner set forth in Regulation SBSR at the earliest practicable date. This information would greatly increase relevant authorities' understanding of the security-based swap market, help them perform their regulatory duties, and provide more and better data to support the Commission's additional Title VII rulemakings. For example, with required regulatory reporting of all security-based swaps in an asset class, the Commission and other relevant authorities would be able to more easily determine the positions of security-based swap dealers, giving them greater visibility into possible systemic risks. Phased compliance within a security-based swap class would not provide a holistic view of dealer positions until the final security-based swaps in that asset class were required to be reported.

However, the Commission is proposing a separate compliance date (proposed Compliance Date 2) for public dissemination. The three-month delay between the date on which persons with a duty to report must begin reporting new security-based swaps to a registered SDR and the date on which the registered SDR must publicly disseminate transaction reports is designed to provide ample time for registered SDRs and market participants to identify and address any problems with trade-by-trade reporting to registered SDRs before registered SDRs are required to publicly disseminate newly executed transactions.[189]

One commenter agreed with the requirements of proposed Rule 911 [190] and believed that they were sufficient to prevent the evasion of reporting.[191] The Commission continues to be concerned with potential efforts to evade public dissemination, but believes that Rule 911 is not necessary in light of the proposed new compliance timeframes. Another commenter believed that the Commission should delay the implementation of Regulation SBSR until more than one SDR is registered because, absent such a delay, the first SDR to register would have a monopoly on security-based swap reporting and a competitive advantage over new entrants.[192] The Commission preliminarily believes instead that a delay in implementation to permit additional registrations would be inconsistent with the objectives of Title VII. Title VII closed major gaps in the regulation of security-based swaps and provided the Commission and other relevant authorities with new regulatory tools to oversee the OTC derivatives markets, which are large and are capable of affecting significant sectors of the U.S. economy. The primary goals of Title VII include increasing transparency in the security-based swap markets and reducing the potential for counterparty and systemic risk.[193]

Furthermore, other Commission rules are designed to minimize the potential that any a ''first mover'' or monopoly advantage that the first SDR might burden users of SDR services. All SDRs, even the only SDR that can accept transactions in a particular asset class, must offer fair, open, and not unreasonably discriminatory access to users of its services,[194] and any fees that it charges must be fair and reasonable and not unreasonably discriminatory.[195] The Commission preliminarily believes that basing the compliance schedule on the date that the first registered SDR commences operations as a registered SDR would encourage all potential SDRs to file complete applications for registration to the Commission and develop their systems and procedures for accepting and maintaining security-based swap data as expeditiously as possible, which will in turn more quickly allow regulators and the public the benefit of increased transparency in the security-based swap market and allow them to better monitor systemic risk.

Given these potential benefits, the Commission preliminarily believes that the compliance schedule should begin even if only one registered SDR that can receive reports of transactions in a particular asset class has commenced operations. The Commission preliminarily believes that it is not necessary or appropriate to wait for multiple SDRs to register and commence operations as registered SDRs before beginning the proposed six-month countdown to proposed Compliance Date 1.[196] The Commission seeks to ensure that registration of new SDRs not delay post-trade transparency for security-based swaps. This could occur if the Commission were to phase in compliance on an SDR-by-SDR basis. If each registered SDR had its own phase-in period, the first registered SDR could be in a phase where public dissemination was required where the second registered SDR may not be. This could create an incentive for persons with a duty to report to choose to report to later-registering SDRs in order to avoid having their transactions publicly disseminated.

D. Request for Comment

The Commission requests comment on all aspects of the proposed compliance dates for Regulation SBSR. In particular:

41. Would the proposed compliance timeline allow reporting parties and registered SDRs sufficient time to implement the requirements of Regulation SBSR? Why or why not? If not, why not and what alternative time period(s) of time would be sufficient?

42. Do you generally agree with the Commission's proposed approach to calculating the compliance dates based on the first registered SDR to accept security-based swaps in a particular asset class commencing operations as a registered SDR? If not, how should the

[188] *See* Roundtable Letter at 4 (stating that market participants could initially prepare reports indicating the aggregate notional amount of swaps outstanding, subdivided by major category, and the identity of any counterparty representing 5% or more of their open positions by notional amount in that major category).

[189] This timeframe generally comports with the recommendation of several of the participants at the Implementation Roundtable, who suggested that six to nine months would be needed for implementation following adoption of final rules by the SEC and CFTC. *See* Implementation Roundtable, Day 1 at 264 (Levi), 298 (Gooch); Implementation Roundtable, Day 2 at 174–8 (Collazo, Cummings, Joachim).

[190] Rule 911, as proposed, was designed to prevent evasion of the public dissemination requirement during a period when two or more SDRs had registered with the Commission and were operating under different compliance dates.

[191] *See* Barnard I at 4.

[192] *See* MFA I at 6 (also arguing that a diverse range of options for reporting security-based swap data would benefit the market and market participants). *See also* ISDA IV at 3 (recommending that the Commission have a single registration date for all SDRs that will be approved ahead of the effective reporting date to ''ensure that all market participants have equal time to build to their chosen [SDR]'').

[193] *See, e.g.,* S. Comm. on Banking, Hous., & Urban Affairs, The Restoring American Financial Stability Act of 2010, S. Rep. No. 111–176, at 32 (''As a key element of reducing systemic risk and protecting taxpayers in the future, protections must include comprehensive regulation and rules for how the OTC derivatives market operates. Increasing the use of central clearinghouses, exchanges, appropriate margining, capital requirements, and reporting will provide safeguards for American taxpayers and the financial system as a whole'').

[194] *See* Rule 13n–4(c)(1)(iii) under the Exchange Act, discussed in the SDR Adopting Release.

[195] *See* Rule 13n–4(c)(1)(i) under the Exchange Act, discussed in the SDR Adopting Release.

[196] However, as the Commission noted in the SDR Adopting Release: ''In considering initial applications for registration on Form SDR filed contemporaneously with the Commission, the Commission intends to process such applications for multiple SDRs accepting [security-based swap] transaction data from the same asset classes within the same period of time so as to address competition concerns that could arise if such SDRs were granted registration at different times.'' SDR Adopting Release, Section VI(A)(2)(c). The Commission also noted that certain unexpected events that raise compliance concerns could affect the Commission's ability to process these applications within the same time period. *See id.*

Commission calculate compliance dates? If the Commission used an alternative method for calculating compliance dates, how could the Commission prevent or minimize evasion of the public dissemination requirement?

43. Do you believe that the proposed implementation schedule and SDR registration process would minimize potential ''first mover'' advantages for the first SDR to register? Why or why not? How could the Commission further minimize any potential ''first mover'' advantage?

44. Do you agree that the current infrastructure that supports swap reporting also can be used to support security-based swap reporting? Why or why not? If so, how much time would be necessary for participants and registered SDRs to make necessary changes to report security-based swaps to registered SDRs? If not, how much time would be needed to create the necessary infrastructure?

45. Do you believe that registered SDRs would be able to satisfy their obligations by proposed Compliance Date 1? Why or why not? If six months after the first registered SDR that accepts security-based swaps in a particular asset class commences operations as a registered SDR is not a sufficient amount of time to comply, what amount of time would be sufficient? In particular, do you believe that six months after the first registered SDR that accepts security-based swaps in an asset class commences operations is a sufficient amount of time to have reported all historical security-based swaps that are no longer ''live,'' as discussed by one commenter? [197] Why or why not? If not, by when do you believe that such security-based swaps should be reported, and why?

46. Do you believe that persons with the duty to report would be able to satisfy their obligations by proposed Compliance Date 1? Why or why not? If six months after the first registered SDR that accepts security-based swaps in a particular asset class commences operations as a registered SDR is not a sufficient amount of time to comply, what amount of time would be sufficient? Would persons with the duty to report require additional time to comply with certain requirements by proposed Compliance Date 1? If so, which requirement(s), and what additional amount of time would be necessary?

47. Do you agree with the Commission's proposal to extend the exemption for the reporting of pre-enactment security-based swaps until six months after an SDR that is capable of receiving security-based swaps in that asset class is registered by the Commission and has commenced operations as a registered SDR? Why or why not?

48. Do you agree with the Commission's proposal to terminate the exemption from Section 29(b) of the Exchange Act in connection with Section 3C(e)(1) on proposed Compliance Date 1? Why or why not? If not, when should the Section 29(b) exemption terminate?

49. Do you believe that registered SDRs will be able to time stamp and assign transaction IDs to pre-enactment and transitional security-based swaps even if they are reported prior to Compliance Date 1? Why or why not? If not, would registered SDRs require additional time to comply with the requirements to time stamp and/or assign transaction IDs?

50. Do you believe that registered security-based swap dealers, registered major security-based swap participants, registered clearing agencies, and platforms would be able to satisfy their obligations to establish policies and procedures for carrying out their reporting obligations by proposed Compliance Date 1? Why or why not? If six months after the first registered SDR that accepts security-based swaps in a particular asset class commences operations as a registered SDR is not a sufficient amount of time to comply, what amount of time would be sufficient?

51. Do you believe that registered SDRs would be able to satisfy their obligations by proposed Compliance Date 2? Why or why not? If nine months after the first registered SDR that accepts security-based swaps in a particular asset class commences operations as a registered SDR is not a sufficient amount of time to comply, what amount of time would be sufficient?

52. Do commenters agree with the Commission's preliminary belief that persons likely to apply for registration as SDRs with the Commission would already be registered with the CFTC as swap data repositories? If so, how easily and how quickly could the systems and processes that support swap data dissemination be configured to support security-based swap data dissemination? Would this process will take more or less than the 3 months that is proposed? Why or why not?

53. Registered clearing agencies may be required to modify their rules to address their reporting obligations under Regulation SBSR, as proposed to be modified in this release. Would the implementation timeframe described above provide registered clearing agencies sufficient time to implement any rule changes that may be required by Regulation SBSR? How would the timing be affected if the registered clearing agency also intends to register as an SDR or is affiliated with a person that intends to register as an SDR?

VIII. Economic Analysis

The Dodd-Frank Act amended the Exchange Act to require the reporting of security-based swap transactions to registered SDRs. Regulation SBSR, as adopted, implements this mandate and assigns the reporting obligation for covered transactions.[198] In addition, Regulation SBSR requires registered SDRs, with a handful of exceptions, to publicly disseminate a subset of the reported transaction information immediately upon receipt.

The proposed amendments to Rule 901(a) would assign to a platform the duty to report security-based swaps executed on its facilities and submitted for clearing, and would assign the duty to report any transactions to which a registered clearing agency is a counterparty to that clearing agency. In addition, this release proposes guidance for how Regulation SBSR would apply to security-based swaps executed in connection with prime brokerage arrangements, which involve an executing broker, a customer, and a prime broker who offers credit intermediation services to the customer. This release also proposes a definition of ''widely accessible'' in Rule 900(tt), which would have the effect of prohibiting registered SDRs from charging users fees or imposing usage restrictions on the security-based swap transaction data that they are required to publicly disseminate. Finally, this release proposes new compliance dates for the rules in Regulation SBSR for which the Commission has not specified a compliance date.

The Commission is sensitive to the economic consequences and effects, including costs and benefits, of its rules. Some of these costs and benefits stem from statutory mandates, while others are affected by the discretion exercised in implementing these mandates. The following economic analysis seeks to identify and consider the benefits and costs—including the effects on efficiency, competition, and capital formation—that would result from the proposed rules and rule amendments. The costs and benefits considered in relation to these proposed rules and rule

[197] *See* ISDA IV at 18 and *supra* note 184.

[198] *See supra* notes 15 and 16 and accompanying text.

amendments have informed the policy choices described throughout this release.

A. Broad Economic Considerations

In the Regulation SBSR Adopting Release, the Commission highlighted certain overarching effects on the security-based swap markets that it believes will result from the adoption of Regulation SBSR. These benefits could include, generally, improved market quality, improved risk management, greater efficiency, and improved oversight by the Commission and other relevant authorities.[199] Regulation SBSR, as adopted, requires market participants to make infrastructure investments in order to report security-based swap transactions to registered SDRs and, as is most relevant for these proposed rules and amendments, for SDRs to make investments in order to receive transaction data from market participants and to publicly disseminate a subset of that transaction information.

The rules, amendments, and guidance proposed in this release are focused on the requirements relevant to the reporting of certain information regarding cleared security-based swaps, which will affect the platforms, registered clearing agencies, and registered SDRs that constitute an infrastructure for the security-based swap market and provide services to counterparties who participate in security-based swap transactions. In particular, the Commission preliminarily believes that the proposed rules and amendments could affect the manner in which firms that provide these services compete with one another and exercise market power over security-based swap counterparties. In turn, there could be implications for the counterparties who are customers of these infrastructure providers and the security-based swap market generally.

1. Security-Based Swap Market Infrastructure

Title VII requires the Commission to create a new regulatory regime for the security-based swap market that includes trade execution, central clearing, and reporting requirements aimed at increasing transparency and customer protection as well as mitigating the risk of financial contagion.[200] These new requirements, once implemented, will oblige market participants, who may have previously engaged in bilateral transaction activity without any need to engage third-party service providers, to interface with platforms, registered clearing agencies, and registered SDRs.

As a general matter, rules that require regulated parties to obtain services can have a material impact on the prices of those services in the absence of a competitive market for those services. In particular, if service providers are monopolists or otherwise have market power, requiring market participants to obtain their services can potentially allow the service providers to increase the profits they earn from providing the required services.[201] Because Title VII requires the Commission to implement rules requiring market participants to use the services provided by platforms, registered clearing agencies, and registered SDRs, these requirements could reduce the sensitivity of demand to changes in prices or quality of the services of firms that create and develop security-based swap market infrastructure.[202] As such, should security-based swap infrastructure providers—such as platforms, registered clearing agencies, and registered SDRs—enjoy market power, they might be able to change their prices or service quality without a significant effect on demand for their services. In turn, these changes in prices or quality could have effects on activity in the security-based swap market.

As discussed below, the proposed rules, amendments, and guidance proposed herein could have an impact on the level of competition among suppliers of trade reporting services and affect the relative bargaining power of suppliers and consumers in determining the prices of those services. In particular, when the supply of trade reporting services is concentrated among a small number of firms, consumers of these services have few alternative suppliers from which to choose. Such an outcome could limit the incentives to produce more efficient trade reporting processes and services and could, in certain circumstances, result in less security-based swap transaction activity than would otherwise be optimal. In the case of security-based swap transaction activity, these welfare losses could result from higher costs to counterparties for hedging financial or commercial risks.

2. Competition Among Security-Based Swap Infrastructure Providers

The Commission's economic analysis of the proposed rules, amendments, and guidance considers how the competitive landscape for platforms, registered clearing agencies, and registered SDRs might affect the market power of these entities and hence the level and allocation of costs related to regulatory requirements. Some of the factors that may influence this competitive landscape have to do with the nature of the trade reporting and are unrelated to regulation, while others may be a result of, or influenced by, the rules that we are proposing. To the extent that the proposed rules inhibit competition among infrastructure providers, this could result in fees charged to counterparties that deviate from the underlying costs of providing the services.

As a general matter, and for reasons unrelated to the regulation of the security-based swap market, trade execution, clearing, and reporting services are likely to be concentrated among a small number of providers. For example, SDRs and clearing agencies must make significant infrastructure and human capital investments to enter their respective markets, but once these start-up costs are incurred, the addition of data management or transaction clearing services is likely to occur at low marginal costs. As a result, the average cost to provide infrastructure services quickly falls for SDRs and clearing agencies as their customer base grows, because they are able to amortize the fixed costs associated with serving counterparties over a larger number of transactions. These economies of scale should favor incumbent service providers who can leverage their market position to discourage entry by potential new competitors that face significant fixed costs to enter the market. As a result, the markets for clearing services and SDR services are likely to be dominated by a small number of firms that each have large market share, which is borne out in the current security-based swap market.[203]

Competition among registered clearing agencies and registered SDRs could also be influenced by the fact that security-based swap market participants incur up-front costs for each connection that they establish with an SDR or clearing agency. If these costs are sufficiently high, an SDR or clearing agency could establish itself as an industry leader by ''locking-in'' customers who are unwilling or unable

[199] *See* Regulation SBSR Adopting Release, Section XXII.

[200] *See* Cross-Border Adopting Release, 79 FR 47285.

[201] These effects, as they relate specifically to the proposed rules and amendments, as well as alternative approaches, are discussed in in Section VIII(D), *infra.*

[202] These requirements might reduce the price elasticity of demand for the services provided by platforms, registered clearing agencies, and registered SDRs.

[203] *See infra* Section IX(B).

to make a similar investment for establishing a connection with a competitor.[204] An SDR or clearing agency attempting to enter the market or increase market share would have to provide services valuable enough, or set fees low enough, to offset the costs of switching from a competitor. In this way, costs to security-based swap market participants of interfacing with market infrastructure could serve as a barrier to entry for firms that would like to provide market infrastructure services provided by SDRs and clearing agencies.

The proposed rules, amendments, and guidance might also influence the competitive landscape for firms that provide security-based swap market infrastructure. Fundamentally, requiring the reporting of security-based swap transactions creates an inelastic demand for the service that would not be present if not for regulation. This necessarily reduces a counterparty's ability to bargain with infrastructure service providers over price or service because the option of not reporting is unavailable. Moreover, infrastructure requirements imposed by Title VII regulation will increase the fixed costs of an SDR operating in the security-based swap market and increase the barriers to entry into the market, potentially discouraging firms from entering the market for SDR services. For example, under Rule 907, as adopted, registered SDRs are required to establish and maintain certain written policies and procedures. The Commission estimated that this requirement will impose initial costs on each registered SDR of approximately $12,250,000.[205]

The proposed rules, amendments, and guidance might also affect the competitive landscape by increasing the incentives for security-based swap infrastructure service providers to integrate horizontally or vertically. As a general matter, firms engage in horizontal integration when they expand their product offerings to include similar goods and services or acquire competitors. For example, SDRs that presently serve the swap market might horizontally integrate by offering similar services in the security-based swap market. Firms vertically integrate by entering into businesses that supply the market that they occupy (''backward vertical integration'') or by entering into businesses that they supply (''forward vertical integration'').

As discussed in more detail in Section VIII(D)(1), *infra,* while proposing a reporting methodology that assigns reporting responsibilities to registered clearing agencies, who will hold the most complete and accurate information for cleared transactions, could minimize potential data discrepancies and errors, rules that give registered clearing agencies discretion over where to report transaction data could provide incentives for registered clearing agencies to create affiliate SDRs and compete with other registered SDRs for post-trade reporting services. The cost to a clearing agency of entering the market for SDR services is likely to be low, given that many of the infrastructure requirements for entrant SDRs are shared by clearing agencies. Clearing agencies already have the infrastructure necessary for capturing transaction records from clearing members and might be able to leverage that pre-existing infrastructure to provide services as an SDR at low incremental cost. Because all clearing transactions, like all other security-based swaps, must be reported to a registered SDR, there would be a set of potentially captive transactions that clearing agencies could initially use to vertically integrate into SDR services.[206]

Entry into the SDR market by registered clearing agencies could potentially lower the cost of SDR services if clearing agencies are able to transmit data to an affiliated SDR at a lower cost relative to transmitting the same data to an independent SDR. The Commission preliminarily believes that this is likely to be true for clearing transactions, given that the clearing agency and affiliate SDR would have greater control over the reporting process relative to sending to an unaffiliated SDR. Even if registered clearing agencies did not enter the market for SDR services, their ability to pursue a vertical integration strategy could motivate incumbent SDRs to offer service models that are sufficiently competitive to discourage entry by registered clearing agencies.

However, the Commission recognizes that the entry of clearing agency-affiliated SDRs might not necessarily result in increased competition among SDRs or result in lower costs for SDR services. In an environment where registered clearing agencies with affiliated SDRs have discretion to send their clearing transaction data to their affiliates, security-based swap market participants who wish to submit their transactions to clearing may have reduced ability to direct the reporting of the clearing transaction to an unaffiliated SDR. As a result, clearing agency-affiliated SDRs would not directly compete with unaffiliated SDRs on the basis of price or quality, because they inherit their clearing agency affiliate's market share. This might allow clearing agency incumbents to exercise market power through their affiliate SDRs relative to stand-alone SDRs.

In summary, the Commission's economic analysis of these proposed rules and amendments considers the features of the market for infrastructure services that support security-based swap market participants. The Commission acknowledges that the allocation of reporting obligations that result from these proposed rules and amendments could affect the balance of competition between different providers of infrastructure. As discussed below, the effect of these proposed rules and amendments on competition between infrastructure providers could ultimately affect security-based swap counterparties.

B. Baseline

The Commission's analysis of the economic effects of the proposed rules, amendments, and guidance includes in its baseline the effects of Regulation SBSR, as adopted, and the SDR core principles and registration rules, as adopted in the SDR Adopting Release. Hence, the Commission's analysis of the potential impacts of the proposed rules, amendments, and guidance takes into account the anticipated effects of the adoption of Regulation SBSR and the SDR rules as described in those releases.

Furthermore, the overall Title VII regulatory framework will have consequences for the transaction activity addressed by this proposal. For example, the scope of future mandatory clearing requirements will affect the overall costs borne by registered clearing agencies, which under the

[204] *See* Joseph Farrell and Paul Klemperer, ''Coordination and Lock-in: Competition with Switching Costs and Network Effects,'' in *Handbook of Industrial Organization,* Mark Armstrong and Robert Porter (ed.) (2007), at 1,972. The authors describe how switching costs affect entry, noting that, on one hand, ''switching costs hamper forms of entry that must persuade customers to pay those costs'' while, on the other hand, if incumbents must set a single price for both new and old customers, a large incumbent might focus on harvesting its existing customer base, ceding new customers to the entrant. In this case, a competitive market outcome would be characterized by prices for services that equal the marginal costs associated with providing services to market participants.

[205] *See* Regulation SBSR Adopting Release at note 1250.

[206] A registered clearing agency expanding to provide SDR services is an example of forward vertical integration. In the context of these proposed rules and amendments, SDRs ''consume'' the data supplied by registered clearing agencies. Clearing agencies engage in forward vertical integration by creating or acquiring the SDRs that consume the data that they produce as a result of their clearing business.

proposal would be obligated to report security-based swap transactions that arise as a consequence of clearing. Similarly, the scope of future mandatory trade execution requirements will affect the volume of transactions that take place on platforms, and ultimately the number of transactions that platforms would be obligated to report under this proposal. Finally, as noted in the Cross-Border Adopting Release,[207] the market for security-based swaps is global in nature and regulatory requirements may differ across jurisdictions. To the extent that the costs of regulatory requirements differ, certain market participants may have incentives to restructure their operations to avoid regulation under Title VII, which generally would reduce the number of transactions affected by this proposal.

The following sections provide an overview of aspects of the security-based swap market that are likely to be most affected by the proposal, as well as elements of the current market structure, such as central clearing and platform trading, that are likely to determine the scope of transactions that will be covered by the proposed rules, amendments, and guidance.[208]

1. Current Security-Based Swap Market

The Commission's analysis of the current state of the security-based swap market is based on data obtained from DTCC–TIW, especially data regarding the activity of market participants in the single-name credit default swap (''CDS'') market during the period 2008 to 2013.[209] While other trade repositories may collect data on equity security-based swaps, the Commission currently has no access to detailed data about these products (or other products that are security-based swaps). As such, the Commission is unable to analyze security-based swaps other than single-name CDS. However, the Commission believes that the single-name CDS data are representative of the overall security-based swap market and therefore can directly inform the Commission's analysis of the security-based swap market.[210]

2. Clearing Activity in Single-Name Credit Default Swaps

Currently, there is no regulatory requirement in the United States to clear security-based swaps. Clearing for certain single-name CDS products occurs on a voluntary basis. Voluntary clearing activity in single-name CDS has steadily increased alongside the Title VII rulemaking process. As a result, any rule that would allocate reporting obligations for clearing transactions would affect the accessibility of data related to a large number of security-based swap transactions. In addition, the size of this part of the market would affect the magnitude of the regulatory reporting burdens. As of the end of 2013, ICE Clear Credit accepted for clearing security-based swap products based on a total of 161 North American corporate reference entities, 121 European corporate reference entities, and six individual sovereign (nation-state) reference entities.

Figure 1, below, shows characteristics of new trades in single-name CDS that reference North American standard corporate ISDA documentation. In particular, the figure documents that about half of all clearable transactions are cleared. Moreover, over the sample period, transaction volume accepted for clearing increased as a fraction of total volume in these products. Analysis of trade activity from July 2012 to December 2013 indicates that, out of $938 billion of notional amount traded in North American corporate single-name CDS products that are accepted for clearing during the 18 months ending December 2013, approximately 71%, or $666 billion, had characteristics making them suitable for clearing by ICE Clear Credit and represented trades between two ICE Clear Credit clearing members. Approximately 79% of this notional value, or $525 billion, was cleared through ICE Clear Credit, or 56% of the total volume of new trade activity. As of the end of 2013, ICE Clear Europe accepted for clearing single-name CDS products referencing a total of 136 European corporate reference entities. Analysis of new trade activity from July 2012 to December 2013 indicates that, out of €531 billion of notional amount traded in European corporate single-name CDS products that are accepted for clearing during the 18 months ending December 2013, approximately 70%, or €372 billion had characteristics making them suitable for clearing by ICE Clear Europe and represented trades between two ICE Clear Europe clearing members. Approximately 51% of this notional amount, or €191 billion. was cleared through ICE Clear Europe, or 36% of the total volume of new trade activity.[211]

[207] *See* 79 FR 47280.

[208] *See* Regulation SBSR Adopting Release, Section XXIII(B) (providing additional information regarding the OTC derivatives market generally, and counterparties specifically).

[209] The data available from DTCC–TIW do not encompass CDS transactions (1) based on non-U.S. reference entities and (ii) where neither counterparty is a U.S. person. Commission staff quantified the proportion of transaction activity included in the DTCC–TIW transaction data. In 2013, DTCC–TIW reported on its Web site new trades in single-name CDSs with gross notional of $12.0 trillion. DTCC–TIW provided to the Commission data that included only transactions with a U.S. counterparty or a U.S. reference entity. During the same period, these data included new trades with gross notional equaling $9.3 trillion, or 77% of the total reported by DTCC–TIW. Hence, the Commission believes that the DTCC–TIW data provide sufficient information to identify the types of market participants active in the security-based swap market and the general pattern of dealing within that market.

[210] According to data published by BIS, the global notional amount outstanding in equity forwards and swaps as of December 2013 was $2.28 trillion. The notional amount outstanding in single-name CDS was approximately $11.32 trillion, in multi-name index CDS was approximately $8.75 trillion, and in multi-name, non-index CDS was approximately $950 billion. *See* Semi-annual OTC derivatives statistics at end-December 2013 (June 2014), Table 19, available at *http://www.bis.org/statistics/dt1920a.pdf*. For the purposes of this analysis, the Commission assumes that multi-name index CDS are not narrow-based index CDS and, therefore, do not fall within the ''security-based swap'' definition. *See* Section 3(a)(68)(A) of the Exchange Act; Product Definitions Adopting Release, 77 FR 48208. The Commission also assumes that all instruments reported as equity forwards and swaps are security-based swaps, potentially resulting in underestimation of the proportion of the security-based swap market represented by single-name CDS. Based on those assumptions, single-name CDS appear to constitute roughly 78% of the security-based swap market. Although the BIS data reflect the global OTC derivatives market and not just the U.S. market, the Commission has no reason to believe that these ratios differ significantly in the U.S. market.

[211] These numbers do not include transactions in European corporate single-name CDS that were cleared by ICE Clear Credit. However, during the sample period, there was only one day (December 20, 2013) on which there were transactions in European corporate single-name CDS that were cleared by ICE Clear Credit, and the traded notional of these transactions was *de minimis*. For historical data, *see https://www.theice.com/marketdata/reports/99*.

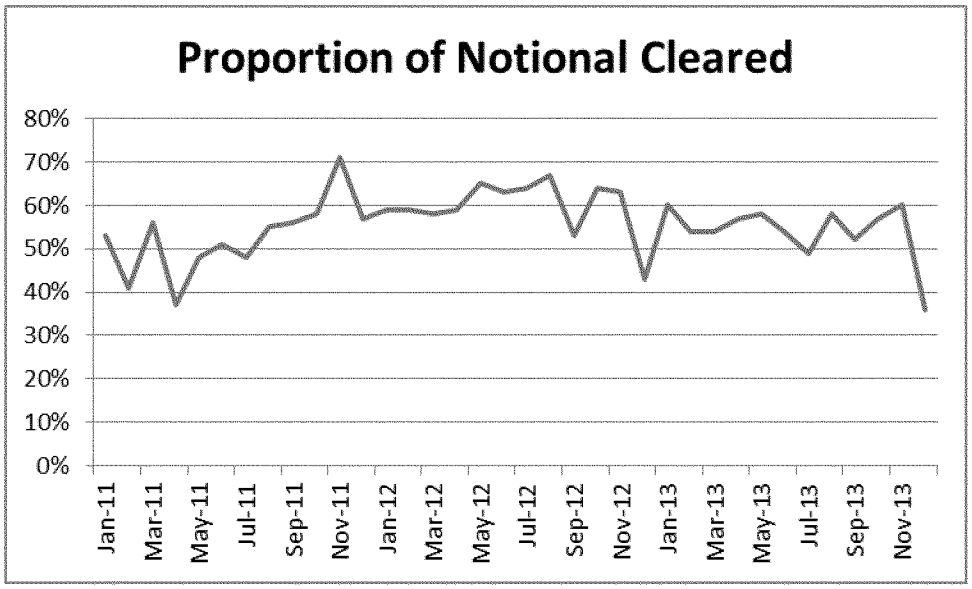

Figure 1: The fraction of total gross notional amount of new trades and assign-entries in North American single-name CDS products that were accepted for clearing by ICE Clear Credit and were cleared within 14 days of the initial transaction.[212]

3. Execution Methods in the Security-Based Swap Market

The proposed rules and amendments address regulatory reporting obligations for, among others, security-based swap transactions executed on platforms and submitted to clearing. While trading in security-based swaps is currently dominated by bilateral negotiation and the use of interdealer brokers, the Commission anticipates that future rulemaking will address mandatory trade execution requirements that will likely result in increased incidence of trading on platforms.[213]

4. Current Market Structure for Security-Based Swap Infrastructure

a. Exchanges and SB SEFs

The proposed rules and amendments would address how transactions conducted on platforms (*i.e.,* national securities exchanges and SB SEFs) would be required to be reported under Regulation SBSR. Currently, there are no SB SEFs registered with the Commission, and as a result, there is no registered SB SEF trading activity to report. There are, however, currently 24 SEFs that are either temporarily registered with the CFTC or whose temporary registrations are pending with the CFTC and currently are exempt from registration with the Commission.[214] As the Commission noted in the Cross-Border Adopting Release, the cash flows of security-based swaps and other swaps are closely related and many participants in the swap market also participate in the security-based swap market.[215] Likewise, the Commission preliminarily believes that many entities that currently act as swap execution facilities are likely to also register with the Commission as SB SEFs. The Commission anticipates that, owing to the smaller size of the security-based swap market, there will be fewer platforms for executing transactions in security-based swaps than the 24 SEFs reported within the CFTC's jurisdiction. Under proposed Rule 901(a)(1), a platform would be required to report to a registered SDR any security-based swap transactions executed on its facilities and submitted to clearing.

b. Clearing Agencies

The market for clearing services and data reporting services in the security-based swap market is currently concentrated among a handful of firms. Table 1 lists the firms that currently clear index and single-name CDS and identifies the segments of the market each firm serves. While there may be limited choices available to participants interested in cleared index CDS transactions, only two firms (albeit with the same parent) clear sovereign single-name CDS and only a single firm serves the market for North American single-name CDS. Concentration of clearing services within a limited set of clearing agencies can be explained, in part, by the existence of strong economies of scale in central clearing.[216]

[212] The Commission prelimdissemination requirements of proposed Regulation SBSR were related to lack of inarily believes that it is reasonable to assume that, when clearing occurs within 14 days of execution, counterparties made the decision to clear at the time of execution and not as a result of information arriving after execution.

[213] *See* Securities Exchange Act Release No. 67177 (June 11, 2012), 77 FR 35640 (June 14, 2012) (''General Policy on Sequencing'').

[214] *See* Effective Date Release, 76 FR 36306 (exempting persons that operate a facility for the trading or processing of security-based swaps that is not currently registered as a national securities exchange or that cannot yet register as an SB SEF because final rules for such registration have not yet been adopted from the requirements of Section 3D(a)(1) of the Exchange Act until the earliest compliance date set forth in any of the final rules regarding registration of SB SEFs). A list of SEFs that are either temporarily registered with the CFTC or whose temporary registrations are pending with the CFTC is available at *http://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=SwapExecutionFacilities* (last visited November 3, 2014).

[215] *See* Cross-Border Adopting Release, 79 FR 47300.

[216] *See* Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66265 (November 2, 2012) (noting that economies of scale can result in natural monopolies). *See also* Craig Pirrong, ''The Industrial Organization of Execution, Clearing and Settlement in Financial Markets,'' Working Paper (2007), available at *http://www.bauer.uh.edu/spirrong/Clearing_silos.pdf* (last visited November 2, 2014) (discussing the presence of economies of scale in central clearing).

TABLE 1—CLEARING AGENCIES CURRENTLY CLEARING INDEX AND SINGLE-NAME CDS

	North American	European	Sovereign	Index
ICE Clear Credit[217]	X	X	X	X
ICE Clear Europe[218]	.....	X	X	X
CME[219]	.....	.....	.....	X
LCH.Clearnet[220]	.....	X	.....	X

c. SDRs

The market for data services has evolved along similar lines. While there is currently no mandatory reporting requirement for the single-name CDS market, virtually all transactions are voluntarily reported to DTCC–TIW, which maintains a legal record of transactions.[221] That there currently is a single dominant provider of record-keeping services for security-based swaps is consistent with the presence of a natural monopoly for a service that involves a predominantly fixed cost investment with low marginal costs of operation.

There are currently no SDRs registered with the Commission. Registration requirements are part of the new rules discussed in the SDR Adopting Release. In the absence of SEC-registered SDRs, the analysis of the economic effects of the proposed rules and amendments discussed in this release on SDRs is informed by the experience of the CFTC-registered SDRs that operate in the swap market. The CFTC has provisionally registered four SDRs to accept transactions in swap credit derivatives.[222]

It is reasonable to estimate that a similar number of persons provisionally registered with the CFTC to service the equity and credit swap markets might seek to register with the Commission as SDRs, and that other persons could seek to register with both the CFTC and the Commission as SDRs. There are economic incentives for the dual registration attributed to the fact that many of the market participants in the security-based swap market also participate in the swap market. Moreover, once an SDR is registered with the CFTC and the required infrastructure for regulatory reporting and public dissemination is in place, the marginal costs for an SDR to also register with the Commission, adding products and databases and implementing modifications to account for difference between Commission and CFTC rules, will likely to be lower than the initial cost of registration with the CFTC.

d. Vertical Integration of Security-Based Swap Market Infrastructure

The Commission has already observed vertical integration of swap market infrastructure: Clearing agencies have entered the market for record-keeping services for swaps by provisionally registering themselves, or their affiliates, as SDRs with the CFTC. Under the CFTC swap reporting regime, two provisionally registered SDRs are, or are affiliated with, clearing agencies that clear swaps. These clearing agencies have adopted rules providing that they will satisfy their CFTC swap reporting obligations by reporting to their own, or their affiliated, SDR.[223] As a result, beta and gamma transactions and subsequent netting transactions that arise from the clearing process are reported by each of these clearing agencies to their associated SDRs.

C. Programmatic Costs of Proposed Amendments to Regulation SBSR

1. Proposed Amendments to Rule 901

Proposed Rule 901(a)(2)(i) would provide that the reporting side for a clearing transaction is the clearing agency that is a counterparty to the clearing transaction. Rule 901(a)(3) would require any person that has a duty to report a security-based swap that has been submitted to clearing at a registered clearing agency to promptly provide that registered clearing agency with the transaction ID of the submitted security-based swap and the identity of the registered SDR to which the transaction will be reported or has been reported.

These proposed amendments to Rule 901 would impose initial and ongoing costs on platforms, clearing agencies, and reporting sides. The Commission preliminarily believes that certain of these costs would be a function of the number of reportable events and the data elements required to be submitted for each reportable event. The discussion below first highlights those burdens and costs related to proposed Rule 901(a)(2)(i), followed by burdens and costs related to proposed Rule 901(a)(3).

a. For Platforms and Registered Clearing Agencies—Rule 901(a)(1) and Rule 901(a)(2)(i)

The Commission preliminarily believes that platforms and registered clearing agencies would face the same costs that reporting sides face. Specifically, platforms and registered clearing agencies would have to: (1) Develop transaction processing systems; (2) implement a reporting mechanism; and (3) establish an appropriate compliance program and support for the operation of the transaction processing system. The Commission also preliminarily believes that, once a platform or registered clearing agency's reporting infrastructure and compliance systems are in place, the burden of reporting each individual reportable event would represent a small fraction of the burdens of establishing the reporting infrastructure and compliance systems. The Commission preliminarily believes that all reportable events, for which platforms and registered clearing agencies would be responsible for reporting, would be reported through electronic means. The Commission preliminarily believes that there would be ten platforms and four registered clearing agencies that would incur duties to report security-based swap transactions under the proposed amendments to Rule 901.

The Commission preliminarily estimates that transaction processing

[217] A current list of single-name and index CDS cleared by ICE Clear Credit is available at: *https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Clearing_Eligible_Products.xls* (last visited November 3, 2014).

[218] A current list of single-name and index CDS cleared by ICE Clear Europe is available at: *https://www.theice.com/publicdocs/clear_europe/ICE_Clear_Europe_Cleared_Products_List.xls* (last visited November 3, 2014).

[219] A current list of products cleared by CME is available at: *http://www.cmegroup.com/trading/otc/files/otc-cds-product-scope.pdf* (last visited November 3, 2014).

[220] A current list of single-name and index CDS cleared by LCH.Clearnet is available at: *http://www.lchclearnet.com/documents/731485/762470/cdsclear+clearable+product+list+%28october+2014%29.xlsx/b0f514f2-d876-4aa4-9e6b-5b4c76985fb8* (last visited November 3, 2014).

[221] *See http://www.isdacdsmarketplace.com/exposures_and_activity* (last visited September 22, 2014) (describing the function and coverage of DTCC–TIW).

[222] A list of SDRs provisionally registered with the CFTC is available at *http://sirt.cftc.gov/sirt/sirt.aspx?Topic=DataRepositories* (last visited November 13, 2014).

[223] *See* CME Clearing Rule 1001 (Regulatory Reporting of Swap Data); ICE Clear Credit Clearing Rule 211 (Regulatory Reporting of Swap Data).

system related to Rule 901 and applicable to platforms and registered clearing agencies would result in initial one-time aggregate costs of approximately $1,428,000, which corresponds to $102,000 for each platform or registered clearing agency.[224] The Commission estimates that the cost to establish and maintain connectivity to a registered SDR to facilitate the reporting required by Rule 901 would impose an annual (first-year and ongoing) aggregate cost of approximately $2,800,000, which corresponds to $200,000 for each platform or registered clearing agency.[225] The Commission estimates, as a result of having to establish a reporting mechanism for security-based swap transactions, platforms and registered clearing agencies would experience certain development, testing, and supports costs. Such costs would amount to an initial one-time aggregate cost of approximately $686,000, which corresponds to an initial one-time cost of $49,000 for each platform or registered clearing agency.[226] The Commission preliminarily estimates that order management costs related to the proposed amendments to Rule 901 would impose ongoing annual aggregate costs of approximately $1,078,000, which corresponds to $77,000 per platform or registered clearing agency.[227] In addition, the Commission estimates that platforms and registered clearing agencies would incur an initial and ongoing aggregate annual cost of $14,000, which corresponds to $1,000 for each platform or registered clearing agency.[228] The Commission estimates that designing and implementing an appropriate compliance and support program will impose an initial one-time aggregate cost of approximately $756,000, which corresponds to a cost of approximately $54,000 for each platform or registered clearing agency.[229] The Commission estimates that maintaining its compliance and support program would impose an ongoing annual aggregate cost of approximately $539,000, which corresponds to a cost of approximately $38,500 for each platform or registered clearing agency.[230]

In the Regulation SBSR Adopting Release, the Commission revised its previous estimates of the number of reportable events associated with security-based swap transactions per year.[231] These revised estimates were a result of the Commission obtaining additional, more recent, and more granular data regarding participation in the security-based swap market from DTCC–TIW. In the Regulation SBSR Adopting Release, the Commission estimated that there will be approximately 3 million reportable events per year under Rule 901, an estimate that the Commission continues to believe is valid for the purposes of this release.[232] The Commission estimated in the Regulation SBSR Adopting Release that Rule 901(a), as adopted, will result in approximately 2 million reportable events related to covered transactions.[233]

The Commission preliminarily estimates that 1 million of the 3 million total reportable events would result from the proposed amendments to Rule 901.[234] This estimate of 1 million reportable events would include the initial reporting of the security-based swaps by platforms and registered clearing agencies as well as any life

[224] This estimate is based on the following: [((Sr. Programmer (160 hours) at $303 per hour) + (Sr. Systems Analyst (160 hours) at $260 per hour) + (Compliance Manager (10 hours) at $283 per hour) + (Director of Compliance (5 hours) at $446 per hour) + (Compliance Attorney (20 hours) at $334 per hour)) × 14 platforms and registered clearing agencies)] = approximately $1,428,000, or $102,000 per platform or registered clearing agency. All hourly cost figures are based upon data from SIFMA's Management & Professional Earnings in the Securities Industry 2013 (modified by Commission staff to account for an 1,800-hour-work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead). *See also* Regulation SBSR Adopting Release, Section XXII(C)(2)(b).

[225] The Commission derived the total estimated expense from the following: ($100,000 hardware- and software-related expenses, including necessary backup and redundancy, per SDR connection) × (2 SDR connections per platform or registered clearing agency) × (14 platforms or registered clearing agencies) = $2,800,000, or $200,000 per platform or registered clearing agency. *See also* Regulation SBSR Adopting Release, Section XXII(C)(2)(b).

[226] This figure is calculated as follows: [((Sr. Programmer (80 hours) at $303 per hour) + (Sr. Systems Analyst (80 hours) at $260 per hour) + (Compliance Manager (5 hours) at $283 per hour) + (Director of Compliance (2 hours) at $446 per hour) + (Compliance Attorney (5 hours) at $334 per hour) × (14 platforms or registered clearing agencies)] = approximately $686,000, which equates to $49,000 per platform or registered clearing agency. *See also* Regulation SBSR Adopting Release, Section XXII(C)(2)(b).

[227] This estimate is based on the following: [((Sr. Programmer (32 hours) at $303 per hour) + (Sr. Systems Analyst (32 hours) at $260 per hour) + (Compliance Manager (60 hours) at $283 per hour) + (Compliance Clerk (240 hours) at $64 per hour) + (Director of Compliance (24 hours) at $446 per hour) + (Compliance Attorney (48 hours) at $334 per hour)) × 14 platforms and registered clearing agencies)] = approximately $1,078,000, or $77,000 per platform or registered clearing agency. *See also* Regulation SBSR Adopting Release, Section XXII(C)(2)(b).

[228] This estimate is calculated as follows: [$250/gigabyte of storage capacity × (4 gigabytes of storage) × (14 platforms or registered clearing agencies)] = $14,000, or $1,000 per platform or registered clearing agency. *See also* Regulation SBSR Adopting Release, Section XXII(C)(2)(b).

[229] This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer (100 hours) at $303 per hour) + (Sr. Systems Analyst (40 hours) at $260 per hour) + (Compliance Manager (20 hours) at $283 per hour) + (Director of Compliance (10 hours) at $446 per hour) + (Compliance Attorney (10 hours) at $334 per hour) × (14 platforms and registered clearing agencies)] = approximately $756,000, or $54,000 per platform or registered clearing agency.

[230] This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer (16 hours) at $303 per hour) + (Sr. Systems Analyst (16 hours) at $260 per hour) + (Compliance Manager (30 hours) at $283 per hour) + (Compliance Clerk (120 hours) at $64 per hour) + (Director of Compliance (12 hours) at $446 per hour) + (Compliance Attorney (24 hours) at $334 per hour) × (14 platforms and registered clearing agencies)] = approximately $539,000, or $38,500 per platform or registered clearing agency. *See also* Regulation SBSR Adopting Release, Section XXII(C)(2)(b).

[231] *See* Regulation SBSR Adopting Release, Section XXI.

[232] The Commission originally estimated that there would be 15.5 million reportable events per year under Regulation SBSR. *See* Regulation SBSR Proposing Release, 75 FR 75247–48. In the Cross-Border Proposing Release, the Commission updated its estimate of the number of reportable events to approximately 5 million per year. The Commission noted that the change in the estimate of the number of reportable events per year was due to better and more precise data available from the industry on the scope, size, and composition of the security-based swap market. *See* Cross-Border Proposing Release, 78 FR 31114–15. For these same reasons, the Commission has further updated its estimate of the number of reportable events to approximately 3 million per year. *See infra* note 233.

[233] The Commission now estimates that there were approximately 2.26 million single-name CDS transactions in 2013. The data studied by the Commission cover single-name CDS transactions, which the Commission continues to believe account for approximately 80–90% of the security-based swap market. The Commission continues to use 78% as its measure of CDS as a percentage of the entire security-based swap market, resulting in a revised estimate of 3 million security-based swap transactions (*i.e.,* 2,260,000/0.78 = 2,897,436 reportable events). *See* Regulation SBSR Adopting Release, Section XXI(B)(4)(b).

[234] The Commission is proposing to amend Rule 901(a)(2) to require a clearing agency to be the reporting side for clearing transactions to which it is a counterparty. The Commission is further proposing to amend Rule 901(e)(1) to provide that a ''clearing agency shall report whether or not it has accepted a security-based swap for clearing.'' Pursuant to Rule 901(e)(1), a registered clearing agency would be required to report whether or not it has accepted a security-based swap for clearing. Proposed Rule 901(a)(2)(i), discussed above, would require clearing agencies to report security-based swap transaction information for clearing transactions. These reportable events have been included in the Commission's estimates of the number of reportable events for the purposes of Rule 901.

In arriving at the Commission's estimate of 1 million reportable events, the Commission has included the following: (1) The termination of the original or ''alpha'' security-based swap; (2) the creation of beta and gamma security-based swaps; (3) the termination of beta, gamma, and any previous open positions during each netting cycle; and (4) any other transactions that are entered into by the registered clearing agency, arriving at 645,000 observations. Inflating this figure by 0.78, the Commission's measure of CDS as a percentage of the entire security-based swap market, is 645,000/0.78 = 826,923 or approximately 1 million reportable events.

cycle events of such transactions. Specifically, the Commission preliminarily estimates that, of the 1 million reportable events, approximately 370,000 would involve the reporting of new security-based swap transactions and approximately 630,000 would involve the reporting of life cycle events under Rule 901(e).[235] As a result, the Commission preliminarily estimates that platforms would be responsible for the reporting of approximately 120,000 security-based swaps,[236] at an annual cost of approximately $45,300 or $4,530 per platform.[237] The Commission preliminarily estimates that registered clearing agencies would be responsible for the reporting of approximately 250,000 security-based swaps, at an annual cost of approximately $94,375 or $23,593.75 per registered clearing agency.[238] The Commission preliminarily estimates that the proposed amendments to Rule 901(a) would result in registered clearing agencies having to report a significant number of life cycle events under Rule 901(e) over the course of a year—consisting primarily of terminations of clearing transactions occurring as part of the netting process—at an annual cost of approximately $237,825 or $59,456.25 per registered clearing agency.[239] The Commission preliminarily believes that all reportable events that would be reported by platforms and registered clearing agencies pursuant to these proposed amendments would be reported through electronic means.

In the Cross-Border Proposing Release, the Commission stated that, to the extent that security-based swaps become more standardized and trade more frequently on electronic platforms (rather than manually), the act of reporting transactions to a registered SDR should become less costly.[240] Together, these trends are likely to reduce the number of transactions that would necessitate the manual capture of bespoke data elements, which is likely to take more time and be more expensive than electronic capture.

b. For Platforms and Reporting Sides of Alphas—Rule 901(a)(3)

Pursuant to proposed Rule 901(a)(3), a person—either the platform upon which the security-based swap was executed or the reporting side for those security-based swaps other than clearing transactions—to report, for those security-based swaps submitted to a registered clearing agency, the transaction ID of the submitted security-based swap and the identity of the registered SDR to which the transaction will be or has been reported.

Rule 901(a)(3) requires certain information (transaction ID and the identity of the registered SDR) to be reported to a registered clearing agency only if such security-based swap has been submitted to a registered clearing agency for clearing. As a result, platforms and reporting sides required to report transaction IDs and the identity of a registered SDR will already have put into place any infrastructure needed to report these security-based swaps to a registered clearing agency. However, requiring the person who has the duty to report the alpha transaction to a registered SDR to provide these data elements to the registered clearing agency to which the alpha has been submitted would result in certain additional development and maintenance costs. Specifically, the Commission preliminarily believes that the additional one-time cost related to the development of the ability to capture the relevant transaction information would be $2,815, and the additional one-time burden related to the implementation of a reporting mechanism for these two data elements would be $1,689 per platform or reporting side.[241] The Commission preliminarily believes that the additional ongoing cost related to the development of the ability to capture the relevant transaction information would be $2,815 and the additional ongoing burden related to the maintenance of the reporting mechanism would be $563, per platform or reporting side.[242]

c. Total Costs of Platforms, Registered Clearing Agencies, and Reporting Sides Relating to Proposed Amendments to Rule 901

Summing these costs, the Commission preliminarily estimates that the initial, first-year cost of complying with the proposed amendments to Rule 901 (including the initial reporting and the reporting of any life cycle events) would be $5,288,450, which corresponds to 528,845 per platform.[243] The Commission estimates that the ongoing aggregate annual costs, after the first

[235] Commission staff arrived at this estimate by summing the number of beta and gamma transactions that would result from observed termination of alphas by a registered clearing agency (197,798) and the number of other betas and gammas for which terminations were not available due to same-day clearing (88,935) to arrive at 286,733 total transactions. Inflating this figure by 0.78, the Commission's measure of CDS as a percentage of the entire security-based swap market, results in an estimate of 286,733/0.78, or approximately 370,000 reportable events.

[236] As discussed in Section II(C)(2), *supra,* proposed Rule 901(a)(1) would require a platform to report any security-based swap executed on its facilities that will be submitted to clearing. Platforms, however, would not be responsible for reporting life cycle events of such security-based swaps. The Commission preliminarily believes that the only life cycle event of a platform-executed security-based swap that is submitted to clearing will be whether the security-based swap is accepted for clearing. Proposed Rule 901(e)(1)(ii) would require the registered clearing agency to report that information, not the platform. The Commission estimates that platforms would be responsible only for the reporting of approximately one third of the 370,000 security-based swaps (or about 120,000 security-based swaps) and registered clearing agencies (as a result of the creation of new security-based swaps during the clearing process) would be responsible for the reporting of the remaining two-thirds of security-based swaps (or 250,000 security-based swaps).

[237] The Commission estimates: ((120,000 × 0.005 hours per transaction)/(10 platforms)) = 60 hours per platform, or 600 total hours. The Commission further estimates the total cost to be: [((Compliance Clerk (30 hours) at $64 per hour) + (Sr. Computer Operator (30 hours) at $87 per hour)) × (10 platforms)] = approximately $45,300, or $4,530 per platform. *See also* Regulation SBSR Adopting Release, Section XXII(C)(2)(b).

[238] The Commission estimates: ((250,000 × 0.005 hours per transaction)/(4 registered clearing agencies)) = 312.5 hours per registered clearing agency, or 1,250 total hours. The Commission further estimates the total cost to be: [((Compliance Clerk (156.25 hours) at $64 per hour) + (Sr. Computer Operator (156.25 hours) at $87 per hour)) × (4 registered clearing agencies)] = $94,375, or $23,593.75 per registered clearing agency. *See also* Regulation SBSR Adopting Release, Section XXII(C)(2)(b).

[239] The Commission estimates: ((630,000 × 0.005 hours per transaction)/(4 registered clearing agencies)) = 787.5 hours per registered clearing agency, or 3,150 total hours. The Commission further estimates the total cost to be: [((Compliance Clerk (393.75 hours) at $64 per hour) + (Sr. Computer Operator (393.75 hours) at $87 per hour)) × (4 registered clearing agencies)] = approximately $237,825, or $59,456.25 per registered clearing agency. *See also* Regulation SBSR Adopting Release, Section XXII(C)(2)(b).

[240] *See* Cross-Border Proposing Release, 78 FR 31198.

[241] The Commission estimates that the addition burdens would be: [(Sr. Programmer (5 hours at $303 per hour) + Sr. Systems Analyst (5 hours) at $260 per hour) = 10 burden hours (development of the ability to capture transaction information) = $2,815 per platform or reporting side; (Sr. Programmer (3 hours) at $303 per hour + Sr. Systems Analyst (3 hours) at $260 per hour) = $1689 per platform or reporting side (implementation of reporting mechanism)]. The total one-time cost associated with proposed Rule 901(a)(3) would be $4,504 per platform or reporting side for a total one-time cost $1,396,240 ($4,504 × 310 (300 reporting sides + 10 platforms)).

[242] The Commission estimates that the additional burdens would be: [(Sr. Programmer (5 hours) + Sr. Systems Analyst (5 hours)) = 10 burden hours (maintenance of transaction capture system); (Sr. Programmer (1 hour) + Sr. Systems Analyst (1 hour)) = 2 burden hours (maintenance of reporting mechanism)]. The total ongoing burden associated with the amendments to 901(a) would be 12 burden hours per platform and reporting side for a total ongoing burden of 3720 hours (12 × 310 (300 reporting sides + 10 platforms)).

[243] This estimate is based on the following: (($102,000 + $200,000 + $49,000 + $77,000 + $54,000 + $1,000 + $38,500 + $4,530 + $2,815) × (10 platforms)) = $5,288,450, which corresponds to $528,845 per platform.

year, of complying with the proposed amendments to Rule 901 (including the initial reporting and the reporting of any life cycle events) would be $3,215,930, which corresponds to $321,593 per platform.[244] The Commission estimates that the initial, first-year cost of complying with the proposed amendments to Rule 901 (including the initial reporting and the reporting of any life cycle events) would be $2,418,200, which corresponds to $604,550 per registered clearing agency.[245] The Commission preliminarily estimates that the ongoing aggregate annual costs, after the first year, of complying with the proposed amendments to Rule 901 (including the initial reporting and the reporting of any life cycle events) would be $1,598,200, which corresponds to $399,550 per registered clearing agency.[246] The Commission estimates that the initial, first-year cost of complying with proposed Rule 901(a)(3) would be $844,500, which corresponds to $2,815 per reporting side.[247] The Commission preliminarily estimates that the ongoing aggregate annual costs, after the first year, of complying with proposed Rule 901(a)(3) would be $168,900, which corresponds to $563 per reporting side.[248]

2. Proposed Amendment to Rule 905(a)

In the Regulation SBSR Adopting Release, the Commission estimated that Rule 905(a), as adopted, will impose an initial, one-time burden associated with designing and building a reporting side's reporting system to be capable of submitting amended security-based swap transaction information to a registered SDR.[249] The Commission stated its belief that designing and building appropriate reporting system functionality to comply with Rule 905(a)(2) will be a component of, and represent an incremental ''add-on'' to, the cost to build a reporting system and develop a compliance function as required under Rule 901, as adopted.[250] Specifically, the Commission estimated that, based on discussions with industry participants, the incremental burden would be equal to 5% of the one-time and annual burdens associated with designing and building a reporting system that is in compliance with Rule 901, plus 10% of the corresponding one-time and annual burdens associated with developing the reporting side's overall compliance program required under Rule 901.[251] This estimate was based on similar calculations contained in the Regulation SBSR Proposing Release,[252] updated to reflect new estimates relating to the number of reportable events and the number of reporting sides.[253]

The Commission preliminarily believes that the above methodology is applicable to error reporting by platforms under the proposed amendment to Rule 905(a). Thus, for platforms, the Commission preliminarily estimates that the proposed amendment to Rule 905(a) would impose an initial (first-year) aggregate cost of $118,250, or $11,825 per platform,[254] and an ongoing aggregate annualized cost of $39,750, which is $3,975 per platform.[255]

3. Proposed Amendments to Rule 906(c)

For Registered Clearing Agencies and Platforms. Rule 906(c), as adopted, requires each participant of a registered SDR that is a registered security-based swap dealer and registered major security-based swap participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any security-based swap transaction reporting obligations in a manner consistent with Regulation SBSR. Rule 906(c), as adopted, also requires such participants to review and update the required policies and procedures at least annually.

The proposed amendment to Rule 906(c) would extend these same requirements to participants of a registered SDR that are platforms or registered clearing agencies. The Commission preliminarily estimates that the one-time, initial burden for each registered clearing agency or platform to adopt written policies and procedures as required under the proposed amendment would be similar to the Rule 906(c) burdens discussed in the Regulation SBSR Adopting Release for registered security-based swap dealers and registered major security-based swap participants. As a result, the Commission preliminarily estimates that the first year cost of complying with the proposed amendment to Rule 906(c) would be approximately $58,000 per registered clearing agency or platform.[256] As discussed in the Regulation SBSR Proposing Release,[257] this figure is based on the estimated cost to develop written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing. In addition, the Commission preliminarily estimates the cost of maintaining such policies and procedures, including a full review at least annually—as would be required by the proposed amendment to Rule 906(c)—would be approximately $34,000 per registered clearing agency or platform.[258] This figure includes an estimate of the cost related to reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining internal controls systems, and performing necessary testing.

D. Economic Effects and Effects on Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act [259] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act [260] requires the Commission, when making rules under the Exchange Act, to consider the impact of such rules on competition.

[244] This estimate is based on the following: (($200,000 + $77,000 + $1,000 + $38,500 + $4,530 + $563) × (10 platforms)) = $3,215,930, or $321,593 per platform.

[245] This estimate is based on the following: (($102,000 + $200,000 + $49,000 +$77,000 + $54,000 + $1,000 + $38,500 + $23,593.75 + $59,456.25) × (4 registered clearing agencies)) = $2,418,200, which corresponds to $604,550 per registered clearing agency.

[246] This estimate is based on the following: (($200,000 + $77,000 + $1,000 + $38,500 + $23,593.75 + $59,456.25) × (4 registered clearing agencies)) = $1,598,200, or $399,550 per registered clearing agency.

[247] This estimate is based on the following: ($2,815 × (300 reporting sides)) = $844,500, which corresponds to $2,815 per reporting side.

[248] This estimate is based on the following: ($563 × 300 reporting sides) = $168,900, or $563 per reporting side.

[249] *See* Regulation SBSR Adopting Release, Section XXII(C)(6).

[250] *See id.*

[251] *See id.*

[252] *See* 75 FR 75254.

[253] *See* Regulation SBSR Adopting Release, Section XXII(C)(1).

[254] *See* Regulation SBSR Proposing Release, 75 FR 75254–55. This figure is calculated as follows: [(($49,000 for one-time development of reporting system) × (0.05)) + (($2,500 annual maintenance of reporting system) × (0.05)) + (($54,000 one-time compliance program development) × (0.1)) + (($38,500 annual support of compliance program) × (0.1))) × (10 platforms)] = $118,250, which is $11,825 per platform.

[255] *See* Regulation SBSR Proposing Release, 75 FR 75254–55. This figure is calculated as follows: [(($2,500 annual maintenance of reporting system) × (0.05)) + (($38,500 annual support of compliance program) × (0.1))) × (10 platforms)] = $39,750, which is $3,975 per platform.

[256] *See* Regulation SBSR Adopting Release, note 1238.

[257] *See* Regulation SBSR Proposing Release, 75 FR 75257.

[258] *See* Regulation SBSR Adopting Release, note 1240.

[259] 15 U.S.C. 78c(f).

[260] 15 U.S.C. 78w(a)(2).

Section 23(a)(2) also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission preliminarily believes that this proposal will result in further progress towards the goals identified in the Regulation SBSR Adopting Release: Providing a means for the Commission and other relevant authorities to gain a better understanding of the aggregate risk exposures and trading behaviors of participants in the security-based swap market; facilitating public dissemination of security-based swap transaction information, thus promoting price discovery and competition by improving the level of information to all market participants; and improving risk management by security-based swap counterparties, which would need to capture and store their transactions in security-based swaps to facilitate reporting.[261]

The economic effects of the proposed rules, amendments, and guidance on firms that provide services to security-based swap counterparties and the security-based swap market are discussed in detail below. The Commission also considered the effects that the proposed rules, amendments, and guidance might have on competition, efficiency, and capital formation. The Commission preliminarily believes that the proposal is likely to affect competition between firms that provide services to security-based swap counterparties and affect efficiency as a result of the way that the proposed rules and amendments allocate regulatory burdens. The Commission preliminarily believes that most of the effects of the proposal on capital formation would be indirect and would be related to the way in which the proposed rules and amendments result in efficient delivery of services by registered clearing agencies and registered SDRs, reducing transactions costs and freeing resources for investment.[262]

This analysis has been informed by the relationships among regulation, competition, and market power discussed in Section VIII(A), *supra.* An environment in which there is limited competition in SDR services could impose certain costs on the security-based swap market, including higher prices or lower quality services from SDRs. For example, a registered SDR might be able to extract monopoly profits from reporting sides when there are few competitors, if reporting sides cannot identify a competing SDR offering prices close enough to marginal cost to make changing service providers privately efficient for the reporting side. However, it is also possible that limited competition in the market for SDR services could yield certain benefits for both regulatory authorities and the public. In particular, a small set of registered SDRs could make it simpler for relevant authorities to build a complete picture of transaction activity and outstanding risk exposures in the security-based swap market, and could limit the need for users of publicly disseminated transaction data to merge these data from multiple sources before using it as an input to economic decisions.

1. Reporting of Clearing Transactions

Proposed Rule 901(a)(2)(i) would assign the duty to report all security-based swaps that have a registered clearing agency as a direct counterparty to that registered clearing agency. Regulation SBSR, as adopted, does not assign reporting obligations for any clearing transactions; thus, in the absence of proposed Rule 901(a)(2)(i), these transactions would not be subject to any regulatory reporting requirement. Without these data, the ability of the Commission and other relevant authorities to carry out their market oversight functions would be limited. For example, while the Commission would have access to uncleared transactions that are reported to a registered SDR, the Commission—in the absence of proposed Rule 901(a)(2)(i)—would not be able to obtain from registered SDRs information about changes to the open positions of the relevant counterparties after alpha transactions are cleared. Without access to this information from registered SDRs, the Commission would be unable to easily observe risk exposures in the security-based swap market, because information about the net open positions in cleared security-based swaps would not be held in registered SDRs. Ensuring that clearing transactions are reported to registered SDRs and delineating reporting responsibilities for these transactions is particularly important given the level of voluntary clearing activity in the market as well as the mandatory clearing determinations required under Title VII.[263]

The Commission preliminarily believes that the costs associated with required reporting pursuant to the proposed amendments could represent a barrier to entry for new, smaller clearing agencies that might not have the ability to comply with the proposed reporting requirements or for whom the expected benefits of compliance might not justify the costs of compliance. To the extent that the proposed rules and amendments might deter new clearing agencies from entering the security-based swap market, this could negatively impact competition between registered clearing agencies.

A registered clearing agency is responsible for executing each of the clearing transactions to which it is a counterparty and, thus, is well-situated to report the resulting transaction information. By proposing to assign the reporting responsibility to registered clearing agencies, the Commission intends to eliminate additional steps in the reporting process that would be needed if another market participant were assigned the duty to report a clearing transaction or if the duty were to remain unassigned.[264] By proposing a reporting methodology with as few steps as possible, the Commission intends to minimize potential data discrepancies and errors by assigning reporting responsibilities to persons that hold the most complete and accurate information for cleared security-based swaps.[265] Inaccurate information would negatively impact the ability of the Commission and other relevant authorities to understand and act on the transaction information reported; accurate information should positively affect their ability to oversee the security-based swap market.

Proposed Rule 901(a)(1)(i) would place the obligation for reporting all clearing transactions on registered clearing agencies and allow them to choose the registered SDR to which they submit transaction data. As noted in Section VIII(A), *supra,* the Commission preliminarily believes that, because many of the infrastructure requirements for entrant SDRs are shared by registered clearing agencies, registered clearing agencies might pursue vertical

[261] *See* Regulation SBSR Adopting Release, Section XXII(D).

[262] These transactions costs would include both implicit and explicit costs. Implicit transactions costs are the spread between transaction prices and the fundamental value of the assets being traded. Explicit transactions costs, by contrast, are commissions and other fees paid by counterparties to access the security-based swap market.

[263] *See* General Policy on Sequencing, 77 FR 35636.

[264] If, for example, the non-clearing agency counterparty had the duty to report a clearing transaction, the registered clearing agency would first have to convey the transaction information to the counterparty—and the counterparty might have to reconfigure the transaction data into the format required by a registered SDR—before the counterparty could report it to a registered SDR.

[265] *See* CME/ICE Letter at 3–4.

integration into the market for SDR services at a lower cost relative to potential entrants from unrelated markets. If the costs of reporting to affiliated SDRs are lower than the costs of reporting to unaffiliated SDRs, then one likely response to the proposed rules and amendments is that registered clearing agencies will choose to report clearing transactions to an affiliated SDR. Such vertical integration of security-based swap clearing and reporting could be beneficial to other market participants if they ultimately share in these efficiency gains. For example, efficiency gains due to straight-through processing from execution to reporting could lower transactions costs for market participants and reduce the likelihood of data discrepancies and delays.

The Commission is also aware of the potential costs of placing the duty on registered clearing agencies to report transactions and allowing them to choose the registered SDR to which they report, as such clearing agencies would likely select their affiliated SDRs. If proposed Rule 901(a)(1)(i) would encourage the formation of affiliate SDRs that would not otherwise emerge, then the aggregate number of registered SDRs might reflect an inefficient level of service provision. As noted in Section VIII(A)(2), *supra,* economies of scale exist in the market for SDR services from the ability to amortize the fixed costs associated with infrastructure over a large volume of transactions. As a result, the entry of clearing agency-affiliated SDRs could indicate that, in aggregate, transaction data is processed at a higher average cost than if there were fewer SDRs. Inefficiencies could be introduced by the Commission and the public receiving security-based swap transaction data from a larger number of registered SDRs. Connecting to a larger number of SDRs and merging transaction data with potentially different data formats and schema could be costly and could lead to losses in data integrity.

The potential for efficiency gains through vertical integration of registered clearing agencies and registered SDRs could foreclose entry into the market for SDR services except by those firms that are willing to simultaneously enter the market for clearing services. The Commission preliminarily believes that registered clearing agencies are more likely to benefit from these efficiencies in shared infrastructure than stand-alone SDRs, given that it is likely to be more difficult for a registered SDR to enter into clearing activity than for a registered clearing agency to enter into SDR activity. Moreover, to the extent that an affiliate SDR is not as cost-effective as a competing unaffiliated SDR, the registered clearing agency could subsidize the operation of its affiliate SDR to provide a competitive advantage in its cost structure over SDRs unaffiliated with a registered clearing agency. Even if the registered clearing agency does not provide a subsidy to its affiliate SDR, and the resulting service is not as price competitive as an unaffiliated SDR, counterparties have less recourse in choosing alternative reporting venues because the duty to report would reside with the registered clearing agency.

Hence, providing registered clearing agencies with the discretion to report transaction information to the registered SDR of their choice could provide a competitive advantage for clearing agency-affiliated SDRs relative to unaffiliated SDRs. This could also have implications for the reporting of uncleared swaps. In particular, a clearing agency-affiliated SDR could leverage its repository activity for cleared transactions by offering SDR services to clearing members for uncleared swaps. If security-based swap counterparties who clear transactions prefer to have their transaction records consolidated in a single database, then a clearing agency-affiliated SDR would be able to offer these counterparties recordkeeping and cost saving benefits by also recording their uncleared transactions. By contrast, to the extent that an unaffiliated SDR is unable to compete with a clearing agency's affiliated SDR for cleared transactions, it would not be able to offer a consolidated record of a counterparty's trade activity. This then provides a unique advantage to clearing agency-affiliated SDRs.

Alternatively, a clearing member seeking to consolidate its transactions at an unaffiliated SDR might contract with the registered clearing agency, for a fee, to transmit data for clearing transactions to an SDR of the clearing member's choice, either as a duplicate report or as a required report by Regulation SBSR. This would allow the registered clearing agency to satisfy its obligations while permitting the clearing member to maintain access to centralized data. However, in this case, the registered clearing agency could choose a fee schedule that encourages the clearing member to report its uncleared bilateral transactions to the affiliate SDR. Such a fee schedule might involve the clearing agency offering to terminate alpha transactions reported to its affiliate SDR for a lower price than alpha transactions at a third-party SDR.

As discussed in Section VIII(C)(1)(a), *supra,* the Commission has estimated the annual and on-going costs associated with requiring registered clearing agencies to establish connections to registered SDRs. The Commission preliminarily believes that, for a given registered clearing agency, these costs may be lower for connections to affiliate SDRs than for connections to unaffiliated SDRs. Because the registered clearing agency might have been involved in developing its affiliated SDR's systems, the clearing agency might, as a result, avoid costs related to translating or reformatting data due to incompatibilities between data reporting by the registered clearing agency and data intake by the SDR.

2. Reporting of Clearing Transactions Involving Allocation

This release explains the Commission's preliminary view of the application of Regulation SBSR to allocations of bunched order executions that are submitted to clearing. The final placement of risk of a bunched order alpha is the series of clearing transactions—the ''gamma series''—that results from clearing the bunched order alpha and is economically relevant to risk monitoring and market surveillance. This proposed interpretation would not create any new duties under Regulation SBSR but rather would explain the application of Regulation SBSR to events that occur as part of the allocation process.[266] Additionally, because the proposed interpretation explains how Regulation SBSR, as adopted and as proposed to be amended by this release, would apply to a platform-executed bunched order that will be submitted to clearing, and the security-based swaps that result from the allocation of any bunched order execution, if the resulting security-based swaps are cleared, the Commission preliminarily believes that the proposed interpretation is not likely to have consequences for efficiency, competition, or capital formation beyond those stemming from allocating transaction reporting obligations to platforms and registered clearing agencies discussed in Section VIII(D)(1), *supra,* and in Section VIII(D)(4), *infra.*

The proposed interpretation discusses the manner in which the bunched order alpha and the security-based swaps

[266] The Commission's estimates of events reportable under these proposed rules and amendments includes observable allocation by clearing agencies in the DTCC–TIW data. Therefore, the costs associated with clearing transactions involving allocation are included in our estimate of the programmatic costs of proposed Rules 901(a)(1) and 901(a)(2)(i).

resulting from its allocation would be reported to a registered SDR. This proposed interpretation is designed to accommodate the various workflows that market participants employ to execute and allocate bunched order alphas. For example, in a case where a registered clearing agency receives allocation instructions only subsequent to clearing, the registered clearing agency would decrement the size of the ''intermediate gamma'' until it eventually reached zero and would novate all of the security-based swaps in a ''gamma series.'' [267] Under proposed Rule 901(a)(2)(i), the registered clearing agency would have the duty to report each new security-based swap that it creates as part of the gamma series. Pursuant to Rule 901(d)(10), as adopted, the registered clearing agency also would be responsible for including the transaction ID of the bunched order alpha in the transaction report of each new security-based swap in the gamma series that results from the termination of the bunched order alpha. The benefit of regulatory reporting of clearing transactions is that relevant authorities would be able to observe allocations at the level of client accounts, facilitating more granular monitoring of risk and market abuse.[268]

3. Alternative Approaches to Reporting Clearing Transactions

As part of the economic analysis of these proposed rules and amendments, the Commission has considered the market power that providers of security-based swap market infrastructure might be able to exercise in pricing the services that they offer counterparties to security-based swaps and/or shifting regulatory burdens onto their customers. The Commission recognizes that the treatment of clearing transactions in this proposal might influence the market power of certain providers of these services by imposing the reporting duty on registered clearing agencies. The Commission considered three alternative allocations of reporting obligations for clearing transactions, each of which implies different allocations of costs across market participants along with different effects on efficiency and competition, and, indirectly, capital formation.

a. Apply the Re-Proposed Reporting Hierarchy

The first alternative to the proposed approach is to apply the reporting hierarchy in Regulation SBSR, as re-proposed. Under this approach, a registered clearing agency would occupy the lowest spot in the hierarchy, along with other persons who are neither registered security-based swap dealers nor registered major security-based swap participants. Under this alternative, when one of the sides of the transaction included a security-based swap dealer or major security-based swap participant and the other side did not, the side including the security-based swap dealer or major security-based swap participant would have the duty to report any resulting clearing transactions, as well as the choice of which registered SDR to which to report. As described in more detail below, placing the duty to report with non-clearing agency reporting sides would likely leave them in a position to either request transaction information from registered clearing agencies to re-transmit that information to registered SDRs, or request that the registered clearing agency report to a registered SDR on their behalf. To the extent that each transmission of data introduces some possibility for error or delay, the additional step of requesting data from a registered clearing agency could result in security-based swap data that are marginally less reliable than under our proposed approach. Alternatively, having the registered clearing agency report clearing transactions would require fewer processing steps and would result in the same outcome for data integrity as the proposed rules.

Under this alternative, one of the sides of the initial alpha transaction would report the resulting clearing transactions according to the hierarchy originally proposed in the Regulation SBSR Proposing Release. For the beta, gamma, and any subsequent clearing transactions (resulting from netting and compression of multiple betas and gammas), the non-clearing agency counterparties could obtain the information needed for regulatory reporting from the registered clearing agency and transmit this information to the registered SDR of its choice.

The Commission preliminarily believes that it is unlikely that non-clearing agency counterparties would be subject to significant additional costs associated with building infrastructure to support regulatory reporting for clearing transactions under this alternative. This is for two reasons. First, to the extent that market participants that submit security-based swaps to clearing also engage in uncleared transactions and fall high on the reporting hierarchy, they likely already have the required infrastructure in place to support regulatory reporting of alphas and uncleared transactions. The Commission anticipates that, as a result, there might be only marginal additional costs for reporting sides to report clearing transactions, if the Commission selected this alternative. Moreover, the Commission anticipates that, once infrastructure is built, the per-transaction cost of data transmission would not vary substantially between registered clearing agencies, who would be required to report pursuant to proposed Rule 901(a)(1)(i), and reporting sides, who would be required to report under this alternative.

Second, counterparties (who are not themselves a registered clearing agency), particularly those who engage solely in cleared trades or who are not high on the Regulation SBSR reporting hierarchy, may enter into an agreement under which the registered clearing agency would submit the information to a registered SDR on their behalf. This service could be bundled as part of the other clearing services purchased, and would result in an outcome substantially similar to giving the registered clearing agency the duty to report. One difference, however, is that the customer of the registered clearing agency could, under this alternative, request that the information be submitted to a registered SDR unaffiliated with the registered clearing agency, a choice that would, under the proposed approach, be at the discretion of the registered clearing agency. Nevertheless, the Commission preliminarily believes that, to the extent that it is economically efficient for the registered clearing agency to report the details of cleared transactions on behalf of its counterparties, this alternative would likely result in ongoing costs of data transmission for market participants and infrastructure providers that are, in the aggregate, similar to the Commission's approach in proposed Rule 901(a)(2)(i).

If registered clearing agencies reporting to registered SDRs on behalf of counterparties is not available under this alternative, then some counterparties would be required to build infrastructure to support regulatory reporting for clearing transactions. Analysis of single-name CDS transactions in 2013 in which a clearing agency was a direct counterparty shows approximately 10 market participants that are not likely to register as security-based swap dealers or major security-based swap participants, and therefore might be required to build infrastructure to support regulatory reporting for clearing transactions in order to maintain current

[267] *See supra* Section III(A) (providing additional examples of workflows for allocation of security-based swaps that are cleared).

[268] *See* Regulation SBSR Adopting Release, Section VIII.

trading practices in the security-based swap market.[269]

Under this alternative, non-clearing agency counterparties would have the ability to choose which registered SDR receives their reports. Because non-clearing agency counterparties would have this choice, registered SDRs under the alternative approach might have additional incentive to provide high levels of service to attract this reporting business by, for example, providing such counterparties with convenient access to reports submitted to the registered SDR or by supporting the counterparties' efforts at data validation and error correction. Additionally, ensuring that these counterparties have discretion over which registered SDR receives their data could allow them to consolidate their security-based swap transactions into a single SDR for record-keeping purposes, or for operational reasons, though only to the extent that they can identify a registered SDR that accepts reports for all relevant asset classes.

In assessing this alternative, the Commission recognizes that registered clearing agencies have a comparative advantage in processing and preparing data for reporting cleared transactions to a registered SDR. Registered clearing agencies terminate alpha transactions, as well as create beta and gamma transactions and all subsequent netting transactions, and so already possess all of the relevant information to report these transaction events to a registered SDR. Moreover, the volume of transactions at registered clearing agencies means that they can amortize the fixed costs of establishing and maintaining connections to a registered SDR over a large quantity of reportable activity, potentially allowing them to report transactions at a lower average cost per transaction than many other market participants, particularly non-registered persons.

The Commission preliminarily believes that, given this comparative advantage, applying to clearing transactions the same reporting hierarchy that it has adopted for uncleared transactions would result in registered clearing agencies reporting the transaction data to registered SDRs as a service to the non-clearing agency counterparties to clearing transactions. In this respect, the outcome would be the same as with proposed Rule 901(a)(2)(i), which would assign this duty to registered clearing agencies. The key difference is that the non-clearing agency counterparty would generate this responsibility through private contract and could terminate the agreement and assume the reporting responsibility, should it perceive the fee or service terms as unreasonable. The ability to terminate such an agreement could diminish the potential bargaining power that the registered clearing agency would otherwise have if the registered clearing agency were assigned the duty to report. However, because the non-clearing agency counterparty might still have to rely on assistance from the clearing agency to satisfy the reporting obligations—particularly for any subsequent clearing transactions resulting from netting and compression of multiple betas and gammas—the reduction in clearing agency bargaining power might not be substantial. A registered clearing agency that supplies this information and converts it into the formats prescribed by the counterparties' chosen SDRs so that a non-clearing agency counterparty can fulfill their reporting requirement could still have significant bargaining power with respect to providing that information.

The Commission preliminarily believes that the proposed rules are generally consistent with the outcome under this alternative in a number of key respects. Under both approaches to reporting—one in which the Commission assigns the reporting responsibility for clearing transactions to registered clearing agencies, and the other in which the market allocated the reporting responsibility in the same way—registered clearing agencies would report clearing transactions to their affiliated SDRs.[270] Under an approach in which the Commission does not assign any reporting duties to registered clearing agencies, counterparties would likely be assessed an explicit fee by registered clearing agencies for submitting reports on the counterparties' behalf. Under proposed Rule 901(a)(1)(i), the fees associated with these services would likely be part of the total fees associated with clearing security-based swaps. Under this alternative and under the proposed approach, efficiency gains stemming from consolidation of the reporting function within registered clearing agencies would be split between such clearing agencies and security-based swap counterparties. The difference between these two regulatory approaches turn on how these gains are split.

The Commission preliminarily believes that this alternative would not necessarily restrict the ability of registered clearing agencies to exercise market power in ways that may allow them to capture the bulk of any efficiency gains. First, while a counterparty to a registered clearing agency could contract with the clearing agency to receive the information about netting and compression transactions that would enable re-transmission to a registered SDR, depending on the policies and procedures of the registered clearing agency, these data might not be in the format that is required for submission to the counterparty's SDR of choice. As a result, counterparties to registered clearing agencies would bear the costs associated with restructuring the data that they receive from registered clearing agencies before submitting transaction reports to a registered SDR. Such costs could limit the feasibility of assuming the reporting responsibility rather than contracting to have the registered clearing agency to perform the duty.

Second, in an environment where reporting obligations for clearing transactions rest with counterparties and there is limited competition among registered clearing agencies, registered clearing agencies might be able to charge high fees to counterparties who must rely on them to provide information necessary to make required reports to registered SDRs. A registered clearing agency could otherwise impair the ability of its counterparties to perform their own reporting if the clearing agency does not provide sufficient support or access to clearing transaction data. In particular, the clearing agency might have incentives to underinvest in the infrastructure necessary to provide clearing transaction data to its counterparties unless the Commission, by rule, established minimum standards for communication of clearing transactions data from registered clearing agencies to their counterparties. The result could be greater difficulties faced by counterparties in reporting data and an increased likelihood of incomplete,

[269] To arrive at this estimate, Commission staff used single-name CDS transaction data for 2013 to produce a list of all direct counterparties to a clearing agency and removed those persons likely to register as security-based swap dealers or major security-based swap participants. The list of likely registrants was constructed using the methodology described in the Cross-Border Adopting Release. *See* Cross-Border Adopting Release, 79 FR 47296, note 150 (describing the methodology employed by the Commission to estimate the number of potential security-based swap dealers); *id.* at 47297, note 153 (describing the methodology employed by the Commission to estimate the number of potential major security-based swap participants).

[270] Unless it preferred a particular registered SDR for operational reasons discussed above, a non-clearing agency counterparty to a clearing transaction would likely contract with the clearing agency to report clearing transactions to the registered SDR that offers the lowest price, most likely the clearing agency affiliate.

inaccurate, or untimely data being submitted to registered SDRs.

Third, under this alternative the registered clearing agency that also is party to the transaction potentially has weaker incentives to provide high-quality regulatory data to the counterparty with a duty to report, which could reduce the quality of regulatory data collected by registered SDRs. The person with the duty to report a transaction has strong incentives to ensure that the transaction details are transmitted in a well-structured format with data fields clearly defined, and that contain data elements that are validated and free of errors because, pursuant to Regulation SBSR, this person is responsible for making accurate reports and, if necessary, making corrections to previously submitted data. Not only would the registered clearing agency have no duty under Regulation SBSR to provide information to its counterparty, but additionally, market forces might not provide sufficient motivation to the registered clearing agency to provide data to the counterparty in a manner that would minimize the counterparty's reporting burden. If registered clearing agencies exercise their market power against counterparties, the counterparties might have limited ability to demand high-quality data reporting services from registered clearing agencies. The Commission notes, however, that it could, by imposing minimum standards on data services provided by registered clearing agencies and regulating the fees associated with data transmission by registered clearing agencies, mitigate some of the effects of market frictions under these alternatives.

The Commission preliminarily believes, however, that despite a similarity in ultimate outcomes, and any benefits that might flow from enabling registered SDRs to compete for clearing transaction business, this alternative does not compare favorably to the proposed approach.

b. Move Registered Clearing Agencies Within the Regulation SBSR Reporting Hierarchy

A second, closely related alternative would involve placing registered clearing agencies within the Regulation SBSR reporting hierarchy below registered security-based swap dealers and registered major security-based swap participants but above counterparties that are not registered with the Commission. This alternative would assign the reporting obligation to a registered security-based swap dealer or registered major security-based swap participant when it is a counterparty to a registered clearing agency, while avoiding the need for non-registered persons to negotiate reporting obligations with registered clearing agencies.

As with the previous alternative of maintaining the reporting hierarchy in Regulation SBSR, as adopted, this alternative potentially results in additional reporting steps and could marginally reduce the quality of regulatory data relative to the proposed approach. A key difference, however, is that this alternative would reduce the likelihood of reporting obligations falling on unregistered persons, who would likely have less market power in negotiations with registered clearing agencies over the terms of reporting to a registered SDR. Larger counterparties, *i.e.,* those with greater transaction flow, are likely to be better able to negotiate the terms of reporting transactions on their behalf or access to the clearing data so that they can perform their own reporting.

Above, the Commission noted three particular ways in which limited competition among registered clearing agencies could result in poorer outcomes for non-clearing agency counterparties. First, when these counterparties obtain clearing data from a registered clearing agency, they would likely incur any costs related to reformatting the data for submission to a registered SDR. Second, registered clearing agencies might charge these counterparties high fees for access to regulatory data that counterparties are required to submit to registered SDRs. Third, registered clearing agencies might have weak incentives to ensure that the data that they supply to reporting sides are of high quality, since the non-clearing agency counterparties would bear the costs of error correction.

Limiting the extent to which registered clearing agencies can exercise the market power from limited competition over their counterparties may reduce some of the drawbacks to the first alternative. In particular, registered clearing agencies may be less likely to exercise market power in negotiations with larger market participants, particularly when these market participants are also clearing members. Clearing members play key roles in the governance and operation of registered clearing agencies, often contributing members to the board of directors. Moreover, clearing members contribute to risk management at registered clearing agencies by, for example, contributing to clearing funds that mutualize counterparty risk.[271] Nevertheless, the Commission preliminarily believes that this alternative does not fully address frictions that arise from limited competition between registered clearing agencies, such as high clearing fees or low quality services. The Commission preliminarily believes that this alternative would be less efficient than requiring the registered clearing agency to report the transaction information directly to a registered SDR, because the registered clearing agency is the only person who has complete information about a clearing transaction immediately upon its creation.

c. Require the Reporting Side for an Alpha To Also Report the Beta and Gamma Transactions

The Commission also considered a third alternative that would make the reporting side for the alpha responsible for reporting both the beta and gamma. This alternative would require the reporting side for the alpha also to report information about a security-based swap—the clearing transaction between the registered clearing agency and the non-reporting side of the alpha—to which it is not a counterparty. The Commission could require the non-reporting side of the alpha to transmit information about its clearing transaction to the reporting side of the alpha. In theory, this would allow the reporting side of the alpha to report both the beta and the gamma. The Commission believes, however, that this result could be difficult to achieve operationally and, in any event, could create confidentiality concerns, as an alpha counterparty may not wish to reveal information about its clearing transactions except to the registered clearing agency (and, if applicable, its clearing member). This alternative also would require reporting sides to negotiate with registered clearing agencies to obtain transaction data and to bear the costs of reformatting these data and correcting errors in these data, exposing them to the market power exercised by registered clearing agencies. Moreover, all other things being equal, having more steps in the reporting process—*e.g.,* more data transfers between execution and reporting—introduces greater opportunity for data discrepancies and delays than having fewer steps. Also, because the reporting side of the alpha would report the beta and gamma, this

[271] *See* Securities Exchange Act Release No. 34–68080 (October 22, 2013), 77 FR 66220, 66267 (November 2, 2012) (''Clearing Agency Standards Adopting Release'') (discussing financial resources of clearing agencies).

alternative is premised on the view that the beta and gamma are life cycle events of the alpha. The Commission, however, considered and rejected this approach in the Regulation SBSR Adopting Release.[272]

In addition, this alternative could result in incomplete regulatory data because it could raise questions about who would report clearing transactions associated with the compression and netting of beta or gamma transactions. For example, suppose a non-dealer clears two standard contracts on the same reference entity using a single registered clearing agency, each contract having a different registered security-based swap dealer as counterparty. Under this alternative to the proposed approach, each dealer would be responsible for reporting a gamma security-based swap between the non-dealer and the registered clearing agency. However, this alternative does not specify which of four potential persons would be required to report the contract that results from netting of the two gamma security-based swaps between the non-dealer and the registered clearing agency.

4. Reporting by Platforms

With the ability to clear trades, it is possible for two counterparties to trade anonymously on an SB SEF or an exchange. In an anonymous trade, because neither counterparty would be aware of the name or registration status of the other, it might not be possible for either counterparty to use the reporting hierarchy in Rule 901(a)(1)(i), as adopted, to determine who must report this initial alpha transaction to a registered SDR.[273] Therefore, because the platform would be the only entity at the time of execution, before the transaction is submitted for clearing, who is certain to know the identity of both transaction sides, the Commission proposes to assign to the platform the duty to report all alpha transactions executed on the platform that will be submitted to clearing.

As discussed above in the context of reporting obligations for registered clearing agencies, the Commission preliminarily believes that the costs associated with required reporting pursuant to the proposed amendments could represent a barrier to entry for new, smaller trading platforms that might not have the ability to comply with the proposed reporting requirements or for whom the expected benefits of compliance might not justify the costs of compliance. To the extent that the proposed rules and amendments might deter new trading platforms from entering the security-based swap market, this could negatively impact competition.

Requiring the execution platform to report information associated with anonymous transactions, preserves counterparties' anonymity and reduces the number of data transmission steps between execution and reporting to a registered SDR. The Commission, however, proposes having the platform report all alpha transactions that will be submitted to clearing, even those that are not anonymous.

Under proposed Rule 901(a)(1), platforms would be required to report all transactions occurring on their facilities that are submitted to clearing. A platform that matches orders and executes transactions will possess all of the primary and secondary trade information necessary to be reported to a registered SDR, and proposed Rule 901(a)(1) would make it unnecessary for counterparties to report these transactions. This approach is designed to result in a more efficient reporting process for platform-executed trades that are submitted to clearing. By reducing the number of steps between the generation of transaction data and reporting to a registered SDR, the Commission preliminarily believes that proposed Rule 901(a)(1) would minimize the possibility of data discrepancies and delays.

At the same time, the Commission recognizes that, because anonymous transactions executed on platforms must be cleared, the platforms that support anonymous trading will more than likely select the registered clearing agency at which to clear a trade. Moreover, because only platforms know the identities of counterparties to anonymous transactions, they will be responsible for submitting these transactions for clearing. If the infrastructure necessary for submitting transactions for clearing is similar to that required to report transactions to clearing agency-affiliated SDRs, then these platforms may prefer to use clearing-agency affiliated SDRs for all of their transaction reports. This is particularly true if the fixed costs to platforms of submitting transactions for clearing and regulatory reporting are high because platforms could avoid interfacing separately with clearing agencies and unaffiliated SDRs. As a result, the proposed rules for platform-executed trades subsequently submitted to clearing might disadvantage registered SDRs that are not affiliated with registered clearing agencies.

While the level of security-based swap activity that currently takes place on platforms and is subsequently submitted for clearing is currently low, future rulemaking under Title VII could cause platform volumes to increase. The Commission has proposed, but not adopted, rules governing the registration and operation of SB SEFs and anticipates considering rules to determine which security-based swaps are subject to mandatory trade execution on national securities exchanges or registered or exempt SB SEFs.[274]

5. Alternative Approaches to Reporting Platform-Executed Transactions

For platform-executed transactions that are submitted to clearing but are not anonymous, a reasonable alternative would be for the Commission to require these transactions to be reported to a registered SDR using the reporting hierarchy in Rule 901(a)(2)(ii), as adopted. Under such an alternative, a platform would have to determine which of the trades it executed were anonymous and which were not, performing due diligence to ensure that transaction reports it sends to its participants do not violate the anonymity of counterparties.[275] The Commission preliminarily believes that it is likely that the platform would pass these costs to counterparties, or, alternatively, offer to report on behalf of the reporting side, for a fee. Counterparties who trade on a platform would have to determine who among them is responsible for reporting their trade and would incur the costs of reporting to a registered SDR. Moreover, such an alternative would exhibit many of the shortcomings of the alternative to proposed Rule 901(a)(1)(i) discussed in Section XI(C)(3), even though it would allow the reporting counterparty to choose the SDR that receives transaction information.

A second alternative would be to assign the reporting duty for all

[272] *See* Regulation SBSR Adopting Release, Section V(B)(2) at note 267 (''Under Rule 900(g), a security-based swap that results from clearing is an independent security-based swap and not a life cycle event of a security-based swap that is submitted to clearing. Thus, Rule 901(e), which addresses the reporting of life cycle events, does not address what person has the duty to report the clearing transactions that arise when a security-based swap is accepted for clearing'').

[273] Some commenters specifically pointed out this fact and argued that SB SEFs and exchanges should therefore incur the duty to report. *See supra* note 55.

[274] *See* General Policy on Sequencing, 77 FR 35640.

[275] The Commission is aware that certain market structures could result in situations where a single security-based swap transaction results in a split trade where one portion is anonymously executed and another portion is not anonymously executed. This could complicate separation of anonymous and non-anonymous executions.

platform-executed transactions that are submitted to clearing to the registered clearing agency. While the registered clearing agency receiving information about a platform-executed alpha will likely have the information necessary for reporting—because the registered clearing agency will need much of the same information about the alpha transaction to clear it—the Commission preliminarily believes that it would be more appropriate to assign the reporting duty to the platform. This approach would imply a more direct flow of information from the point of execution on the platform to the registered SDR, thus minimizing opportunities for data discrepancies or delays. This approach would also reduce the need for registered clearing agencies to invest resources in systems to receive data elements from platforms beyond what is already required for clearing.

6. Application of Regulation SBSR to Prime Brokerage Transactions

This release proposes interpretive guidance for how Regulation SBSR should be applied to prime brokerage transactions. As this guidance would not create any new duties—but instead would merely explain how the series of related transactions under a prime brokerage arrangement would have to be reported and publicly disseminated under Regulation SBSR, as adopted—there would be no additional costs or benefits beyond those already considered in the Regulation SBSR Adopting Release.[276]

Prime brokerage transactions involve a reallocation of counterparty risk when the prime broker interposes itself between the counterparties to the original transaction (a customer of the prime broker and a third-party executing dealer). Regulatory reporting of this activity would allow relevant authorities to more accurately conduct market surveillance and monitor counterparty risk. As a result of public dissemination of all three related transactions, market observers would have access to information of the transaction between the two original counterparties and the subsequent two transactions with the prime broker, thereby allowing them to compare the prices and conditions of these transactions. This would allow users of publicly disseminated data to infer from these disseminated reports the fees that the prime broker charges for its credit intermediation service and separate these fees from the transaction price of the security-based swap.

7. Proposed Prohibition on Fees for Public Dissemination

The Commission is proposing new Rule 900(tt), which would define the term ''widely accessible'' as used in the definition of ''publicly disseminate'' in Rule 900(cc), as adopted, to mean ''widely available to users of the information on a non-fee basis.'' This proposed definition would have the effect of prohibiting a registered SDR from charging fees for or imposing usage restrictions on the security-based swap transaction data that it is required to publicly disseminate under Regulation SBSR.

Allowing access to transaction information without cost or restriction allows it to be quickly incorporated into security-based swap prices by market participants, leading to increased informational efficiency of these prices and prices in related financial markets. Free and unrestricted access to transaction prices and volumes facilitates a more level playing field for market participants, particularly those that otherwise have less access to security-based swap order flow information, potentially enhancing competition between market participants.[277] Finally, unburdened access to security-based swap market data also could benefit non-security-based swap financial market participants who may use data from the security-based swap market as input for their decision making, potentially improving the efficiency of capital allocation and indirectly improving the environment for capital formation.[278] For instance, if a single-name CDS on a reference entity trades more often than the underlying bonds, single-name CDS transaction prices may help investors in evaluating whether the prices of the underlying bonds incorporate available information about the credit risk of the issuer.[279]

The proposed prohibition on a registered SDR charging fees for public dissemination of the regulatorily mandated security-based swap transaction data also is consistent with the CFTC's current prohibition on CFTC-registered SDRs charging for public dissemination of regulatorily mandated swap transaction data. Such consistency lessens the incentives for SDRs registered with the CFTC to enter the security-based swap market and also register with the Commission and charge for public dissemination of security-based swap market data.[280] Entering the security-based swap market would allow them to charge for public dissemination of security-based swap market data and use those revenues from this business to subsidize their operations in the swap market, in which they are not permitted to charge for public dissemination of swap market data. If an SEC-registered SDR charges fees for security-based swap data in order to subsidize its reporting activity in the CFTC regime, then security-based swap market participants reporting to this SDR could face higher costs than those it would face if the SDR participated only in the security-based swap market.

The Commission notes two ways in which market forces may limit the extent of cross-subsidization by registered SDRs that also publicly disseminate swap data. First, if SDRs compete for customers of raw security-based swap data, then SDRs operating in both regimes who choose to subsidize their activities in the swap market by charging higher fees for security-based swap data will likely find themselves at a disadvantage relative to SDRs that operate only in the security-based swap regime who can afford to offer lower fees since they, by definition, do not cross-subsidize because they do not participate in both markets. However, this result depends significantly on the assumption of a competitive market for security-based swap data, which is less likely to exist when the number of registered of SDRs is small. Second, it is possible that there are synergies available to SDRs that operate in both regimes. These synergies would lower the average cost of public dissemination by these SDRs and reduce the level of subsidies needed to cover these costs. As a result, these synergies could limit

[276] *See* Regulation SBSR Adopting Release, Section XXII(C)(1). The Commission's estimates in that release of the number of reportable events included all legs of prime brokerage transactions.

[277] *See* Regulation SBSR Adopting Release, Section XXII(D)(3).

[278] *See* Philip Bond, Alex Edmans, and Itay Goldstein, ''The Real Effects of Financial Markets,'' Annual Review of Financial Economics, Vol. 4 (October 2012) (reviewing the theoretical literature on the feedback between financial market price and the real economy).

[279] *See* Sugato Chakravarty, Huseyin Gulen, and Stewart Mayhew, ''Informed Trading in Stock and Option Markets,'' Journal of Finance, Vol. 59, No. 3 (2004) (estimating that the proportion of information about underlying stocks revealed first in option markets ranges from 10% to 20%); Gary Gorton, ''Are Naked Credit Default Swaps Too Revealing?'' (June 4, 2010), available at *http://faculty.som.yale.edu/garygorton/documents/NakedCDSTooRevealingIDDJune2010.pdf* (last visited October 2, 2014) (discussing how the introduction of CDS contracts may increase the information sensitivity of underlying bonds).

[280] Dual registration is likely to occur independent of the ability to charge for public dissemination of data in the security-based swap market. However, the ability to charge for public dissemination would add an additional incentive to do so.

the size of the subsidy that users of security-based swap data would pay to users of swap data.

Additionally, the Commission preliminarily believes that requiring free and unrestricted access to publicly-disseminated data will reinforce the economic effects of Rule 903(b). Rule 903(b), as adopted, provides that a registered SDR may disseminate information using UICs (such as product IDs or other codes—*e.g.,* reference entity identifiers—embedded within the product IDs) or permit UICs to be used for reporting by its participants only if the information necessary to interpret such UICs is widely available on a non-fee basis. In the absence of a prohibition on fees for or restricted access to publicly-disseminated data, the Commission is concerned that a registered SDR that wished to charge (or allow others to charge) users for the information necessary to understand these UICs—but could not, because of Rule 903(b)—might seek to do so indirectly by recharacterizing the charge as being for public dissemination. The Commission preliminarily believes that this could reduce the economic benefits of Rule 903(b).

The Commission acknowledges that receiving data from market participants; cleaning, processing, and storing these data; and making these data available to the Commission and the public are costly services for registered SDRs to provide. If charging fees for raw security-based swap data is prohibited, registered SDRs could employ a number of alternative measures to ensure they have sufficient resources to comply with the statutory and regulatory requirements imposed on registered SDRs. Some of these measures may have negative consequences for market participants, reducing the benefits of publicly-disseminated data. For example, registered SDRs could charge fees to recipients of value-added data and services. Registered SDRs that provide such data and services for a fee may have incentives to limit the usefulness of transaction information through free public feeds, particularly in form and manner in which it is made available, to push market participants towards the fee-based services. Such an outcome could hinder the transparency goals of the reporting regime because those market participants with resources sufficient to buy value added data and services would continue to have an informational advantage over those without.

Registered SDRs also could pass the costs of publicly disseminating security-based swap data through to the reporting parties who report transaction data to the registered SDR. Direct fees imposed on market participants would likely be in proportion to the number of transactions they execute, with more active market participants, who contribute more to the production of transaction information, paying a larger share of the costs of disseminating that information. These costs of SDR reporting would likely be passed through to non-dealers as a component of transactions costs. Non-security-based swap market participants, by contrast, would not bear any of the costs. This could have the effect of security-based swap market participants subsidizing other users of the raw security-based swap data through free public feeds.

8. Proposed Compliance Schedule for Regulation SBSR

The compliance schedule proposed in this release is designed to provide affected persons, especially registered SDRs and persons with a duty to report security-based swap transactions to registered SDRs, with time to develop, test, and implement reporting and dissemination systems. The new proposed compliance schedule takes into consideration the fact that the CFTC's regulatory reporting and public dissemination rules are now in effect. As a result, several SDRs have registered and are operating under the CFTC regime in the swap market, and swap market participants have developed substantial infrastructure to support swap transaction reporting.[281] It is likely that much of the infrastructure implemented in the swap market can be repurposed for the security-based swap market, and if so, would enable more efficient implementation of the Commission's regime for security-based swap reporting.

In the newly proposed compliance schedule, the two compliance dates, with respect to security-based swaps in a particular asset class, are based on the date that the first registered SDR that can accept security-based swaps in that asset class commences operations. This approach is designed to prevent regulatory reporting and public dissemination of security-based swap transaction data from being delayed while additional SDRs register with the Commission and commence operations, while still offering time for SDRs and market participants to develop the necessary policies, procedures, and infrastructure to become operational. For example, while reporting to a registered SDR on a transaction-by-transaction basis would be required on the date six months after the first registered SDR in an asset class commences operations (*i.e.,* proposed Compliance Date 1), public dissemination would not be required for an additional three months (*i.e.,* on proposed Compliance Date 2). This three-month period is designed to allow registered SDRs to evaluate compliance with the SDRs' requirements for transaction reports being submitted on a mandatory basis beginning on Compliance Date 1, and to allow persons having the duty to report—which, as a result of the amendments proposed herein, would include platforms, registered clearing agencies, and reporting sides—to make any necessary adjustments to the transaction records that they submit. Registered SDRs also would have time to test that the appropriate subset of information provided in the regulatory report will be publicly disseminated, with flags as required by the registered SDR's policies and procedures.[282]

There are potential drawbacks to the proposed compliance schedule as well. First, new entrants into the SDR market might be at a competitive disadvantage since they would have to adhere to compliance dates that were set based on registration of the first SDR in that asset class that commences operations. This would be true particularly if persons with a duty to report face high switching costs between SDRs and could be locked in to the first registered SDR with which they engage. Second, the proposed compliance schedule hinges on a person registering and then commencing operations as an SDR. As a result, reporting to an SDR, and the associated public dissemination, might not occur for an extended period of time.

The Commission preliminarily believes, however, that most persons that have the desire and ability to operate as SEC-registered SDRs are already operational in the swaps market as CFTC-registered SDRs, and each should have a strong incentive to submit applications to register with the Commission quickly. Thus, there is less likelihood of multiple applications arriving over an extended period of time, which could have been the case when the Commission originally proposed Rules 910 and 911 in the Regulation SBSR Proposing Release in 2010, before the CFTC had finalized its

[281] *See Sec. Indus. & Fin. Mkts. Ass'n* v. *CFTC,* Civil Action No. 13–1916 (PLF), slip op. at 89 (D.D.C., September 16, 2014) (noting that ''the plaintiffs' associations' members' declarants have made clear that the members (or their foreign affiliates) already have come into compliance with the [CFTC] Rules as they apply extraterritorially'').

[282] *See* Rules 907(a)(3) and 907(a)(4), as adopted.

rules and SDRs were registered by the CFTC. The newly proposed compliance schedule could give added incentive to avoid delaying the submission of an application for registration, and to commence operation as an SEC-registered SDR as quickly as possible. This result would help the Commission and other relevant authorities obtain more complete information about the security-based swap market for oversight purposes as quickly as possible, and also allow the public to obtain price, volume, and transaction information about all security-based swaps as quickly as possible.

IX. Paperwork Reduction Act

Certain provisions of these proposed amendments to Regulation SBSR contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[283] As discussed in Section I, *supra,* these proposed amendments to Regulation SBSR would impact Rules 900, 901, 905, 906, and 908. This release also proposes guidance for complying with certain aspects of Regulation SBSR and proposes new compliance dates for the rules in Regulation SBSR for which the Commission has not specified a compliance date. The titles of the collections for Regulation SBSR are: (1) Rule 901—Reporting Obligations—For Reporting Sides; (2) Rule 901—Reporting Obligations—For Registered SDRs; (3) Rule 902—Public Dissemination of Transaction Reports; (4) Rule 904—Operating Hours of Registered Security-Based Swap Data Repositories; (5) Rule 905—Correction of Errors in Security-Based Swap Information—For Reporting Sides; (6) Rule 905—Correction of Errors in Security-Based Swap Information—Non-Reporting Sides; (7) Rule 906(a)—Other Duties of All Participants—For Registered SDRs; (8) Rule 906(a)—Other Duties of All Participants—For Non-Reporting Sides; (9) Rule 906(b)—Other Duties of All Participants—For All Participants; (10) Rule 906(c)—Other Duties of All Participants—For Covered Participants; (11) Rule 907—Policies and Procedures of Registered Security-Based Swap Data Repositories; and (12) Rule 908(c)—Substituted Compliance (OMB Control No. 3235–0718). The estimated collection of information burdens for Regulation SBSR are contained in the Regulation SBSR Adopting Release.[284] The estimated changes to these burdens and costs that would result from the proposed rules and amendments are discussed below. Compliance with these collections of information requirements is mandatory. The Commission is submitting these collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a currently valid control number.

A. Definitions—Rule 900

Rule 900 sets forth definitions of various terms used in Regulation SBSR. In this release, the Commission is proposing to amend the definition of ''participant'' in Rule 900(u) and to create a new defined term ''widely accessible''—in proposed Rule 900(tt)—that is used in the definition of ''publicly disseminate'' in Rule 900(cc), as adopted. The proposed definition of ''widely accessible'' would have to effect of prohibiting a registered SDR from charging fees for or imposing usage restrictions on the security-based swap transaction data that it is required to publicly disseminate under Regulation SBSR.

Although the Commission discusses certain costs associated with these proposed definitions in this Section, the Commission does not believe that these changes themselves would result in a ''collection of information'' within the meaning of the PRA.

B. Reporting Obligations—Rule 901

1. Rule 901—As Adopted

Rule 901, as adopted, specifies, with respect to each reportable event pertaining to covered transactions, who is required to report, what data must be reported, when it must be reported, where it must be reported, and how it must be reported. Rule 901(a), as adopted, establishes a ''reporting hierarchy'' that specifies the side that has the duty to report a security-based swap that is a covered transaction. Pursuant to Rule 901(b), as adopted, if there is no registered SDR that will accept the report required by Rule 901(a), the person required to make the report must report the transaction to the Commission. Rule 901(c) sets forth the primary trade information and Rule 901(d) sets forth the secondary trade information that must be reported. Rule 901(e) requires the reporting of life cycle events and adjustments due to life cycle events, which pursuant to Rule 901(j) must be reported within 24 hours of the time of occurrence, to the entity to which the original transaction was reported. Rule 901(f) requires a registered SDR to timestamp, to the second, any information submitted to it pursuant to Rule 901, and Rule 901(g) requires a registered SDR to assign a transaction ID to each security-based swap, or establish or endorse a methodology for transaction IDs to be assigned by third parties. Rule 901(h) requires reporting sides to electronically transmit the information required by Rule 901 in a format required by the registered SDR. Rule 901(i) requires reporting of pre-enactment security-based swaps and transitional security-based swaps to the extent that information about such transactions is available.

For Reporting Sides. The Commission estimated that Rule 901, as adopted, will impose an estimated total first-year burden of approximately 1,394 hours[285] per reporting side for a total first-year burden of 418,200 hours for all reporting sides.[286] The Commission estimated that Rule 901, as adopted, will impose ongoing annualized aggregate burdens of approximately 687 hours[287] per reporting side for a total aggregate annualized cost of 206,100 hours for all reporting sides.[288] The Commission further estimated that Rule 901, as adopted, will impose initial and ongoing annualized dollar cost burdens of $201,000 per reporting side, for total aggregate initial and ongoing annualized dollar cost burdens of $60,300,000.[289]

[283] 44 U.S.C. 3501 *et seq.*

[284] *See* Regulation SBSR Adopting Release, Section XXI.

[285] *See* Regulation SBSR Adopting Release, Section XXI(B). The Commission derived its estimate from the following: (355 hours (one-time hourly burden for establishing and OMS) + 172 hours (one-time hourly burden for establishing security-based swap reporting mechanisms) + 180 hours (one-time hourly burden for compliance and ongoing support) = 707 hours (one-time total hourly burden). *See* Regulation SBSR Proposing Release, 75 FR 75248–50, notes 186, 194, and 201. (436 hours (annual-ongoing hourly burden for internal order management) + 33.3 hours (revised annual-ongoing hourly burden for security-based swap reporting mechanisms) + 218 hours (annual-ongoing hourly burden for compliance and ongoing support) = 687.3 hours (one-time total hourly burden. *See id.* at 75248–50, notes 187 and 201 (707 one-time hourly burden + 687 revised annual-ongoing hourly burden = 1,394 total first-year hourly burden).

[286] *See* Regulation SBSR Adopting Release, Section XXI(B). The Commission derived its estimate from the following: (1,394 hours per reporting side × 300 reporting sides) = 418,200 hours.

[287] *See* Regulation SBSR Adopting Release, Section XXI(B). *See* Cross-Border Proposing Release, 78 FR 31112–15.

[288] *See* Regulation SBSR Adopting Release, Section XXI(B). The Commission derived its estimate from the following: (687 hours per reporting side × 300 reporting sides) = 206,100 hours.

[289] *See* Regulation SBSR Adopting Release, Section XXI(B). The Commission derived its estimate from the following: ($201,000 per reporting side × 300 reporting sides) = $60,300,000. *See*

Continued

For Registered SDRs. The Commission estimated that the first-year aggregate annualized burden on registered SDRs associated with Rules 901(f) and 901(g) will be 2,820 burden hours, which corresponds to 282 burden hours per registered SDR.[290] The Commission also estimated that the ongoing aggregate annualized burden associated with Rules 901(f) and 901(g) will be 1,520 burden hours, which corresponds to 152 burden hours per registered SDR.[291]

2. Rule 901—Proposed Amendments

The proposed amendments to Rule 901 would establish certain requirements relating to the reporting of security-based swap transactions to a registered SDR. Rule 901 of Regulation SBSR, as adopted, contained ''collection of information requirements'' within the meaning of the PRA, and the proposed amendments to Rule 901 contain additional ''collection of information requirements'' within the meaning of the PRA, which are discussed below. The title of this collection is ''Rule 901—Reporting Obligations for Platforms and Clearing Agencies.''

a. Summary of Collection of Information

The Commission is proposing reporting obligations for those security-based swaps that are clearing transactions or that are executed on a platform and will be submitted to clearing. In order to facilitate such reporting, the Commission is proposing Rules 901(a)(1), 901(a)(2)(i), and 901(a)(3). Pursuant to new subparagraph (1) of Rule 901(a), if a security-based swap is executed on a platform and will be submitted to clearing, the platform on which the transaction was executed shall have the duty to report the transaction to a registered SDR. The Commission also is proposing a new subparagraph (2)(i) of Rule 901(a) that would assign the reporting duty for a clearing transaction to the registered clearing agency that is a counterparty to the security-based swap.

The Commission also is proposing to add a new subparagraph (3) to Rule 901(a) that would require any person that has a duty to report a security-based swap that is submitted to clearing—which would be a platform or a reporting side—to provide the registered clearing agency with the transaction ID of the alpha and the identity of the registered SDR to which the alpha will be reported or has been reported.

b. Proposed Use of Information

The security-based swap transaction information that would be required by the proposed amendments to Rule 901 would be used by registered SDRs, market participants, the Commission, and other relevant authorities. The information reported by platforms and registered clearing agencies pursuant to Rule 901 would be used by registered SDRs to publicly disseminate reports of security-based swap transactions, as well as to offer a resource for the Commission and other relevant authorities to obtain detailed information about the security-based swap market. Market participants also would use the information about these transactions that is publicly disseminated, among other things, to assess the current market for security-based swaps and any underlying securities and to assist in the valuation of their own positions. The Commission and other relevant authorities would use information about security-based swap transactions reported to and held by registered SDRs to monitor and assess systemic risks, as well as to examine for and consider whether to take enforcement action against potentially abusive trading behavior, as appropriate.

c. Respondents

In the Regulation SBSR Adopting Release, the Commission estimated 300 reporting side respondents and that, among the 300 reporting sides, approximately 50 are likely to be required to register with the Commission as security-based swap dealers and approximately five are likely to register as major security-based swap participants.[292] The Commission noted that these 55 reporting sides likely will account for the vast majority of recent security-based swap transactions and reports and that there are only a limited number of security-based swap transactions that do not include at least one of these larger counterparties on either side.[293] Finally, the Commission estimated that the number of registered SDRs would not exceed ten.[294]

Proposed Rules 901(a)(1) and 901(a)(2)(i) would assign reporting duties for security-based swap transactions, in certain enumerated cases set forth in these rules, to platforms and registered clearing agencies, respectively. The Commission preliminarily believes that these proposed amendments to Rule 901(a) would result in 14 additional respondents incurring the duty to report under Regulation SBSR. Specifically, the Commission believes that there would be ten platforms (exchanges and SB SEFs) and four registered clearing agencies that would incur such duties. Proposed Rule 901(a)(3) would require a person—either the platform upon which the security-based swap was executed or the reporting side for those security-based swaps other than clearing transactions—to report, for those security-bases swaps submitted to a registered clearing agency, the transaction ID of the submitted security-based swap and the identity of the registered SDR to which the transaction will be or has been reported. The Commission preliminarily believes that proposed Rule 901(a)(3) would place reporting obligations on 300 reporting sides and 10 platforms.

d. Total Initial and Annual Reporting and Recordkeeping Burdens

i. Platforms and Registered Clearing Agencies

Pursuant to Rule 901, all security-based swap transactions must be reported to a registered SDR or to the Commission. Together, paragraphs (a), (b), (c), (d), (e), (h), and (j) of Rule 901 set forth the parameters that reporting entities must follow to report security-based swap transactions. Because platforms and registered clearing agencies now would have the duty to report, initial and ongoing burdens would be placed on these entities. The Commission preliminarily believes that these burdens will be a function of, among other things, the number of reportable events and the data elements required to be reported for each such event.

In the Regulation SBSR Adopting Release, the Commission estimated that respondents would face three categories of burdens to comply with Rule 901.[295] The Commission preliminarily believes that platforms and registered clearing agencies would face the same categories of burdens as those identified in the Regulation SBSR Adopting Release for other types of respondents. First, each platform and registered clearing agency

Cross-Border Proposing Release, 78 FR 31113–15. The Commission originally estimated this burden based on discussions with various market participants. *See* Regulation SBSR Proposing Release, 75 FR 75247–50.

[290] *See* Regulation SBSR Adopting Release, Section XXI(B). *See* Regulation SBSR Proposing Release, 75 FR 75250. This figure is based on the following: [(1,200) + (1,520)] = 2,720 burden hours, which corresponds to 272 burden hours per registered SDR.

[291] *See* Regulation SBSR Adopting Release, Section XXI(B).

[292] *See* Regulation SBSR Adopting Release, Section XXI(B)(3).

[293] *See id.*

[294] *See id.*

[295] *See* Regulation SBSR Adopting Release, Section XXI(B)(4).

would likely have to develop the ability to capture the relevant transaction information.[296] Second, each platform and registered clearing agency would have to implement a reporting mechanism. Third, each platform and registered clearing agency would have to establish an appropriate compliance program and support for the operation of any system related to the capture and reporting of transaction information. The Commission preliminarily believes that platforms and registered clearing agencies would need to develop capabilities similar to those highlighted in the Regulation SBSR Adopting Release in order to be able to capture and report security-based swap transactions. The Commission also preliminarily believes that, once a platform or registered clearing agency's reporting infrastructure and compliance systems are in place, the burden of reporting each individual reportable event will be small when compared to the burdens of establishing the reporting infrastructure and compliance systems.[297] The Commission preliminarily believes that all of the reportable events, for which platforms and registered clearing agencies would be responsible for reporting, will be reported through electronic means.

The Commission estimates that the total burden placed upon reporting sides as a result of Rule 901 would be approximately 1,361 hours [298] per reporting side during the first year.[299] The Commission preliminarily believes that this per-entity cost would be the same for platforms and registered clearing agencies, resulting in a total first-year burden of 19,054 hours for all platforms and registered clearing agencies under the proposed amendments to Rule 901.[300] The Commission estimates that the proposed amendments to Rule 901 would impose ongoing annualized aggregate burdens of approximately 654 hours [301] per reporting entity for a total aggregate annualized cost of 9,156 hours for all platforms and registered clearing agencies.[302] The Commission further preliminarily estimates that the proposed amendments to Rule 901 would impose initial and ongoing annualized dollar cost burdens of $201,000 per reporting entity,[303] for total aggregate initial and ongoing annualized dollar cost burdens of $2,814,000.[304]

In the Regulation SBSR Adopting Release, the Commission revised its previous estimates of the number of reportable events associated with security-based swap transactions to approximately 3 million reportable events per year under Rule 901, an estimate that the Commission continues to believe is valid for the purposes of the Regulation SBSR Proposed Amendments.[305] The Commission estimated in the Regulation SBSR Adopting Release that Rule 901(a), as adopted in that release, will result in approximately 2 million reportable events related to covered transactions.[306]

The Commission preliminarily estimates that 1 million of the 3 million total reportable events would be reported as a result of the proposed amendments to Rule 901.[307] The Commission believes that these 1 million reportable events would include the initial reporting of the security-based swap by platforms and clearing agencies as well as the reporting of any life cycle events. The Commission preliminarily estimates that of the 1 million reportable events, approximately 370,000 would involve the reporting of new security-based swap transactions, and approximately 630,000 would involve the reporting of life cycle events under Rule 901(e).[308] As a result, the Commission preliminarily estimates that platforms will be responsible for the reporting of approximately 120,000 security-based swaps.[309] The Commission preliminarily estimates that the proposed amendments to Rule 901(a) would result in platforms having a total burden of 600 hours attributable to the reporting of security-based swaps by platform to registered SDRs under Rules 901(c) and 901(d) over the course of a year.[310] The Commission preliminarily

[296] In the Regulation SBSR Adopting Release, the Commission discussed the development, by reporting sides, of an internal order and trade management system. The Commission believes that the costs of developing a transaction processing system are comparable to the costs discussed therein. Although the actual reporting infrastructure needed by platforms and registered clearing agencies could have some attributes that differ from the attributes of an internal order and trade management system, the Commission nonetheless preliminarily believes that the cost of implementing a transaction processing system, and establishing an appropriate compliance program and support for the operation of the system, will be similar to the costs for reporting sides discussed in the Regulation SBSR Adopting Release.

[297] In the Regulation SBSR Adopting Release, the Commission reiterated its belief that reporting specific security-based swap transactions to a registered SDR—separate from the establishing of infrastructure and compliance systems that support reporting—would impose an annual aggregate cost of approximately $5,400,000. *See* Regulation SBSR Adopting Release, Section XXI(B)(4).

[298] The Commission derived its estimate from the following: (355 hours (one-time hourly burden for establishing and OMS) + 172 hours (one-time hourly burden for establishing security-based swap reporting mechanisms) + 180 hours (one-time hourly burden for compliance and ongoing support) = 707 hours (one-time total hourly burden). *See* Regulation SBSR Proposing Release, 75 FR 75248–50, notes 186, 194, and 201. (436 hours (annual-ongoing hourly burden for order management) + 218 hours (annual-ongoing hourly burden for compliance and ongoing support) = 654 hours (one-time total hourly burden. *See id.* at 75248–50, notes 187 and 201 (707 one-time hourly burden + 654 revised annual-ongoing hourly burden = 1,361 total first-year hourly burden).

[299] *See* Regulation SBSR Adopting Release, Section XXI(B)(4).

[300] The Commission derived its estimate from the following: (1,361 hours per reporting entity × 14 platforms and registered clearing agencies) = 19,054 hours.

[301] *See supra* note 298.

[302] The Commission derived its estimate from the following: (654 hours per reporting entity × 14 platforms and registered clearing agencies) = 9,156 hours.

[303] This figure is based on the sum of per-reporting entity estimates for connectivity to SDRs for data reporting, as follows: [($100,000 hardware- and software-related expenses, including necessary back-up and redundancy, per SDR connection) × (2 SDR connections per reporting entity)] + [($250/gigabyte of storage capacity) × (4 gigabytes of storage capacity)] = $201,000. *See* Regulation SBSR Proposing Release, 75 FR 75248–49, notes 188 and 193.

[304] The Commission derived its estimate from the following: ($201,000 per reporting side × 14 reporting sides) = $2,814,000. *See also* Cross-Border Proposing Release, 78 FR 31112–15.

[305] *See* Regulation SBSR Adopting Release, Section XXI(B)(4)(b).

[306] *See id.*

[307] The Commission is proposing to amend Rule 901(a)(2) to require a registered clearing agency to be the reporting side for clearing transactions to which it is a counterparty. The Commission is further proposing to amend Rule 901(e)(1) to provide that a ''registered clearing agency shall report whether or not it has accepted a security-based swap for clearing.'' Proposed Rule 901(a)(2)(i), discussed above, would require registered clearing agencies to report security-based swap transaction information for clearing transactions. These reportable events have been included in the Commission's estimates of the number of reportable events for the purposes of Rule 901. In arriving at the of 1 million reporting events, the Commission has included the following: (1) The termination of the original or ''alpha'' security-based swap; (2) the creation of beta and gamma security-based swaps; (3) the termination of beta, gamma, and any previous open positions during each netting cycle; and (4) any other transactions that are entered into by the registered clearing agency.

[308] *See supra* note 235.

[309] The Commission preliminarily believes that platforms will be responsible only for the reporting of any initial security-based swaps that are executed on their facilities. Since only platform-executed security-based swaps that will be submitted to a registered clearing agency for clearing are subject to this proposal, platforms would not be responsible for any life cycle event reporting under Rule 901(e). The Commission estimates that platforms would be responsible for reporting only approximately one third of the 360,000 security-based swaps (or 120,000 security-based swaps) and registered clearing agencies (as a result of the creation of new security-based swaps during the clearing process) would be responsible for the reporting of the remaining two-thirds of security-based swaps (or 250,000 security-based swaps).

[310] *See* Regulation SBSR Adopting Release, Section XXI(B)(4). In the Regulation SBSR Proposing Release, the Commission estimated that

Continued

estimates that the proposed amendments to Rule 901(a) would result in registered clearing agencies having a total burden of 1,250 hours attributable to the reporting of security-based swaps to registered SDRs over the course of a year.[311] The Commission preliminarily estimates that the proposed amendments to Rule 901(a) would result in registered clearing agencies having a total burden of 3,150 hours attributable to the reporting of life cycle events to registered SDRs under Rule 901(e) over the course of a year.[312] The Commission preliminarily believes that the proposed amendments would result in a total reporting burden for registered clearing agencies under Rules 901(c) and (d) along with the reporting of life cycle events under Rule 901(e) of 4,400 burden hours.[313] The Commission believes that all reportable events that would be reported by platforms and registered clearing agencies pursuant to these proposed amendments would be reported through electronic means.

The Commission recognizes that some entities that would qualify as platforms or registered clearing agencies may have already spent time and resources building the infrastructure that will support their eventual reporting of security-based swaps. The Commission notes that, as a result, the burdens and costs estimated herein could be greater than those actually incurred by affected parties as a result of compliance with the proposed amendments to Rule 901(a). Nonetheless, the Commission believes that its estimates represent a reasonable upper bound of the actual burdens and costs required to comply with the paperwork burdens associated with the proposed amendments to Rule 901(a).

ii. Platforms and Reporting Sides

Proposed Rule 901(a)(3) would require a person, either the platform upon which the security-based swap was executed or the reporting side for those security-based swaps other than clearing transactions, to report, for those security-bases swaps submitted to a registered clearing agency, the transaction ID of the submitted security-based swap and the identity of the registered SDR to which the transaction will be or has been reported.

Rule 901(a)(3) would require certain information (transaction ID and the identity of the registered SDR) to be reported to a registered clearing agency only if such security-based swap has been submitted to a registered clearing agency for clearing. As a result, platforms and reporting sides required to report transaction IDs and the identity of a registered SDR will already have put into place any infrastructure needed to report these security-based swaps to a registered clearing agency.[314] However, the Commission does believe that including these items would result in additional development and maintenance burdens. Specifically, the Commission preliminarily believes that the additional one-time burden related to the development of the ability to capture the additional specific data elements required by proposed Rule 901(a)(3) would be 10 burden hours and the additional one-time burden related to the implementation of a reporting mechanism would be 6 burden hours, per platform and reporting side.[315] The Commission preliminarily believes that the additional ongoing burden related to the ability to capture the additional specific data elements required by proposed Rule 901(a)(3) would be 10 burden hours and the additional ongoing burden related to the maintenance of the reporting mechanism would be 2 burden hours, per platform and reporting side.[316]

iii. Bunched Order Executions and Allocations

As explained in Section VIII of the Regulation SBSR Adopting Release and Section III, *supra,* bunched order executions and allocations must be reported to a registered SDR pursuant to Rule 901(a). The Regulation SBSR Adopting Release explains how Regulation SBSR applies to executed bunched orders that are reported pursuant to the reporting hierarchy in Rule 901(a)(2)(ii), as adopted. That release also explains how Regulation SBSR applies to the security-based swaps that result from allocation of an executed bunched order, if the resulting security-based swaps are uncleared. In Section III, *supra,* the Commission explained how Regulation SBSR, as adopted and as proposed to be amended by this release, would apply to a platform-executed bunched order that will be submitted to clearing, and the security-based swaps that result from the allocation of any bunched order execution, if the resulting security-based swaps are cleared. The Commission included in its estimates of the number of reportable events in the Regulation SBSR Adopting Release security-based swaps that result from the allocation of bunched order executions that would be submitted to clearing, if the resulting security-based swaps are cleared. Thus, there is no burden associated with bunched order executions and allocations that has not already been taken into account.

iv. Prime Brokerage Transactions

The Commission preliminarily believes that in a prime brokerage transaction the customer/executing dealer transaction is a security-based

it would take approximately 0.005 hours for each security-based swap transaction to be reported. *See* 75 FR 75249, note 195. The Commission calculates the following: ((120,000 × 0.005)/(10 platforms)) = 60 burden hours per platform or 600 total burden hours attributable to the reporting of security-based swaps.

[311] *See* Regulation SBSR Adopting Release, Section XXI(B)(4). In the Regulation SBSR Proposing Release, the Commission estimated that it would take approximately 0.005 hours for each security-based swap transaction to be reported. *See* 75 FR 75249, note 195. The Commission calculates the following: ((250,000 × 0.005)/(4 registered clearing agencies)) = 312.5 burden hours per registered clearing agency or 1,250 total burden hours attributable to the reporting of security-based swaps.

[312] *See* Regulation SBSR Adopting Release, Section XXI(B)(4). In the Regulation SBSR Proposing Release, the Commission estimated that it would take approximately 0.005 hours for each security-based swap transaction to be reported. *See* 75 FR 75249, note 195. The Commission calculates the following: ((630,000 × 0.005)/(4 registered clearing agencies)) = 787.5 burden hours per registered clearing agency or 3,150 total burden hours attributable to the reporting of life cycle events under Rule 901(e).

[313] As is discussed immediately above, the Commission preliminarily believes that registered clearing agencies would incur a burden of 1,250 hours attributable to the reporting of security-based swaps pursuant to proposed Rule 901(a)(2)(i) along with a burden of 3,150 hours attributable to the reporting of life cycle events under Rule 901(e). As discussed in note 309, *supra,* platforms would not be responsible for the reporting of any life cycle events of any platform-executed security-based swap that will be submitted to clearing.

[314] The required infrastructure for platforms and related burdens and costs are discussed in Section IX(B)(2)(d)(i), *supra.* For reporting sides, the required infrastructure and related burdens and costs are already accounted for in the Regulation SBSR Adopting Release, Section XXI(B)(4). The additional burdens discussed in this paragraph related to the ability to capture the additional specific data elements, as would be required by proposed Rule 901(a)(3), would be incremental burdens that are in addition to the previously established infrastructure burdens and costs.

[315] The Commission preliminarily estimates that the additional burdens would be: [(Sr. Programmer (5 hours) + Sr. Systems Analyst (5 hours)) = 10 burden hours (development of the ability to capture transaction information); (Sr. Programmer (3 hours) + Sr. Systems Analyst (3 hours)) = 6 burden hours (implementation of reporting mechanism)]. The total one-time burden associated with the amendments to 901(a) would be 16 burden hours per platform and reporting side for a total one-time burden of 4960 hours (16 × 310 (300 reporting sides + 10 platforms)).

[316] The Commission preliminarily estimates that the additional burdens would be: [(Sr. Programmer (5 hours) + Sr. Systems Analyst (5 hours)) = 10 burden hours (maintenance of transaction capture system); (Sr. Programmer (1 hour) + Sr. Systems Analyst (1 hour)) = 2 burden hours (maintenance of reporting mechanism)]. The total ongoing burden associated with the proposed amendments to Rule 901(a) would be 12 burden hours per platform and reporting side for a total ongoing burden of 3,720 hours (12 × 310 (300 reporting sides + 10 platforms)).

swap that must be reported pursuant to Rule 901(a)(2)(ii), as adopted. The Commission further preliminarily believes that the prime broker/customer and prime broker/executing dealer transactions also are security-based swaps that must be reported pursuant to Rule 901(a)(2)(ii). In this release, the Commission clarifies that prime brokerage transactions were included in the estimates of security-based swap transactions that are required to be reported, and as a result, do not represent any new burdens.[317]

e. Recordkeeping Requirements

Apart from the duty to report certain transaction information to a registered SDR, the Commission does not believe that Rule 901 would result in any recordkeeping requirement for platform and reporting sides. As is stated in the SDR Adopting Release, Rule 13n–5(b)(4) under the Exchange Act requires an SDR to maintain the transaction data and related identifying information that it collects for not less than five years after the applicable security-based swap expires, and historical positions for not less than five years.[318] Accordingly, security-based swap transaction reports received by a registered SDR pursuant to Rule 901 would be required to be retained by the registered SDR for not less than five years after the applicable security-based swap expires. The Commission does not believe that reporting of security-based swap transactions by platforms or registered clearing agencies—or the inclusion of two additional data elements—would have any impact on the PRA burdens of registered SDRs as detailed in the SDR Adopting Release.

f. Collection of Information Is Mandatory

Each collection of information discussed above is mandatory.

g. Confidentiality of Responses to Collection of Information

A registered SDR, pursuant to Sections 13(n)(5) of the Exchange Act and Rules 13n–4(b)(8) and 13n–9 thereunder, is required to maintain the privacy of the security-based swap information it receives. For the majority of security-based swap transactions, the information collected pursuant to Rule 901(c) by a registered SDR will be publicly disseminated. However, certain security-based swaps are not subject to Rule 902's public dissemination requirement; therefore, information about these transactions will not be publicly available. In addition, for all security-based swaps, the information collected pursuant to Rule 901(d) is for regulatory purposes only and will not be widely available to the public. To the extent that the Commission receives confidential information pursuant to this collection of information, such information would be kept confidential, subject to the provisions of applicable law.

3. Rule 901—Aggregate Total PRA Burdens and Costs

Based on the foregoing, the Commission estimates the following aggregate total PRA burdens and costs, by category of entity, resulting from Rule 901, as adopted and as proposed to be amended herein.

a. For Platforms

As discussed above, the Regulation SBSR Adopting Release, the Commission estimated burdens and costs for reporting sides under Rule 901. The Commission estimated that Rule 901, as adopted, will impose an estimated total first-year burden of approximately 1,394 hours[319] per reporting side for a total first-year burden of 418,200 hours for all reporting sides.[320] The Commission estimated that Rule 901, as adopted, will impose ongoing annualized aggregate burdens of approximately 687 hours[321] per reporting side for a total aggregate annualized cost of 206,100 hours for all reporting sides.[322] The Commission further estimated that Rule 901, as adopted, will impose initial and ongoing annualized dollar cost burdens of $201,000 per reporting side, for total aggregate initial and ongoing annualized dollar cost burdens of $60,300,000.[323]

The Commission preliminarily believes that platforms would have a first-year burden of 1,361 hours per platform, for a total first-year burden of 13,610 hours under proposed Rule 901(a)(1).[324] The Commission also preliminarily estimates that proposed Rule 901(a)(1) would impose ongoing annualized aggregate burdens of approximately 654 hours[325] per platform for a total aggregate annualized burden of 6,540 hours for all platforms.[326] The Commission further preliminarily estimates that the proposed Rule 901(a)(1) would impose initial and ongoing annualized dollar cost burdens of $201,000 per platform,[327] for total aggregate initial and ongoing annualized dollar cost burdens of $2,010,000.[328]

The Commission preliminarily estimates that the proposed amendments to Rule 901(a) would result in platforms having a total burden of 600 hours attributable to the reporting of security-based swaps to registered SDRs over the course of a year, or 60 hours per platform.

The Commission preliminarily believes that the additional one-time burden related to the development of the ability to capture the relevant transaction information, required by proposed Rule 901(a)(3), would be 10 burden hours and the additional one-time burden related to the implementation of a reporting mechanism would be 6 burden hours, per platform. The Commission preliminarily believes that the additional ongoing burden related to the development of the ability to capture the relevant transaction information would be 10 burden hours and the additional ongoing burden related to the maintenance of the reporting mechanism would be 2 burden hours, per platform. As a result, the Commission estimates that the total first-year burden would be 28 hours and the ongoing annual burden would be 12 hours.

As a result of these proposed requirements, the Commission preliminarily estimates that platforms would have a total first-year burden of 14,490 hours, or 1,449 hours per platform.[329] In addition, the

[317] As is discussed in Section VIII(D)(6), *supra,* the Commission does not believe that the interpretive guidance would create any new duties. As a result, the Commission does not believe that there would be any burdens or any additional costs or benefits beyond those already considered in the Regulation SBSR Adopting Release. The Commission's estimates of the number of reportable events included all legs of prime brokerage transactions. *See supra* note 276.

[318] *See* SDR Adopting Release, Section VI(E)(4).

[319] *See* Regulation SBSR Adopting Release, Section XXI(B).

[320] *See id.*

[321] *See id.*

[322] *See id.*

[323] *See id.*

[324] The Commission derived its estimate from the following: (1,361 hours per platform × 10 platforms) = 13,610 hours.

[325] *See* Cross-Border Proposing Release, 78 FR 31112–15.

[326] The Commission derived its estimate from the following: (654 hours per platform × 10 platforms) = 6,540 hours.

[327] This figure is based on the sum of per-entity estimates for connectivity to SDRs for data reporting, as follows: [($100,000 hardware- and software-related expenses, including necessary back-up and redundancy, per SDR connection) × (2 SDR connections per platform)] + [($250/gigabyte of storage capacity) × (4 gigabytes of storage capacity)] = $201,000.

[328] The Commission derived its estimate from the following: ($201,000 per platform × 10 platforms) = $2,010,000. *See also* Cross-Border Proposing Release, 78 FR 31112–15.

[329] The Commission derived its estimate from the following: ((1,361 hours + 60 hours + 28) per platform × 10 platforms) = 14,490 hours.

Commission preliminarily estimates that platforms would have an ongoing annual burden of 7,260 hours, or 726 hours per platform.[330] The Commission also preliminarily estimates that each platform would have connectivity costs of $201,000 in the first year and each year thereafter.

b. For Registered Clearing Agencies

The Commission preliminarily believes that registered clearing agencies would have a first-year burden of 1,361 hours per registered clearing agency, for a total first-year burden of 5,444 hours under Rule 901 (before including the burdens related to the reporting of individual security-based swap transactions).[331] The Commission also preliminarily estimates that Rule 901 would impose ongoing annualized aggregate burdens of approximately 654 hours [332] per registered clearing agency for a total aggregate annualized burden of 2,616 hours for all registered clearing agencies.[333] The Commission further preliminarily estimates that the proposed Rule 901(a)(2)(i) would impose initial and ongoing annualized dollar cost burdens of $201,000 per registered clearing agency,[334] for total aggregate initial and ongoing annualized dollar cost burdens of $804,000.[335]

The Commission preliminarily estimates that the proposed Rule 901(a)(2)(i) would result in registered clearing agencies having a total burden of 1,250 hours attributable to the initial reporting of security-based swaps to registered SDRs over the course of a year, or 312.5 hours per registered clearing agency. The Commission preliminarily estimates that the proposed amendments to Rule 901(a) would result in registered clearing agencies having a total burden of 3,150 hours attributable to the reporting of life cycle events by registered clearing agencies to registered SDRs under Rule 901(e) over the course of a year, or 787.5 hours per registered clearing agency. The Commission preliminarily believes that the proposed amendments would result in a total annual burden on registered clearing agencies to report security-based swaps and life cycle events of 4,400 burden hours, or 1,100 hours per registered clearing agency.

The Commission preliminarily estimates that, as a result of these proposed requirements, registered clearing agencies would have a total first-year burden of 9,844 hours, or 2,461 hours per registered clearing agency.[336] In addition, the Commission preliminarily estimates that registered clearing agencies would have an ongoing annual burden of 7,328 hours, or 1,754 hours per registered clearing agency.[337] The Commission also preliminarily estimates that each registered clearing agency would have connectivity costs of $201,000 in the first year and each year thereafter.[338]

c. For Reporting Sides

The Commission preliminarily believes that, as a result of proposed Rule 901(a)(3), reporting sides would have a first-year burden of 1,394 hours per reporting side, for a total first-year burden of 418,200 hours.[339] The Commission also preliminarily estimates that proposed Rule 901(a)(3) would impose ongoing annualized aggregate burdens of approximately 687 hours [340] per reporting side, for a total aggregate annualized burden of 206,100 hours for all reporting sides.[341] The Commission further preliminarily estimates that the proposed Rule 901(a)(3) would impose initial and ongoing annualized dollar cost burdens of $201,000 per registered clearing agency,[342] for total aggregate initial and ongoing annualized dollar cost burdens of $60,300,000.[343]

As discussed above, the Commission estimated that Rule 901(a), as previously adopted, will result in reporting sides having a total burden of 2,500 hours attributable to the reporting of security-based swaps to registered SDRs under Rules 901(c) and 901(d) over the course of a year, or 8.33 hours per reporting side. The Commission further estimated that Rule 901(a), as previously adopted, would result in reporting sides having a total burden of 7,500 hours attributable to the reporting of life cycle events to registered SDRs under Rule 901(e) over the course of a year, or 25 hours per reporting side. As a result, the Commission stated its belief that the total burden associated with the reporting of security-based swaps under Rules 901(c) and 901(d), along with the reporting of life cycle events under Rule 901(e), would be 10,000 hours, or 33.33 hours per reporting side.

The Commission preliminarily believes that the additional one-time burden related to the development of the ability to capture the relevant transaction information, required by proposed Rule 901(a)(3), would be 10 burden hours and the additional one-time burden related to the implementation of a reporting mechanism would be 6 burden hours, per reporting side. The Commission preliminarily believes that the additional ongoing burden related to the development of the ability to capture the relevant transaction information would be 10 burden hours and the additional ongoing burden related to the maintenance of the reporting mechanism would be 2 burden hours, per reporting side. As a result, the Commission estimates that the total first-year burden would be 28 hours and the ongoing annual burden would be 12 hours.

As a result of these proposed requirements, the Commission preliminarily estimates that reporting sides would have a total first-year burden of 436,599 hours, or 1,455.33 hours per reporting side.[344] In addition, the Commission preliminarily estimates that reporting sides would have an ongoing annual burden of 219,699 hours, or 732.33 hours per reporting

[330] The Commission derived its estimate from the following: ((654 hours + 60 hours + 12 hours) per platform × 10 platforms) = 7,260 hours.

[331] The Commission derived its estimate from the following: (1,361 hours per registered clearing agency × 4 registered clearing agencies) = 5,444 hours.

[332] *See supra* note 302.

[333] The Commission derived its estimate from the following: (654 hours per reporting entity × 4 registered clearing agencies) = 2,616 hours.

[334] This figure is based on the sum of per-reporting entity estimates for connectivity to SDRs for data reporting, as follows: [($100,000 hardware- and software-related expenses, including necessary back-up and redundancy, per SDR connection) × (2 SDR connections per reporting entity)] + [($250/gigabyte of storage capacity) × (4 gigabytes of storage capacity)] = $201,000.

[335] The Commission derived its estimate from the following: ($201,000 per reporting side × 4 registered clearing agencies) = $804,000. *See also* Cross-Border Proposing Release, 78 FR 31112–15.

[336] The Commission derived its estimate from the following: ((1,361 hours + 312.5 hours + 787.5 hours) per registered clearing agency × 4 registered clearing agencies) = 9,844 hours.

[337] The Commission derived its estimate from the following: ((654 hours + 312.5 hours + 787.5 hours) per registered clearing agency × 4 registered clearing agencies) = 7,016 hours.

[338] *See supra* note 334.

[339] The Commission derived its estimate from the following: (1,394 hours per reporting side × 300 reporting sides) = 418,200 hours.

[340] *See* Cross-Border Proposing Release, 78 FR 31112–15.

[341] The Commission derived its estimate from the following: (687 hours per reporting side × 300 reporting sides) = 206,100 hours.

[342] This figure is based on the sum of per-reporting side estimates for connectivity to SDRs for data reporting, as follows: [($100,000 hardware- and software-related expenses, including necessary back-up and redundancy, per SDR connection) × (2 SDR connections per reporting side)] + [($250/gigabyte of storage capacity) × (4 gigabytes of storage capacity)] = $201,000.

[343] The Commission derived its estimate from the following: ($201,000 per reporting side × 300 reporting sides) = $60,300,000. *See also* Cross-Border Proposing Release, 78 FR 31112–15.

[344] The Commission derived its estimate from the following: ((1,394 hours + 33.33 hours + 28) per reporting sides × 300 reporting sides) = 436,599 hours.

side.[345] The Commission also preliminarily estimates that each reporting side would have connectivity costs of $201,000 in the first year and each year thereafter.

C. Correction of Errors in Security-Based Swap Information—Rule 905

1. Rule 905—As Adopted

Rule 905, as adopted, establishes procedures for correcting errors in reported and disseminated security-based swap information. Under Rule 905(a)(1), where a side that was not the reporting side for a security-based swap transaction discovers an error in the information reported with respect to such security-based swap, the counterparty must promptly notify the reporting side of the error. Under Rule 905(a)(2), as adopted, where a reporting side for a security-based swap transaction discovers an error in the information reported with respect to a security-based swap, or receives notification from its counterparty of an error, the reporting side must promptly submit to the entity to which the security-based swap was originally reported an amended report pertaining to the original transaction. The amended report must be submitted to the registered SDR in a manner consistent with the policies and procedures of the registered SDR required pursuant to Rule 907(a)(3).

Rule 905(b), as adopted, sets forth the duties of a registered SDR relating to corrections. If the registered SDR either discovers an error in a transaction on its system or receives notice of an error from a reporting side, Rule 905(b)(1) requires the registered SDR to verify the accuracy of the terms of the security-based swap and, following such verification, promptly correct the erroneous information contained in its system. Rule 905(b)(2) further requires that, if such erroneous information relates to a security-based swap that the registered SDR previously disseminated and falls into any of the categories of information enumerated in Rule 901(c), the registered SDR must publicly disseminate a corrected transaction report of the security-based swap promptly following verification of the trade by the counterparties to the security-based swap, with an indication that the report relates to a previously disseminated transaction.

In the Regulation SBSR Adopting Release, the Commission stated its belief that, with respect to reporting sides, Rule 905(a) will impose an initial, one-time burden associated with designing and building the reporting side's reporting system to be capable of submitting amended security-based swap transactions to a registered SDR. In the Regulation SBSR Adopting Release, for reporting sides, the Commission estimated that Rule 905(a) will impose an initial (first-year) aggregate burden of 15,015 hours, which is 50.0 burden hours per reporting side,[346] and an ongoing aggregate annualized burden of 7,035 hours, which is 23.5 burden hours per reporting side.[347]

With respect to the actual submission of amended transaction reports required under Rule 905(a)(2), the Commission stated its belief that this will not result in a material burden because this will be done electronically though the reporting system that the reporting side must develop and maintain to comply with Rule 901. The overall burdens associated with such a reporting system are addressed in the Commission's analysis of Rule 901.

With regard to non-reporting-side participants, the Commission stated its belief that Rule 905(a) will impose an initial and ongoing burden associated with promptly notifying the relevant reporting entity after discovery of an error as required under Rule 905(a)(1). In the Regulation SBSR Adopting Release, the Commission estimated that the annual burden will be 998,640 hours, which corresponds to 208.05 burden hours per non-reporting-side participant.[348] This figure was based on the Commission's estimate of (1) 4,800 non-reporting-side participants; and (2) 1 transaction per day per non-reporting-side participant.[349] The burdens of Rule 905 on reporting sides and non-reporting-side participants will be reduced to the extent that complete and accurate information is reported to registered SDRs in the first instance pursuant to Rule 901.

Rule 905(b) requires a registered SDR to develop protocols regarding the reporting and correction of erroneous information. In the Regulation SBSR Adopting Release, however, the Commission stated its belief that this duty would represent only a minor extension of other duties for which the Commission is estimating burdens, and consequently, will not impose substantial additional burdens on a registered SDR. The Commission noted that a registered SDR will be required to have the ability to collect and maintain security-based swap transaction reports and update relevant records under the rules adopted in the SDR Adopting Release. Likewise, the Commission noted that a registered SDR must have the capacity to disseminate additional, corrected security-based swap transaction reports under Rule 902. The Commission concluded that the burdens associated with Rule 905—including systems development, support, and maintenance—are addressed in the Commission's analysis of those other rules and, thus, the Commission stated its belief that Rule 905(b) will impose only an incremental additional burden on registered SDRs. In the Regulation SBSR Adopting Release, the Commission estimated that developing and publicly providing the necessary procedures will impose on each registered SDR an initial one-time burden on each registered SDR of approximately 730 burden hours.[350] The Commission further estimated that to review and update such procedures on an ongoing basis will impose an annual burden on each SDR of approximately 1,460 burden hours.[351]

Accordingly, in the Regulation SBSR Adopting Release, the Commission estimated that the initial (first-year) aggregate annualized burden on registered SDRs under Rule 905 will be 21,900 burden hours, which corresponds to 2,190 burden hours for each registered SDR.[352] The Commission further estimated that the ongoing aggregate annualized burden on registered SDRs under Rule 905 will be 14,600 burden hours, which corresponds to 1,460 burden hours for each registered SDR.[353]

2. Rule 905—Proposed Amendments

Rule 905, as adopted, establishes a mechanism for reporting corrections of previously submitted security-based swap transaction information and assigns certain duties to the counterparties to a transaction and to the registered SDR that holds the transaction. In light of the Commission's proposed amendment to Rule 901(a) to require a platform to report a security-based swap that is executed on the platform and that will be submitted to clearing, the Commission is proposing to make conforming changes to Rule 905(a) to require the person having the duty to report the initial transaction to correct previously reported erroneous

[345] The Commission derived its estimate from the following: ((687 hours + 33.33 hours + 12 hours) per reporting side × 300 reporting sides) = 219,699 hours.

[346] *See* Regulation SBSR Adopting Release, Section XXI(F).

[347] *See id.*

[348] *See id.*

[349] *See id.*

[350] *See id.*

[351] *See id.*

[352] *See id.*

[353] *See id.*

information if it discovers an error. Thus, under the proposed amendments to Rule 905(a), the person having the duty to report a security-based swap, whether a counterparty or a platform, would be required to correct previously reported erroneous information with respect to that security-based swap if it discovers an error.

Certain provisions of Rule 905 of Regulation SBSR contain ''collection of information requirements'' within the meaning of the PRA. The title of this collection is ''Rule 905—Correction of Errors in Security-Based Swap Information.''

a. Summary of Collection of Information

Rule 905 establishes duties for security-based swap counterparties and registered SDRs to correct errors in information that previously has been reported.

Duty to correct. Under the proposed amendment to Rule 905(a)(1), where a person that was not the reporting side for a security-based swap transaction discovers an error in the information reported with respect to such security-based swap, that person must promptly notify the person having the duty to report the security-based swap of the error. Under the proposed amendment to Rule 905(a)(2), where a person having the duty to report a security-based swap transaction discovers an error in the information reported with respect to a security-based swap, or receives notification from a counterparty of an error, such person must promptly submit to the entity to which the security-based swap was originally reported an amended report pertaining to the original transaction. The amended report must be submitted to the registered SDR in a manner consistent with the policies and procedures of the registered SDR required pursuant to Rule 907(a)(3), as adopted. As a result the proposed amendments to Rule 905, a platform would have the duty to report if it discovers an error.

b. Proposed Use of Information

The security-based swap transaction information required to be reported under the proposed amendments to Rule 905 would be used by registered SDRs, its participants, the Commission, and other relevant authorities. Participants will be able to use such information to evaluate and manage their own risk positions and satisfy their duties to report corrected information to a registered SDR. A registered SDR will need the required information to correct security-based swap transaction records, in order to maintain an accurate record of a participant's positions as well as to disseminate corrected information. The Commission and other relevant authorities will need the corrected information to have an accurate understanding of the market for surveillance and oversight purposes.

c. Respondents

Rule 905, as proposed to be amended, would apply to platforms. As noted above, the Commission estimates that there will be approximately 10 platforms that incur a duty to report security-based swap transactions pursuant to Rule 901.

d. Total Initial and Annual Reporting and Recordkeeping Burdens

In the Regulation SBSR Adopting Release, the Commission estimated that Rule 905(a), as adopted, will impose an initial, one-time burden associated with designing and building the reporting side's reporting system to be capable of submitting amended security-based swap transactions to a registered SDR.[354] The Commission stated its belief that designing and building appropriate reporting system functionality to comply with Rule 905(a)(2), as adopted, will be a component of, and represent an incremental ''add-on'' to, the cost to build a reporting system and develop a compliance function as required under Rule 901, as adopted.[355] Specifically, the Commission estimated that, based on discussions with industry participants, the incremental burden would be equal to 5% of the one-time and annual burdens associated with designing and building a reporting system that is in compliance with Rule 901, plus 10% of the corresponding one-time and annual burdens associated with developing the reporting side's overall compliance program required under Rule 901.[356]

The Commission preliminarily believes that the above methodology is applicable to error reporting by platforms under the proposed amendments to Rule 905(a). Thus, for platforms, the Commission estimates that the proposed amendments to Rule 905(a) would impose an initial (first-year) aggregate burden of 500.5 hours, which is 50.0 burden hours per platform,[357] and an ongoing aggregate annualized burden of 234.5 hours, which is 23.5 burden hours per platform.[358]

e. Recordkeeping Requirements

Security-based swap transaction reports received pursuant to Rule 905 are subject to Rule 13n–5(b)(4) under the Exchange Act. This rule requires an SDR to maintain the transaction data and related identifying information for not less than five years after the applicable security-based swap expires and historical positions for not less than five years.

With respect to corrected information that is disseminated by a registered SDR in compliance with Rule 905(b)(2), Rule 13n–7(b) under the Exchange Act requires an SDR to keep and preserve at least one copy of all documents, including all policies and procedures required by the Exchange Act and the rules or regulations thereunder, for a period of not less than five years, the first two years in a place that is immediately available. This requirement encompasses amended security-based swap transaction reports disseminated by the registered SDR. The amendments to Rule 905(a) clarify the duties of counterparties and other persons to report corrected information to a registered SDR. The requirement that a registered SDR disseminate corrected information would not change. The Commission preliminarily believes that the number of corrections reported to the registered SDR would not be impacted by the proposed amendments. As a result, the Commission preliminarily believes that the burdens under Rule 905(b)(2) would not be impacted by the proposed amendments to Rule 905(a).

f. Collection of Information Is Mandatory

Each collection of information discussed above is mandatory.

g. Confidentiality of Responses to Collection of Information

Information collected pursuant to the proposed amendments to Rule 905 would be widely available to the extent that it corrects information previously reported pursuant to Rule 901(c) and incorporated into security-based swap

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[354] *See id.*

[355] *See id.*

[356] *See id.*

[357] *See* Regulation SBSR Proposing Release, 75 FR 75254–55. This figure is calculated as follows: [(((172 burden hours for one-time development of reporting system) × (0.05)) + ((33 burden hours annual maintenance of reporting system) × (0.05)) + ((180 burden hours one-time compliance program development) × (0.1)) + ((218 burden hours annual support of compliance program) × (0.1))) × (10 platforms)] = 500.5 burden hours, which is 50 burden hours per reporting side. *See also* Regulation SBSR Adopting Release, Section XXI(F).

[358] *See* Regulation SBSR Proposing Release, 75 FR 75254–55. This figure is calculated as follows: [(((33 burden hours annual maintenance of reporting system) × (0.05)) + ((218 burden hours annual support of compliance program) × (0.1))) × (10 platforms)] = 234.5 burden hours, which is 23.5 burden hours per platform.

transaction reports that are publicly disseminated by a registered SDR pursuant to Rule 902. Most of the information required under Rule 902 will be widely available to the public to the extent it is incorporated into security-based swap transaction reports that are publicly disseminated by a registered SDR pursuant to Rule 902. However, Rule 902(c) prohibits public dissemination of certain kinds of transactions and certain kinds of transaction information. An SDR, pursuant to Sections 13(n)(5) of the Exchange Act and Rules 13n–4(b)(8) and Rule 13n–9 thereunder, is required to maintain the privacy of this security-based swap information. To the extent that the Commission receives confidential information pursuant to this collection of information, such information will be kept confidential, subject to the provisions of applicable law.

3. Rule 905—Aggregate Total PRA Burdens and Costs

The Commission estimates the following aggregate total PRA burdens and costs, by category of entity, resulting from the proposed amendments to Rule 905.

a. For Platforms

For platforms, the Commission estimates that the proposed amendments to Rule 905(a) would impose an initial (first-year) aggregate burden of 500.5 hours, which is 50.0 burden hours per platform,[359] and an ongoing aggregate annualized burden of 234.5 hours, which is 23.5 burden hours per platform.[360]

For reporting sides, the Commission estimates that Rule 905(a), as adopted, will impose an initial (first-year) aggregate burden of 15,015 hours, which is 50.0 burden hours per reporting side,[361] and an ongoing aggregate annualized burden of 7,035 hours, which is 23.5 burden hours per reporting side.[362]

b. For Non-Reporting Sides

For non-reporting sides, the Commission estimates that the annual burden will be 998,640 hours, which corresponds to 208.05 burden hours per non-reporting-side participant.[363]

c. For Registered SDRs

For registered SDRs, the Commission estimates that the initial (first-year) aggregate annualized burden on registered SDRs under Rule 905, as adopted and as proposed to be amended herein, would be 21,900 burden hours, which corresponds to 2,190 burden hours for each registered SDR.[364] The Commission further estimates that the ongoing aggregate annualized burden on registered SDRs under Rule 905, as adopted and as proposed to be amended herein, would be 14,600 burden hours, which corresponds to 1,460 burden hours for each registered SDR.[365]

D. Other Duties of Participants—Rule 906

1. Rule 906—As Adopted

Rule 906(a), as adopted, sets forth a procedure designed to ensure that a registered SDR obtains relevant UICs for both sides of a security-based swap, not just of the reporting side. Rule 906(a) requires a registered SDR to identify any security-based swap reported to it for which the registered SDR does not have a counterparty ID and (if applicable) broker ID, trading desk ID, and trader ID of each counterparty. Rule 906(a) further requires the registered SDR, once a day, to send a report to each participant identifying, for each security-based swap to which that participant is a counterparty, the security-based swap(s) for which the registered SDR lacks counterparty ID and (if applicable) broker ID, trading desk ID, and trader ID. A participant that receives such a report must provide the missing ID information to the registered SDR within 24 hours.

Rule 906(b) requires each participant of a registered SDR to provide the registered SDR with information sufficient to identify the participant's ultimate parent(s) and any affiliate(s) of the participant that are also participants of the registered SDR.

Rule 906(c) requires each participant that is a registered security-based swap dealer or registered major security-based swap participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any security-based swap transaction reporting obligations in a manner consistent with Regulation SBSR. In addition, Rule 906(c) requires each such participant to review and update its policies and procedures at least annually.

For Registered SDRs. Rule 906(a) requires a registered SDR, once a day, to send a report to each of its participants identifying, for each security-based swap to which that participant is a counterparty, any security-based swap(s) for which the registered SDR lacks counterparty ID and (if applicable) broker ID, trading desk ID, and trader ID. In the Regulation SBSR Adopting Release, the Commission estimated that there will be a one-time, initial burden of 112 burden hours for a registered SDR to create a report template and develop the necessary systems and processes to produce a daily report required by Rule 906(a).[366] Further, the Commission estimated that there will be an ongoing annualized burden of 308 burden hours for a registered SDR to generate and issue the daily reports, and to enter into its systems the ID information supplied by participants in response to the daily reports.[367]

Accordingly, in the Regulation SBSR Adopting Release, the Commission estimated that the initial aggregate annualized burden for registered SDRs under Rule 906(a) will be 4,200 burden hours for all SDR respondents, which corresponds to 420 burden hours per registered SDR.[368] The Commission estimated that the ongoing aggregate annualized burden for registered SDRs

[359] This figure is calculated as follows: [(((172 burden hours for one-time development of reporting system) × (0.05)) + ((33 burden hours annual maintenance of reporting system) × (0.05)) + ((180 burden hours one-time compliance program development) × (0.1)) + ((218 burden hours annual support of compliance program) × (0.1))) × (10 platforms)] = 500.5 burden hours, which is 50 burden hours per reporting side.

[360] This figure is calculated as follows: [(((33 burden hours annual maintenance of reporting system) × (0.05)) + ((218 burden hours annual support of compliance program) × (0.1))) × (10 platforms)] = 234.5 burden hours, which is 23.5 burden hours per platform.

[361] This figure is calculated as follows: [(((172 burden hours for one-time development of reporting system) × (0.05)) + ((33 burden hours annual maintenance of reporting system) × (0.05)) + ((180 burden hours one-time compliance program development) × (0.1)) + ((218 burden hours annual support of compliance program) × (0.1))) × (300 reporting sides)] = 15,015 burden hours, which is 50 burden hours per reporting side. The burden hours for annual maintenance of the reporting system has been updated to reflect new information on the number of reportable events.

[362] This figure is calculated as follows: [(((33 burden hours annual maintenance of reporting system) × (0.05)) + ((218 burden hours annual support of compliance program) × (0.1))) × (300 reporting sides)] = 7,035 burden hours, which is 23.5 burden hours per reporting side. The burden hours for annual maintenance of the reporting system has been updated to reflect new information on the number of reportable events.

[363] This figure is based on the following: [(1.14 error notifications per non-reporting-side participant per day) × (365 days/year) × (Compliance Clerk at 0.5 hours/report) × (4,800 non-reporting-side participants)] = 998,640 burden hours, which corresponds to 208.05 burden hours per non-reporting-side participant.

[364] This figure is based on the following: [(730 burden hours to develop protocols) + (1,460 burden hours annual support)) × (10 registered SDRs)] = 21,900 burden hours, which corresponds to 2,190 burden hours per registered SDR.

[365] This figure is based on the following: [(1,460 burden hours annual support) × (10 registered SDRs)] = 14,600 burden hours, which corresponds to 1,460 burden hours per registered SDR.

[366] *See* Regulation SBSR Adopting Release, Section XXI(G).

[367] *See id.*

[368] *See id.*

under Rule 906(a) will be 3,080 burden hours, which corresponds to 308 burden hours per registered SDR.[369]

For Participants. Rule 906(a) requires any participant of a registered SDR that receives a report from that registered SDR to provide the missing UICs to the registered SDR within 24 hours. Because all SDR participants will likely be the non-reporting side for at least some transactions to which they are counterparties, in the Regulation SBSR Adopting Release, the Commission stated its belief that all participants will be impacted by Rule 906(a). In the Regulation SBSR Adopting Release, the Commission estimated that the initial and ongoing annualized burden under Rule 906(a) for all participants will be 199,728 burden hours, which corresponds to 41.6 burden hours per participant.[370] This figure is based on the Commission's estimates of (1) 4,800 participants; and (2) approximately 1.14 transactions per day per participant.[371]

Rule 906(b) requires every participant to provide the registered SDR an initial parent/affiliate report and subsequent reports, as needed. In the Regulation SBSR Adopting Release, the Commission estimated that there will be 4,800 participants, that each participant will connect to two registered SDRs on average, and that each participant will submit two reports each year.[372] Accordingly, the Commission estimated that the initial and ongoing aggregate annualized burden associated with Rule 906(b) will be 9,600 burden hours, which corresponds to 2 burden hours per participant.[373] The aggregate burden represents an upper estimate for all participants; the actual burden will likely decrease because certain larger participants are likely to have multiple affiliates, and one member of the group could report ultimate parent and affiliate information on behalf of all of its affiliates at the same time.

Rule 906(c) requires each participant that is a registered security-based swap dealer or registered major security-based swap participant (each, a ''covered participant'') to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with applicable security-based swap transaction reporting obligations. Rule 906(c) also requires the review and updating of such policies and procedures at least annually. In the Regulation SBSR Adopting Release, the Commission estimated that the one-time, initial burden for each covered participant to adopt written policies and procedures as required under Rule 906(c) will be approximately 216 burden hours.[374] As discussed in the Regulation SBSR Adopting Release,[375] this figure is based on the estimated number of hours to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing. In addition, in the Regulation SBSR Adopting Release, the Commission estimated the burden of maintaining such policies and procedures, including a full review at least annually, as required by Rule 906(c), will be approximately 120 burden hours for each covered participant.[376] This figure includes an estimate of hours related to reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining internal controls systems, and performing necessary testing. Accordingly, the Commission estimated that the initial aggregate annualized burden associated with Rule 906(c) will be 18,480 burden hours, which corresponds to 336 burden hours per covered participant.[377] In the Regulation SBSR Adopting Release, the Commission estimated that the ongoing aggregate annualized burden associated with Rule 906(c) will be 6,600 burden hours, which corresponds to 120 burden hours per covered participant.[378]

Therefore, in the Regulation SBSR Adopting Release, the Commission estimated that the total initial aggregate annualized burden associated with Rule 906 will be 230,370 burden hours,[379] and the total ongoing aggregate annualized burden will be 217,370 burden hours for all participants.[380]

2. Rule 906—Proposed Amendments

a. Rule 906(b)—Proposed Amendments

The Commission is proposing to revise Rule 906(b) to indicate that reporting obligations under Rule 906(b) would not attach to participants that are platforms or registered clearing agencies. Under the proposed amendments to Rule 901(a) and 901(e), platforms and registered clearing agencies would have the duty to report certain security-based swaps and therefore would become participants of registered SDRs. Rule 906(b), as adopted, requires each participant of a registered SDR to provide the registered SDR information sufficient to identify its ultimate parent(s) and any affiliate(s) of the participant that also are participants of the registered SDR, using ultimate parent IDs and participant IDs. The Commission does not believe that this change, which would relieve platforms and registered clearing agencies of the requirement to provide ultimate parent IDs and participant IDs, would affect the existing burdens being placed on platforms and registered clearing agencies.

b. Rule 906(c)—Proposed Amendments

i. Summary of Collection of Information

The proposed amendments to Rule 906(c) would require each participant that is a registered clearing agency or platform to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with applicable security-based swap transaction reporting obligations. Each such participant also would be required to review and update its policies and procedures at least annually.

ii. Proposed Use of Information

The policies and procedures required under the proposed amendments to Rule 906(c) would be used by participants to aid in their compliance with Regulation SBSR, and also used by the Commission as part of its ongoing efforts to monitor and enforce compliance with the federal securities laws, including Regulation SBSR, through, among other things, examinations and inspections.

iii. Respondents

The proposed amendments to Rule 906(c) would result in the rule applying to registered clearing agencies and platforms. The Commission estimates that there will be 4 registered clearing agencies and 10 platforms.

iv. Total Initial and Annual Reporting and Recordkeeping Burdens

For Registered Clearing Agencies and Platforms. The proposed amendment to Rule 906(c) would require each registered clearing agency or platform to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with applicable security-based swap transaction reporting obligations. The proposed amendment to Rule 906(c) also would require each registered clearing agency and platform to review and update such policies and

[369] *See id.*

[370] *See id.*

[371] *See id.*

[372] *See id.* The Commission estimates that, during the first year, each participant will submit an initial report and one update report and, in subsequent years, will submit two update reports.

[373] *See id.*

[374] *See id.*

[375] *See id.*

[376] *See id.*

[377] *See id.*

[378] *See id.*

[379] *See id.*

[380] *See id.*

procedures at least annually. The Commission estimates that the one-time, initial burden for each registered clearing agency or platform to adopt written policies and procedures as required under the proposed amendments to Rule 906(c) would be similar to the Rule 906(c) burdens discussed in the Regulation SBSR Adopting Release for covered participants, and would be approximately 216 burden hours per registered clearing agency or platform.[381] As discussed in the Regulation SBSR Proposing Release,[382] this figure is based on the estimated number of hours to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing. In addition, the Commission estimates the burden of maintaining such policies and procedures, including a full review at least annually will be approximately 120 burden hours for each registered clearing agency or platform.[383] This figure includes an estimate of hours related to reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining internal controls systems, and performing necessary testing. Accordingly, the Commission estimates that the initial aggregate annualized burden associated with the proposed amendments to Rule 906(c) would be 4,704 burden hours, which corresponds to 336 burden hours per registered clearing agency or platform.[384] The Commission estimates that the ongoing aggregate annualized burden associated with the proposed amendments to Rule 906(c) will be 1,680 burden hours, which corresponds to 120 burden hours per registered clearing agency or platform.[385]

v. Recordkeeping Requirements

The Commission has adopted recordkeeping rules for registered clearing agencies[386] and proposed recordkeeping rules for platforms.[387]

vi. Collection of Information Is Mandatory

Each collection of information discussed above is mandatory.

vii. Confidentiality of Responses to Collection of Information

The collection of information required by the proposed amendments to Rule 906 would not be widely available. To the extent that the Commission receives confidential information pursuant this collection of information, such information will be kept confidential, subject to applicable law.

3. Rule 906—Aggregate Total PRA Burdens and Costs

Based on the foregoing, the Commission estimates the following aggregate total PRA burdens and costs, by category of entity, resulting from Rule 906, as adopted and as proposed to be amended herein.

a. For Platforms and Registered Clearing Agencies

The Commission estimates that the one-time, initial burden for each registered clearing agency or platform to adopt written policies and procedures as required under Rule 906(c), as adopted and as proposed to be amended herein, would be similar to the Rule 906(c) burdens discussed in the Regulation SBSR Adopting Release for covered participants, and would be approximately 216 burden hours per registered clearing agency or platform.[388] This figure is based on the estimated number of hours to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing. In addition, the Commission estimates the burden of maintaining such policies and procedures, including a full review at least annually, as required by Rule 906(c), would be approximately 120 burden hours for each registered clearing agency or platform.[389] This figure includes an estimate of hours related to reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining internal controls systems, and performing necessary testing. Accordingly, the Commission estimates that the initial aggregate annualized burden associated with Rule 906(c), as adopted and as proposed to be amended herein, would be 4,704 burden hours, which corresponds to 336 burden hours per registered clearing agency or platform.[390] The Commission estimates that the ongoing aggregate annualized burden associated with Rule 906(c), as adopted and as proposed to be amended herein, would be 1,680 burden hours, which corresponds to 120 burden hours per registered clearing agency or platform.[391]

b. For Registered SDRs

The proposed amendments to Regulation SBSR discussed in this release would not modify any requirements in Rule 906(a), as adopted. Therefore, the Commission is not modifying its analysis of the burden that Rule 906(a), as adopted, will impose on registered SDRs.

c. For Participants

The Commission estimates that the initial and ongoing annualized burden under Rule 906(a) for all participants will be 199,728 burden hours, which corresponds to 41.6 burden hours per participant.[392] This figure is based on the Commission's estimates of (1) 4,800 participants; and (2) approximately 1.14 transactions per day per participant.[393]

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[381] *See* Regulation SBSR Proposing Release, 75 FR 75257. This figure is based on the following: [(Sr. Programmer at 40 hours) + (Compliance Manager at 40 hours) + (Compliance Attorney at 40 hours) + (Compliance Clerk at 40 hours) + (Sr. Systems Analyst at 32 hours) + (Director of Compliance at 24 hours)] = 216 burden hours per registered clearing agency or platform.

[382] *See* Regulation SBSR Proposing Release, 75 FR 75257.

[383] *See id.* This figure is based on the following: [(Sr. Programmer at 8 hours) + (Compliance Manager at 24 hours) + (Compliance Attorney at 24 hours) + (Compliance Clerk at 24 hours) + (Sr. Systems Analyst at 16 hours) + (Director of Compliance at 24 hours)] = 120 burden hours per registered clearing agency or platform.

[384] This figure is based on the following: [(216 + 120 burden hours) × (14 registered clearing agencies and platforms)] = 4,704 burden hours.

[385] This figure is based on the following: [(120 burden hours) × (14 registered clearing agencies and platforms)] = 1,680 burden hours.

[386] *See* Clearing Agency Standards Adopting Release.

[387] *See* Securities Exchange Act Release No. 63825 (February 2, 2011), 76 FR 10948 (February 29, 2011) (''SB SEF Proposing Release'').

[388] This figure is based on the following: [(Sr. Programmer at 40 hours) + (Compliance Manager at 40 hours) + (Compliance Attorney at 40 hours) + (Compliance Clerk at 40 hours) + (Sr. Systems Analyst at 32 hours) + (Director of Compliance at 24 hours)] = 216 burden hours per registered clearing agency or platform.

[389] This figure is based on the following: [(Sr. Programmer at 8 hours) + (Compliance Manager at 24 hours) + (Compliance Attorney at 24 hours) + (Compliance Clerk at 24 hours) + (Sr. Systems Analyst at 16 hours) + (Director of Compliance at 24 hours)] = 120 burden hours per registered clearing agency or platform.

[390] This figure is based on the following: [(216 + 120 burden hours) × (14 registered clearing agencies and platforms)] = 4,704 burden hours.

[391] This figure is based on the following: [(120 burden hours) × (14 registered clearing agencies and platforms)] = 1,680 burden hours.

[392] *See* Regulation SBSR Adopting Release, Section XXI(G). This burden was calculated using the same methodology as was used in the Regulation SBSR Proposing Release, updated to account for new estimates of the number of missing information reports resulting from updates in the number of reportable events. *See* Regulation SBSR Proposing Release, 75 FR 75256–57. This figure is based on the following: [(1.14 missing information reports per participant per day) × (365 days/year) × (Compliance Clerk at 0.1 hours/report) × (4,800 participants) = 199,728 burden hours, which corresponds to 47.5 burden hours per participant.

[393] This figure is based on the following: [((2,000,000 estimated annual security-based swap transactions)/4,800 participants))/(365 days/year)] = 1.14, or approximately 1 transaction per day.

The Commission estimates that the initial and ongoing aggregate annualized burden associated with Rule 906(b), as adopted and as proposed to be amended herein, would be 9,600 burden hours, which corresponds to 2 burden hours per participant.[394]

The Commission estimates that the one-time, initial burden for each covered participant to adopt written policies and procedures as required under Rule 906(c), as adopted and as proposed to be amended herein, would be approximately 216 burden hours.[395] This figure is based on the estimated number of hours to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing. In addition, the Commission estimates the burden of maintaining such policies and procedures, including a full review at least annually, as required by Rule 906(c), as adopted and as proposed to be amended herein, would be approximately 120 burden hours for each covered participant.[396] This figure includes an estimate of hours related to reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining internal controls systems, and performing necessary testing. Accordingly, the Commission estimates that the initial aggregate annualized burden associated with Rule 906(c), as adopted and as proposed to be amended herein, would be 18,480 burden hours, which corresponds to 336 burden hours per covered participant.[397] The Commission estimates that the ongoing aggregate annualized burden associated with Rule 906(c), as adopted and as proposed to be amended herein, would be 6,600 burden hours, which corresponds to 120 burden hours per covered participant.[398]

Therefore, the Commission estimates that the total initial aggregate annualized burden associated with Rule 906, as adopted and as proposed to be amended herein, would be 232,008 burden hours,[399] and the total ongoing aggregate annualized burden would be 219,008 burden hours for all participants.[400]

E. Policies and Procedures of Registered SDRs—Rule 907

1.Rule 907—As Adopted

Rule 907(a), as adopted, requires a registered SDR to establish and maintain written policies and procedures that detail how it will receive and publicly disseminate security-based swap transaction information. Rule 907(a)(4) requires policies and procedures for assigning ''special circumstances'' flags to the necessary transaction reports.

Rule 907(c), as adopted, requires a registered SDR to make its policies and procedures available on its Web site. Rule 907(d), as adopted, requires a registered SDR to review, and update as necessary, the policies and procedures that it is required to have by Regulation SBSR at least annually. Rule 907(e), as adopted, requires a registered SDR to have the capacity to provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to Regulation SBSR and the registered SDR's policies and procedures established thereunder.

In the Regulation SBSR Adopting Release, the Commission estimated that the one-time, initial burden for a registered SDR to adopt written policies and procedures as required under Rule 907 will be approximately 15,000 hours.[401] In the Regulation SBSR Adopting Release, the Commission stated that, drawing on the Commission's experience with other rules that require entities to establish and maintain policies and procedures,[402] this figure is based on the estimated number of hours to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing.[403] In addition, in the Regulation SBSR Adopting Release, the Commission estimated the annual burden of maintaining such policies and procedures, including a full review at least annually, making available its policies and procedures on the registered SDR's Web site, and information or reports on non-compliance, as required under Rule 907(e), will be approximately 30,000 hours for each registered SDR.[404] As discussed in the Regulation SBSR Proposing Release, this figure includes an estimate of hours related to reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining relevant systems and internal controls systems, performing necessary testing, monitoring participants, and compiling data.

In the Regulation SBSR Adopting Release, the Commission estimated that the initial annualized burden associated with Rule 907 will be approximately 45,000 hours per registered SDR, which corresponds to an initial annualized aggregate burden of approximately 450,000 hours.[405] The Commission further estimated that the ongoing annualized burden associated with Rule 907 will be approximately 30,000 hours per registered SDR,[406] which corresponds to an ongoing annualized

[394] *See* Regulation SBSR Adopting Release, Section XXI(G). *See also* Regulation SBSR Proposing Release, 75 FR 75257. This figure is based on the following: [(Compliance Clerk at 0.5 hours per report) × (2 reports/year/SDR connection) × (2 SDR connections/participant) × (4,800 participants)] = 9,600 burden hours, which corresponds to 2 burden hours per participant.

[395] *See* Regulation SBSR Adopting Release, Section XXI(G). *See also* Regulation SBSR Proposing Release, 75 FR 75257. This figure is based on the following: [(Sr. Programmer at 40 hours) + (Compliance Manager at 40 hours) + (Compliance Attorney at 40 hours) + (Compliance Clerk at 40 hours) + (Sr. Systems Analyst at 32 hours) + (Director of Compliance at 24 hours)] = 216 burden hours per covered participant.

[396] *See* Regulation SBSR Adopting Release, Section XXI(G). *See also* Regulation SBSR Proposing Release, 75 FR 75257. This figure is based on the following: [(Sr. Programmer at 8 hours) + (Compliance Manager at 24 hours) + (Compliance Attorney at 24 hours) + (Compliance Clerk at 24 hours) + (Sr. Systems Analyst at 16 hours) + (Director of Compliance at 24 hours)] = 120 burden hours per covered participant.

[397] *See* Regulation SBSR Adopting Release, Section XXI(G). This figure is based on the following: [(216 + 120 burden hours) × (55 covered participants)] = 18,480 burden hours.

[398] *See* Regulation SBSR Adopting Release, Section XXI(G). This figure is based on the following: [(120 burden hours) × (55 covered participants)] = 6,600 burden hours.

[399] *See* Regulation SBSR Adopting Release, Section XXI(G). This figure is based on the following: [(4,200 burden hours for registered SDRs under Rule 906(a)) + (199,728 burden hours for participants under Rule 906(a)) + (9,600 burden hours for participants under Rule 906(b)) + (18,480 burden hours for covered participants under Rule 906(c))] = 232,008 burden hours.

[400] *See* Regulation SBSR Adopting Release, Section XXI(G). This figure is based on the following: [(3,080 burden hours for registered SDRs under the proposed amendment to Rule 906(a)) + (199,728 burden hours for participants under the proposed amendment to Rule 906(a)) + (9,600 burden hours for participants under the proposed amendment to Rule 906(b)) + (6,600 burden hours for covered participants under the proposed amendment to Rule 906(c))] = 219,008 burden hours.

[401] *See* Regulation SBSR Adopting Release, Section XXI(H). These burdens are the result of Rule 907 only and do not account for any burdens that result from the SDR Rules. Such burdens are addressed in a separate release. *See* SDR Adopting Release, Section VIII(D).

[402] *See supra* note 382.

[403] *See* Regulation SBSR Adopting Release, Section XXI(H). This figure also includes time necessary to design and program systems and implement policies and procedures to assign certain UICs, as required by Rule 907(a)(5).

[404] *See* Regulation SBSR Adopting Release, Section XXI(H).

[405] This figure is based on the following: [((15,000 burden hours per registered SDR) + (30,000 burden hours per registered SDR)) × (10 registered SDRs)] = 450,000 initial annualized aggregate burden hours during the first year.

[406] *See* Regulation SBSR Adopting Release, Section XXI(H).

aggregate burden of approximately 300,000 hours.[407]

2. Rule 907—Proposed Amendments

The Commission is proposing to revise Rule 907(a)(6) to indicate that a registered SDR's policies and procedures need not contain provisions for obtaining ultimate parent IDs and participant IDs from participants that are platforms or registered clearing agencies. Under the proposed amendments to Rule 901(a) and 901(e), platforms and registered clearing agencies would have the duty to report certain security-based swaps and become participants of registered SDRs to which they report. Rule 907(a)(6), as adopted, requires a registered SDR to establish and maintain written policies and procedures ''[f]or periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any participant(s) with which the participant is affiliated, using ultimate parent IDs and participant IDs.'' The Commission preliminarily believes that requiring a platform or registered clearing agency to report parent and affiliate information to a registered SDR would not serve any regulatory purpose and, therefore, has proposed to amend Rule 907(a)(6) to indicate that the obligations under Rule 907(a)(6) do not attach to participants that are platforms or a registered clearing agencies. This proposed amendment would not result in any burdens being placed on platforms and registered clearing agencies.

3. Rule 907—Aggregate Total PRA Burdens and Costs

Based on the foregoing, the Commission estimates that the one-time, initial burden for a registered SDR to adopt written policies and procedures as required under Rule 907 will be approximately 15,000 hours. In addition, the Commission estimated the annual burden of maintaining such policies and procedures, including a full review at least annually, making available its policies and procedures on the registered SDR's Web site, and information or reports on non-compliance, as required under Rule 907(e), will be approximately 30,000 hours for each registered SDR. The Commission therefor estimates that the initial annualized burden associated with Rule 907 will be approximately 45,000 hours per registered SDR, which corresponds to an initial annualized aggregate burden of approximately 450,000 hours.[408] The Commission further estimated that the ongoing annualized burden associated with Rule 907 will be approximately 30,000 hours per registered SDR,[409] which corresponds to an ongoing annualized aggregate burden of approximately 300,000 hours.[410]

F. Cross-Border Matters—Rule 908

1. Rule 908—As Adopted

Rule 908(a), as adopted, defines when a security-based swap transaction is subject to regulatory reporting and/or public dissemination. Specifically, Rule 908(a)(1)(i), as adopted, provides that a security-based swap shall be subject to regulatory reporting and public dissemination if ''[t]here is a direct or indirect counterparty that is a U.S. person on either or both sides of the transaction.'' Rule 908(a)(1)(ii), as adopted, provides that a security-based swap shall be subject to regulatory reporting and public dissemination if ''[t]he security-based swap is submitted to a clearing agency having its principal place of business in the United States.'' Rule 908(a)(2), as adopted, provides that a security-based swap not included within the above provisions would be subject to regulatory reporting but not public dissemination ''if there is a direct or indirect counterparty on either or both sides of the transaction that is a registered security-based swap dealer or a registered major security-based swap participant.''

Regulation 908(b), as adopted, defines when a person might incur obligations under Regulation SBSR. Rule 908(b) provides that, notwithstanding any other provision of Regulation SBSR, a person shall not incur any obligation under Regulation SBSR unless it is a U.S. person, a registered security-based swap dealer, or a registered major security-based swap participant.

The Commission stated its belief in the Regulation SBSR Adopting Release that Rules 908(a) and 908(b) do not impose any collection of information requirements. To the extent that a security-based swap transaction or person is subject to Rule 908(a) or 908(b), respectively, the collection of information burdens are calculated as part of the underlying rule (*e.g.,* Rule 901, which imposes the basic duty to report security-based swap transaction information).

Rule 908(c), as adopted, sets forth the requirements surrounding requests for substituted compliance. Rule 908(c)(1) sets forth the general rule that compliance with Title VII's regulatory reporting and public dissemination requirements may be satisfied by compliance with the rules of a foreign jurisdiction that is the subject of a Commission order described in Rule 908(c)(2), provided that at least one of the direct counterparties is either a non-U.S. person or a foreign branch.

Rule 908(c)(2)(ii), as adopted, applies to any person that requests a substituted compliance determination with respect to regulatory reporting and public dissemination of security-based swaps. In connection with each request, the requesting party must provide the Commission with any supporting documentation that the entity believes is necessary for the Commission to make a determination, including information demonstrating that the requirements applied in the foreign jurisdiction are comparable to the Commission's and describing the methods used by relevant foreign financial regulatory authorities to monitor compliance with those requirements. In the Regulation SBSR Adopting Release, the Commission estimated that the total paperwork burden associated with submitting a request for a substituted compliance determination with respect to regulatory reporting and public dissemination will be approximately 1,120 hours, plus $1,120,000 for 14 requests.[411] The Commission noted that this estimate includes all collection burdens associated with the request, including burdens associated with analyzing whether the regulatory requirements of the foreign jurisdiction impose a comparable, comprehensive system for the regulatory reporting and public dissemination of all security-based swaps. Furthermore, the Commission observed that this estimate assumes that each request will be prepared *de novo,* without any benefit of prior work on related subjects. The Commission noted,

[407] *See id.*

[408] This figure is based on the following: [((15,000 burden hours per registered SDR) + (30,000 burden hours per registered SDR)) × (10 registered SDRs)] = 450,000 initial annualized aggregate burden hours during the first year.

[409] *See* Regulation SBSR Proposing Release, 75 FR 75259. This figure is based on the following: [(Sr. Programmer at 3,333 hours) + (Compliance Manager at 6,667 hours) + (Compliance Attorney at 10,000 hours) + (Compliance Clerk at 5,000 hours) + (Sr. System Analyst at 3,333 hours) + (Director of Compliance at 1,667 hours)] = 30,000 burden hours per registered SDR.

[410] *See* Regulation SBSR Proposing Release, 75 FR 75259. This figure is based on the following: [(30,000 burden hours per registered SDR) × (10 registered SDRs)] = 300,000 ongoing, annualized aggregate burden hours.

[411] The Commission staff estimates that the paperwork burden associated with making a substituted compliance request pursuant to Rule 908(c)(2)(ii) will be approximately 80 of in-house counsel time, plus $80,000 for the services of outside professionals (based on 200 hours of outside counsel time × $400). *See* Cross-Border Proposing Release, 78 FR 31110.

however, that as such requests are developed with respect to certain jurisdictions, the cost of preparing such requests with respect to other foreign jurisdictions could decrease.[412]

In the Regulation SBSR Adopting Release, the Commission estimated, assuming ten requests in the first year, that the aggregated burden for the first year will be 800 hours, plus $800,000 for the services of outside professionals.[413] The Commission estimated that it would receive 2 requests for substituted compliance determinations pursuant to Rule 908(c)(2)(ii) in each subsequent year. Assuming the same approximate time and costs, the Commission stated that the aggregate burden for each year following the first year will be up to 160 hours of company time and $160,000 for the services of outside professionals.[414]

2. Rule 908—Proposed Amendments

The Commission is proposing to amend Rule 908(b) to make it consistent with 901(a)(1) which would provide that platforms and registered clearing agencies would have the duty to report in certain circumstances. The Commission proposes to amend Rule 908(b) to provide: ''Notwithstanding any other provision of [Regulation SBSR], a person shall not incur any obligation under [Regulation SBSR] unless it is: (1) A U.S. person; (2) A registered security-based swap dealer or registered major security-based swap participant; (3) A platform; or (4) A registered clearing agency.'' The Commission preliminarily believes that, since the proposed amendment to Rule 908(b) simply makes it clear that platforms and registered clearing agencies may have obligations under Regulation SBSR, there are no burdens associated with the amendment to Rule 908(b). In addition, to the extent that a platform or registered clearing agency does have obligations under Regulation SBSR, those burdens are discussed under the applicable rule.

3. Rule 908—Aggregate Total Burdens and Costs

Based on the foregoing, the Commission estimates the following aggregate total PRA burdens and costs, by category of entity, resulting from Rule 908, as adopted and as proposed to be amended herein.

The Commission has estimated that the total paperwork burden associated with submitting a request for a substituted compliance determination with respect to regulatory reporting and public dissemination will be approximately 1,120 hours, plus $1,120,000 for 14 requests.[415] The Commission further estimated that the aggregated burden for the first year will be 800 hours, plus $800,000 for the services of outside professionals.[416] The Commission estimated that it would receive 2 requests for substituted compliance determinations pursuant to Rule 908(c)(2)(ii) in each subsequent year. Assuming the same approximate time and costs, the Commission stated that the aggregate burden for each year following the first year will be up to 160 hours of company time and $160,000 for the services of outside professionals.[417]

G. Request for Comments

Pursuant to 44 U.S.C. 3505(c)(2)(B), the Commission solicits comment to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information shall have practical utility;

2. Evaluate the accuracy of our estimate of the burden of the proposed collection of information;

3. Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and

4. Evaluate whether there are ways to minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090, with reference to File Number S7–03–15. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File Number S7–03–15 and be submitted to the Securities and Exchange Commission, Office of FOIA/PA Operations, 100 F Street NE., Washington, DC 20549–2736. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

X. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA) [418] the Commission must advise the OMB whether the proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation.

The Commission requests comment on the potential impact of the proposed rules and amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

[412] If and when the Commission grants a request for substituted compliance, subsequent applications might be able to leverage work done on the initial application. However, the Commission is unable to estimate the amount by which the cost could decrease without knowing the extent to which different jurisdictions have similar regulatory structures.

[413] The Commission staff estimates that the paperwork burden associated with making a substituted compliance request pursuant to Rule 242.908(c)(2)(ii) will be up to approximately 800 hours (80 hours of in-house counsel time × 10 respondents), plus $800,000 for the services of outside professionals (based on 200 hours of outside counsel time × $400 × 10 respondents). *See* Cross-Border Proposing Release, 78 FR 31110.

[414] The Commission staff estimates that the paperwork burden associated with making a substituted compliance request pursuant to Rule 908(c)(2)(ii) would be up to approximately 160 hours (80 hours of in-house counsel time × two respondents) + plus $160,000 for the services of outside professionals (based on 200 hours of outside counsel time × $400 × two respondents). *See* Cross-Border Proposing Release, 78 FR 31110.

[415] The Commission staff estimates that the paperwork burden associated with making a substituted compliance request pursuant to Rule 908(c)(2)(ii) will be approximately 80 of in-house counsel time, plus $80,000 for the services of outside professionals (based on 200 hours of outside counsel time × $400). *See id.* at 31110

[416] The Commission staff estimates that the paperwork burden associated with making a substituted compliance request pursuant to Rule 908(c)(2)(ii) will be up to approximately 800 hours (80 hours of in-house counsel time × 10 respondents), plus $800,000 for the services of outside professionals (based on 200 hours of outside counsel time × $400 × 10 respondents). *See* Cross-Border Proposing Release, 78 FR 31110.

[417] The Commission staff estimates that the paperwork burden associated with making a substituted compliance request pursuant to Rule 908(c)(2)(ii) would be up to approximately 160 hours (80 hours of in-house counsel time × 2 respondents) + plus $160,000 for the services of outside professionals (based on 200 hours of outside counsel time × $400 × 2 respondents). *See* Cross-Border Proposing Release, 78 FR 31110.

[418] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. and 15 U.S.C. and as a note to 5 U.S.C. 601).

XI. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act of 1980 (''RFA'') [419] requires the Commission to undertake an initial regulatory flexibility analysis of the proposed rules on ''small entities.'' Section 605(b) of the RFA [420] provides that this requirement shall not apply to any proposed rule or proposed rule amendment which, if adopted, would not have a significant economic impact on a substantial number of small entities. Pursuant to 5 U.S.C. 605(b), the Commission hereby certifies that the proposed rules and rule amendments to Regulation SBSR would not, if adopted, have a significant economic impact on a substantial number of small entities. In developing these proposed amendments to Regulation SBSR, the Commission has considered their potential impact on small entities. For purposes of Commission rulemaking in connection with the RFA, a small entity includes: (1) When used with reference to an ''issuer'' or a ''person,'' other than an investment company, an ''issuer'' or ''person'' that, on the last day of its most recent fiscal year, had total assets of $5 million or less; [421] or (2) a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[422] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[423]

The Commission believes, based on input from security-based swap market participants and its own information, that the majority of security-based swap transactions have at least one counterparty that is either a security-based swap dealer or major security-based swap participant, and that these entities—whether registered broker-dealers or not—would exceed the thresholds defining ''small entities'' set out above. Accordingly, neither of these types of entities would likely qualify as small entities for purposes of the RFA. Moreover, even in cases where one of the counterparties to a security-based swap is not covered by these definitions, the Commission believes that any such entities would not be ''small entities'' as defined in Commission Rule 0–10. Feedback from industry participants and the Commission's own information about the security-based swap market indicate that only persons or entities with assets significantly in excess of $5 million participate in the security-based swap market.[424] Given the magnitude of this figure, and the fact that it so far exceeds $5 million, the Commission continues to believe that the vast majority of, if not all, security-based swap transactions are between large entities for purposes of the RFA.

In addition, the Commission believes that persons that are likely to register as SDRs would not be small entities. Based on input from security-based swap market participants and its own information, the Commission continues to believe that most if not all registered SDRs would be part of large business entities, and that all registered SDRs would have assets exceeding $5 million and total capital exceeding $500,000. Therefore, the Commission continues to believe that no registered SDRs would be small entities.

The proposed rules and rule amendments would apply to all platforms on which security-based swaps are executed and registered clearing agencies that clear security-based swaps. Based on the Commission's existing information about the security-based swap market and the entities likely to be platforms and registered clearing agencies, the Commission preliminarily believes that these entities would not be small entities. The Commission preliminarily believes that most, if not all, of the platforms and registered clearing agencies would be large business entities or subsidiaries of large business entities, and that all platforms would have assets in excess of $5 million and annual receipts in excess of $7,000,000. Therefore, the Commission preliminarily believes that no platforms or registered clearing agencies would be small entities.

The Commission encourages written comments regarding this certification. The Commission solicits comment as to whether the proposed rules and amendments to Regulation SBSR could have an effect on small entities that has not been considered. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

XII. Statutory Basis and Text of Proposed Rules

Pursuant to the Exchange Act, 15 U.S.C. 78a *et seq.,* and particularly Sections 3C(e), 11A(b), 13(m)(1), 13A(a), 23(a)(1), 30(c), and 36(a), 15 U.S.C. 78c–3(e), 78k–1(b), 78m(m)(1), 78m–1(a), 78w(a)(1), 78dd(c), and 78mm(a) thereof, the Commission is proposing to amend Rules 900, 901, 905, 906, 907, and 908 of Regulation SBSR under the Exchange Act, 17 CFR 242.900, 242.901, 242.905, 242.906, 242.907, and 242.908.

List of Subjects in 17 CFR Part 242

Brokers, Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, and as amended elsewhere in this issue of the **Federal Register**, the Commission proposes to further amend 17 CFR part 242 as follows:

PART 242—REGULATIONS M, SHO, ATS, AC, NMS, AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 1. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–l(c), 78*l,* 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37, unless otherwise noted.

■ 2. In § 242.900, revise paragraph (u) and add paragraph (tt) to read as follows:

Regulation SBSR—Regulatory Reporting and Public Dissemination of Security-Based Swap Information

§ 242.900 Definitions.

* * * * *

(u) *Participant*, with respect to a registered security-based swap data repository, means:

(1) 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);

(2) A platform that reports a security-based swap to that registered security-based swap data repository to satisfy an obligation under § 242.901(a); or

(3) A registered clearing agency that is required to report to that registered

[419] 5 U.S.C. 603(a).

[420] 5 U.S.C. 605(b).

[421] *See* 17 CFR 240.0–10(a).

[422] 17 CFR 240.17a–5(d).

[423] *See* 17 CFR 240.0–10(c).

[424] For example, as revealed in a current survey conducted by Office of the Comptroller of the Currency, 99.9% of CDS positions by U.S. commercial banks are held by those with assets over $80 billion. *See* Office of the Comptroller of the Currency, ''Quarterly Report on Bank Trading and Derivatives Activities First Quarter 2014'' (2014).

security-based swap data repository whether or not it has accepted a security-based swap for clearing pursuant to § 242.901(e)(1)(ii).

* * * * *

(tt) *Widely accessible,* as used in paragraph (cc) of this section, means widely available to users of the information on a non-fee basis.

■ 3. In § 242.901 add paragraphs (a)(1), (a)(2)(i), (a)(3), and (e)(1)(ii) and revise paragraphs (e)(2) and (h) to read as follows:

§ 242.901 Reporting obligations.

(a) * * *

(1) *Platform-executed security-based swaps that will be submitted to clearing.* If a security-based swap is executed on a platform and will be submitted to clearing, the platform on which the transaction was executed shall report to a registered security-based swap data repository the information required by §§ 242.901(c), 901(d)(1), 901(d)(9), and 901(d)(10).

(2) * * *

(i) *Clearing transactions.* For a clearing transaction, the reporting side is the registered clearing agency that is a counterparty to the transaction.

* * * * *

(3) *Notification to registered clearing agency.* A person who, under § 242.901(a)(1) or § 242.901(a)(2)(ii), has a duty to report a security-based swap that has been submitted to clearing at a registered clearing agency shall promptly provide that registered clearing agency with the transaction ID of the submitted security-based swap and the identity of the registered security-based swap data repository to which the transaction will be reported or has been reported.

* * * * *

(e) * * *

(1) * * *

(ii) *Acceptance for clearing.* A registered clearing agency shall report whether or not it has accepted a security-based swap for clearing.

(2) All reports of life cycle events and adjustments due to life cycle events shall, within the timeframe specified in paragraph (j) of this section, be reported to the entity to which the original security-based swap transaction will be reported or has been reported and shall include the transaction ID of the original transaction.

* * * * *

(h) *Format of reported information.* A person having a duty to report shall electronically transmit the information required under this section in a format required by the registered security-based swap data repository to which it reports.

* * * * *

■ 4. In § 242.905, revise paragraph (a) to read as follows:

§ 242.905 Correction of errors in security-based swap information.

(a) *Duty to correct.* Any counterparty or other person having a duty to report a security-based swap that discovers an error in information previously reported pursuant to §§ 242.900 through 242.909 shall correct such error in accordance with the following procedures:

(1) If a person that was not the reporting side for a security-based swap transaction discovers an error in the information reported with respect to such security-based swap, that person shall promptly notify the person having the duty to report the security-based swap of the error; and

(2) If the person having the duty to report a security-based swap transaction discovers an error in the information reported with respect to a security-based swap, or receives notification from a counterparty of an error, such person shall promptly submit to the entity to which the security-based swap was originally reported an amended report pertaining to the original transaction report. If the person having the duty to report reported the initial transaction to a registered security-based swap data repository, such person shall submit an amended report to the registered security-based swap data repository in a manner consistent with the policies and procedures contemplated by § 242.907(a)(3).

* * * * *

■ 5. In § 242.906, revise paragraphs (b) and (c) to read as follows:

§ 242.906 Other duties of participants.

* * * * *

(b) *Duty to provide ultimate parent and affiliate information.* Each participant of a registered security-based swap data repository that is not a platform or a registered clearing agency shall provide to the registered security-based swap data repository information sufficient to identify its ultimate parent(s) and any affiliate(s) of the participant that also are participants of the registered security-based swap data repository, using ultimate parent IDs and counterparty IDs. Any such participant shall promptly notify the registered security-based swap data repository of any changes to that information.

(c) *Policies and procedures of security-based swap dealers, major security-based swap participants, registered clearing agencies, and platforms.* Each participant of a registered security-based swap data repository that is a security-based swap dealer, major security-based swap participant, registered clearing agency, or platform shall establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that it complies with any obligations to report information to a registered security-based swap data repository in a manner consistent with §§ 242.900 through 242.909. Each such participant shall review and update its policies and procedures at least annually.

■ 6. In § 242.907, revise paragraph (a)(6) to read as follows:

§ 242.907 Policies and procedures of registered security-based swap data repositories.

(a) * * *

(6) For periodically obtaining from each participant other than a platform or a registered clearing agency information that identifies the participant's ultimate parent(s) and any participant(s) with which the participant is affiliated, using ultimate parent IDs and counterparty IDs.

* * * * *

■ 7. In § 242.908, revise paragraphs (b)(1) and (2) and add paragraphs (b)(3) and (4) to read as follows:

§ 242.908 Cross-border matters.

* * * * *

(b) * * *

(1) A U.S. person;

(2) A registered security-based swap dealer or registered major security-based swap participant;

(3) A platform; or

(4) A registered clearing agency.

* * * * *

By the Commission.

Dated: February 11, 2015.

Brent J. Fields,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations:

Appendix

Reopening of Comment Periods for Certain Rulemaking Releases and Policy Statement Applicable to Security-Based Swaps Proposed Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Action

[Release No. 34–69491; File No. S7–34–10]

http://www.sec.gov/comments/s7-34-10/s73410.shtml

• Email message from Christopher Young, Director, U.S. Public Policy, ISDA, to Thomas Eady, SEC, dated March 27, 2014 (''ISDA III'').

• Email message from Marisol Collazo, Chief Executive Officer, DTCC Data Repository US LLC, to Thomas Eady and Michael J. Gaw, SEC, dated March 24, 2014 (with attached letters submitted to the CFTC regarding CME Rule 1001) (''DTCC VIII'').

• Letter from Kim Taylor, President, Clearing, CME Group, and Kara L. Dutta, General Counsel, ICE Trade Vault (''ICE''), LLC, to Elizabeth M. Murphy, Secretary, Commission, dated November 19, 2013 (''CME/ICE Letter'').

• Letter from Kara L. Dutta, General Counsel, ICE Trade Vault, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated September 23, 2013 (''ICE Letter'').

• Letter from Larry E. Thompson, General Counsel, Depository Trust & Clearing Corporation (''DTCC''), to Elizabeth M. Murphy, Secretary, SEC, dated August 21, 2013 (''DTCC VI'').

• Letter from Jeff Gooch, Head of Processing, Markit, Chair and CEO, MarkitSERV, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''MarkitSERV IV'').

• Letter from Kathleen Cronin, Senior Managing Director, General Counsel, CME Group Inc., to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 (''CME II'').

Comments on Proposed Rule: Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information

[Release No. 34–63346; File No. S7–34–10]

http://www.sec.gov/comments/s7-34-10/s73410.shtml

• Letter from Larry E. Thompson, General Counsel, the Depository Trust & Clearing Corporation (''DTCC''), to the Honorable Mary L. Schapiro, Chairman, Commission, and the Honorable Gary Gensler, Chairman, CFTC, dated June 3, 2011 (''DTCC IV'').

• Letter from John R. Gidman, Association of Institutional Investors, to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated June 2, 2011 (''Institutional Investors Letter''). [Note: This comment letter is in fact dated ''June 2, *2010,''* but the Commission deems the true date to be June 2, *2011.* The comment letter references proposed Regulation SBSR, which the Commission issued in November 2010, and thus the comment could not have been submitted in June 2010.]

• Letter from Richard M. Whiting, Executive Director and General Counsel, FSR, to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated May 12, 2011 (''Roundtable Letter'').

• MFA Recommended Timeline for Adoption and Implementation of Final Rules Pursuant to Title VII of the Dodd-Frank Act (''MFA Recommended Timeline''), attached to letter from Richard H. Baker, President and Chief Executive Officer, MFA, to the Honorable Mary L. Schapiro, Chairman, Commission, dated March 24, 2011.

• Letter from Edward J. Rosen, Cleary Gottlieb Steen & Hamilton LLP, on behalf of Bank of America Merrill Lynch, BNP Paribas, Citi, Credit Agricole Corporate and Investment Bank, Credit Suisse Securities (USA), Deutsche Bank AG, Morgan Stanley, Nomura Securities International, Inc., PNC Bank, Société General, UBS Securities LLC, and Wells Fargo & Company, to Elizabeth M. Murphy, Secretary, Commission, and David A. Stawick, Secretary, CFTC, dated February 14, 2011 (''Cleary I'').

• Letter from Andrew Downes, Managing Director, UBS Investment Bank, and James B. Fuqua, Managing Director, UBS Securities LLC, to Elizabeth M. Murphy, Secretary, Commission, dated February 7, 2011 (''UBS Letter'').

• Letter from Richard G. Ketchum, Chairman and Chief Executive Officer, Financial Industry Regulatory Authority (''FINRA''), to Elizabeth M. Murphy, Secretary, Commission, dated January 27, 2011 (''FINRA Letter'').

• Letter from Dennis M. Kelleher, President and Chief Executive Officer, Stephen W. Hall, Securities Specialist, and Wallace C. Turbeville, Derivatives Specialist, Better Markets, Inc. (''Better Markets''), to Elizabeth M. Murphy, Secretary, Commission, dated January 24, 2011 (''Better Markets II'').

• Letter from Kevin Gould, President, Markit North America, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated January 24, 2011 (''Markit I'').

• Letter from Jeff Gooch, Chief Executive Officer, MarkitSERV LLC, to Elizabeth M. Murphy, Secretary, Commission, dated January 24, 2011 (''MarkitSERV I'').

• Letter from Larry E. Thompson, General Counsel, DTCC, dated January 18, 2011 (''DTCC II'').

• Letter from Karrie McMillan, General Counsel, ICI, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''ICI I'').

• Letter from Robert Pickel, Executive Vice Chairman, ISDA, and Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''ISDA/SIFMA I''), and accompanying study, ''Block trade reporting for over-the-counter derivatives markets'' (''ISDA/SIFMA Block Trade Study'').

• Letter from Stuart J. Kaswell, Executive Vice President, Managing Director, and General Counsel, Managed Funds Association, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''MFA I'').

• Letter from Lee H. Olesky, Chief Executive Officer, and Douglas L. Friedman, General Counsel, Tradeweb Markets LLC, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''Tradeweb Letter'').

• Letter from Gus Sauter, Managing Director and Chief Investment Officer, and John Hollyer, Principal and Head of Risk Management and Strategy Analysis, Vanguard, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''Vanguard Letter'').

• Letter from Julian Harding, Chairman, WMBAA, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''WMBAA II'').

• Letter from R. Glenn Hubbard, Co-Chair, John L. Thornton, Co-Chair, and Hal S. Scott, Director, Committee on Capital Markets Regulation, David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 (''CCMR I'').

• Letter from Spencer Bachus, Ranking Member, Committee on Financial Services, and Frank Lucas, Ranking Member, Committee on Agriculture, U.S. House of Representatives, to The Honorable Timothy Geithner, Secretary, Department of Treasury, the Honorable Gary Gensler, Chairman, CFTC, the Honorable Mary Schapiro, Chairman, Commission, and the Honorable Ben Bernanke, Chairman, Federal Reserve, dated December 16, 2010 (''Bachus/Lucas Letter'').

• Letter from Chris Barnard, dated December 3, 2010 (''Barnard I'').

Re-Opening of Comment Periods for Certain Rulemaking Releases and Policy Statement Applicable to Security-Based Swaps Proposed Pursuant to the Securities Comments on Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act

[Release No. 34–67177; File No. S7–05–12]

• Letter from Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, to Elizabeth M. Murphy, Secretary, Commission, dated August 13, 2012 (''SIFMA II'').

Comments on Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants

(Release No. 34–69490; File No. S7–02–13)

http://www.sec.gov/comments/s7-02-13/s70213.shtml

• Letter from Karel Engelen, Senior Director, Head of Data, Reporting & FpML, ISDA, to Elizabeth M. Murphy, Secretary, Commission, dated November 14, 2014 (''ISDA IV'').

Real-Time Reporting: Title VII Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act

http://www.sec.gov/comments/df-title-vii/real-time-reporting/real-time-reporting.shtml

• Letter from Gerald Donini, Barclays Capital, Inc., to David A Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, SEC, dated February 3, 2011 (''Barclays I'').

• Letter from James Hill, Managing Director, Morgan Stanley, to David A Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, SEC, dated November 1, 2010 (''Morgan Stanley Letter'').

Comments on Reporting of Security-Based Swap Transaction Data

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http://www.sec.gov/comments/s7-28-10/s72810.shtml

• Letter from Larry E. Thompson, General Counsel, DTCC, to Elizabeth M. Murphy,

Secretary, Commission, dated December 20, 2010 (''DTCC I'').

• Letter from Robert Pickel, Executive Vice Chairman, ISDA, to Elizabeth Murphy, Secretary, Commission, dated December 10, 2010 (''ISDA I'').

Comments on Proposed Rule: Security-Based Swap Data Repository Registration, Duties, and Core Principles

[Release No. 34–63347; File No. S7–35–10]

http://www.sec.gov/comments/s7-35-10/s73510.shtml

• Letter from Larry E. Thompson, General Counsel, DTCC, to Elizabeth M. Murphy, Secretary, Commission, dated January 24, 2011 (''DTCC III'').

Comments on Joint Public Roundtable on International Issues Relating to the Implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act

[Release No. 34–64939; File No. 4–636]

http://www.sec.gov/comments/4-636/4-636.shtml

• Letter from Jeff Gooch, Chief Executive Officer, MarkitSERV, to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated September 19, 2011 (''MarkitSERV III'').

Roundtable Transcripts

• Joint CFTC–SEC Staff Roundtable on Implementation, May 2, 2011. Available at: *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/csjac_transcript050211.pdf* (''Implementation Roundtable, Day 1'').

• Joint CFTC–SEC Staff Roundtable on Implementation, May 3, 2011. Available at: *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/csjac_transcript050311.pdf* (''Implementation Roundtable, Day 2'').

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