SUMMARY: The Securities and Exchange Commission (“SEC” or “Commission”) is adopting certain amendments to Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information (“Regulation SBSR”). Specifically, new Rule 901(a)(1) of Regulation SBSR requires 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 a security-based swap executed on such platform that will be submitted to clearing. New Rule 901(a)(2)(i) of Regulation SBSR requires a registered clearing agency to report any security-based swap to which it is a counterparty. The Commission is adopting certain conforming amendments to other provisions of Regulation SBSR in light of the newly adopted amendments to Rule 901(a), and an amendment that would require registered security-based swap data repositories (“SDRs”) to provide the security-based swap transaction data that they are required to publicly disseminate to the users of the information on a non-fee basis. The Commission also is adopting amendments to Rule 908(a) to extend Regulation SBSR’s regulatory reporting and public dissemination requirements to additional types of cross-border security-based swaps. The Commission is offering guidance regarding the application of Regulation SBSR to prime brokerage transactions and to the allocation of cleared security-based swaps. Finally, the Commission is adopting a new compliance schedule for the portions of Regulation SBSR for which the Commission has not previously specified compliance dates.

DATES: Effective Date: October 11, 2016.

For a discussion of the Compliance Dates for Regulation SBSR, see Section X of the Supplementary Information.

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I. Introduction
Section 13A(a)(1) of the Exchange Act 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 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 generally provides that

transaction, volume, and pricing data of security-based swaps shall be publically disseminated in real time.\footnote{In addition, 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 national security-based swap transaction (block trade) for particular markets and contracts” and “specify the appropriate time delay for reporting large national security-based swap transactions (block trades) to the public.”}


In April 2015, the Commission proposed certain rules that would address the application of Title VII requirements to security-based swap activity engaged in by non-U.S. persons within the United States,\footnote{7 See letters to Brent J. Fields, Secretary, Commission, from Larry E. Thompson, Vice Chairman and General Counsel, Depository Trust & Clearing Corporation (“DTCC”), dated May 4, 2015 (“DTCC Letter”); Susan Milligan, Head of U.S. Public Affairs, LCH.Clearnet Group Limited, dated May 4, 2015 (“LCH.Clearnet Letter”); Marcus Schuler, Head of Regulatory Affairs, Markit, dated May 4, 2015 (“Markit Letter”); and Vincent A. McGonagle, Director, Division of Market Oversight, and Phyllis P. Dietz, Acting Director, Division of Clearing and Risk, Wholesale Market Brokers’ Association, Americas (“WMBAA”), dated May 4, 2015 (“WMBAA Letter”).} including how Regulation SBSR would apply to activities conducted entirely within the United States,\footnote{8 In addition, 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 national security-based swap transaction (block trade) for particular markets and contracts” and “specify the appropriate time delay for reporting large national security-based swap transactions (block trades) to the public.”}7 including the U.S. Activity Proposals.\footnote{9 The issues raised by these commenters included, for example, the 24-hour reporting delay adopted in the Regulation SBSR Adopting Release; the ability to report all transaction information required by Regulation SBSR to third parties, including foreign privacy laws; the identification of indirect counterparties; public dissemination of certain illiquid security-based swaps; the requirement for registered SRDs to disseminate the full notional size of all transactions; and the requirement that a registered SRD immediately disseminate information upon receiving a transaction report. See 80 FR at 14741, n. 8.}8

In this release, the Commission is adopting, with a number of revisions, the amendments to Regulation SBSR contained in the Regulation SBSR Proposed Amendments Release and the U.S. Activity Proposal.\footnote{10 The Commission also considered, where appropriate, the impact of rules and technical standards promulgated by other regulators, such as the CFTC and the European Securities and Markets Authority (“ESMA”), on practices in the security-based swap market.}


In this release, the Commission employs as a baseline the security-based swap market as it existed at the time of this release, including applicable rules that the Commission already has adopted but excluding rules that the Commission has proposed but not yet finalized.\footnote{15 See Securities Exchange Act Release No. 72472 (June 25, 2014), 79 FR 47278 (August 12, 2014) (“Cross-Border Adopting Release”).}11 Accordingly, these comments are beyond the scope of this release and are not addressed herein.

II. Economic Considerations and Baseline Analysis

To provide context for understanding the rules being adopted today and the related economic analysis that follows, this section describes the current state of the security-based swap market and the existing regulatory framework; it also identifies broad economic considerations that underlie the likely economic effects of these rules.

A. Baseline

includes rules that have been adopted but for which compliance is not yet required, including the SBS Entity Registration Adopting Release,17 the Regulation SBSR Adopting Release,18 and the External Business Conduct Adopting Release,19 as these final rules—even if compliance is not required—are part of the existing regulatory landscape that market participants must take into account when conducting their security-based swap activity.

The following sections provide an overview of aspects of the security-based swap market that are likely to be most affected by the amendments and guidance being adopted today, 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 them.

1. Available Data Regarding Security-Based Swap Activity

The Commission’s understanding of the market is informed in part by available data on security-based swap transactions, though the Commission acknowledges that limitations in the data prevent the Commission from quantitatively characterizing certain aspects of the market.20 Because these data do not cover the entire market, the Commission has developed an understanding of market activity using a sample of transaction data that includes only certain portions of the market. The Commission believes, however, that the data underlying its analysis here provide reasonably comprehensive information regarding single-name credit default swap (“CDS”) transactions and the composition of participants in the single-name CDS market.

Specifically, the Commission’s analysis of the state of the current security-based swap market is based on data obtained from the DTCC Derivatives Repository Limited Trade Information Warehouse (“TIW”), especially data regarding the activity of market participants in the single-name CDS market during the period from 2008 to 2015. According to data published by the Bank for International Settlements (“BIS”), the global notional amount outstanding in single-name CDS was approximately $7.18 trillion,21 in multi-name index CDS was approximately $4.74 trillion, and in multi-name, non-index CDS was approximately $373 billion. The total gross market value outstanding in single-name CDS was approximately $284 billion, and in multi-name CDS instruments was approximately $137 billion.22 The global notional amount outstanding in equity forwards and swaps as of December 2015 was $3.32 trillion, with total gross market value of $147 billion.23 As these figure show (and as the Commission has previously noted), although the definition of security-based swaps is not limited to single-name CDS, single-name CDS make up a vast majority of security-based swaps in terms of notional amount outstanding, and the Commission believes that the single-name CDS data are sufficiently representative of the market to inform the Commission’s analysis of the state of the current security-based swap market.24

The Commission notes that the data available to it from TIW do not encompass those CDS transactions that both: (1) Do not involve U.S. counterparties; 25 and (2) are based on non-U.S. reference entities. Notwithstanding this limitation, the TIW data should provide sufficient information to permit the Commission to identify the types of market participants active in the security-based swap market and the general pattern of dealing within that market.26

21 The global notional amount outstanding represents the total face amount of the swap used to calculate payments. The gross market value is the cost of replacing all open contracts at current market prices.
23 These totals include both swaps and security-based swaps, as well as products that are excluded from the definition of “swap,” such as certain equity forwards.
24 See U.S. Activity Adopting Release, 81 FR at 8601.
25 The Commission has classified accounts as “U.S. counterparties” based on TIW’s entity domicile determinations. The Commission notes, however, that TIW’s entity domicile determinations are not necessarily identical in all cases to the definition of “U.S. person” under Exchange Act Rule 3a71-3(a)(4), 17 CFR 240.3a71-3(a)(4).
26 The challenges the Commission faces in estimating measures of current market activity stem, in part, from the absence of comprehensive reporting requirements for security-based swap market participants. The Commission has adopted rules regarding trade reporting, data elements, and public reporting for security-based swaps that are designed to, when fully implemented, provide us with appropriate measures of market activity. See Regulation SBSR Adopting Release, 80 FR at 14699–700.

One commenter recommended that the Commission collect a more complete set of data to more precisely estimate the number of non-U.S. persons that would be affected by the proposed rules.27 Given the absence of comprehensive reporting requirements for security-based swap transactions, and the fact that the location of personnel that arrange, negotiate, or execute a security-based swap transaction is not currently available in TIW, a more precise estimate of the number of non-U.S. persons affected by the adopted rules is not currently feasible.

2. Clearing Activity in Single-Name CDS

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 in recent years. As of the end of 2015, ICE Clear Credit accepted for clearing security-based swap products based on a total of 232 North American corporate reference entities, 174 European corporate reference entities, and 21 individual sovereign 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. Analysis of trade activity from January 2011 to December 2015 indicates that, out of $3.460 billion of notional amount traded in North American corporate single-name CDS products that are accepted for clearing during the 60 months ending December 2015, approximately 70%, or $2.422 billion, had characteristics making them suitable for clearing by ICE Clear Credit and represented trades between two ICE Clear Credit clearing members. Approximately 80% of this notional value, or $1.938 billion, was cleared through ICE Clear Credit, or 56% of the total volume of new trade activity. As of the end of 2015, ICE Clear Europe

18 See supra note 16.
20 The Commission also relies on qualitative information regarding market structure and evolving market practices provided by commenters, both in letters and in meetings with Commission staff, and knowledge and expertise of Commission staff.
27 See ISDA Letter at 3, 7 (arguing that the Commission lacks complete data to estimate the number of non-U.S. persons that use U.S. personnel to arrange, negotiate, or execute security-based swap transactions or the number of registered U.S. broker-dealers that intermediates these transactions and that this “makes it difficult or impossible for the Commission to formulate a useful estimate of the market impact, cost and benefits of the Proposal”; suggesting that the Commission “gather[] more robust and complete data prior to finalizing a rulemaking that will have meaningful impact on a global market”).
accepted for clearing single-name CDS products referencing a total of 176 European corporate reference entities and seven sovereign reference entities. Analysis of new trade activity from January 2011 to December 2015 indicates that, out of €1,963 billion of notional volume traded in European corporate single-name CDS products that are accepted for clearing during the 60 months ending December 2015, approximately 58%, or €1.139 billion, had characteristics making them suitable for clearing by ICE Clear Europe and represented trades between two ICE Clear Europe clearing members. Approximately 71% of this notional amount, or €805 billion, was cleared through ICE Clear Europe, or 41% of the total volume of new trade activity.28

3. Current Market Structure for Security-Based Swap Infrastructure

a. Exchanges and SB SEFs

The rules and amendments adopted herein address how transactions conducted on platforms (i.e., national securities exchanges and SB SEFs) must 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 22 swap execution facilities (“SEFs”) that are either temporarily registered with the Commission ("CFTC") or whose temporary registrations are pending with the CFTC and currently are exempt from registration with the Commission.30 As the Commission noted in the U.S. Activity 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. Likewise, the Commission believes that it is possible that some entities that currently act as SEFs will 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 22 SEFs reported within the CFTC’s jurisdiction. Under newly adopted Rule 901(a)(1), a platform is required to report to a registered SDR any security-based swap transaction that is executed on the platform and submitted to clearing.

b. Clearing Agencies

The market for clearing 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 several choices available to participants interested in cleared index CDS

<table>
<thead>
<tr>
<th>Month</th>
<th>Proportion of Notional Cleared</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan-12</td>
<td>80%</td>
</tr>
<tr>
<td>Apr-12</td>
<td>70%</td>
</tr>
<tr>
<td>Jul-12</td>
<td>60%</td>
</tr>
<tr>
<td>Oct-12</td>
<td>50%</td>
</tr>
<tr>
<td>Jan-13</td>
<td>40%</td>
</tr>
<tr>
<td>Apr-13</td>
<td>30%</td>
</tr>
<tr>
<td>Jul-13</td>
<td>20%</td>
</tr>
<tr>
<td>Oct-13</td>
<td>10%</td>
</tr>
</tbody>
</table>

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.29

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28 These numbers do not include transactions in European corporate single-name CDS that were cleared by ICE Clear Credit. During the sample period, a total of 2,168 transactions in European corporate single-name CDS (with a total gross notional amount of approximately €11 billion) were cleared by ICE Clear Credit. All but one of these transactions occurred between 2014 and 2015. For historical data, see https://www.theice.com/marketdata/reports/99 (last visited on May 25, 2016).

29 The Commission 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.

30 See Securities Exchange Act Release No. 64678 (June 13, 2011), 76 FR 36287, at 36305 (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”)) (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/swapExecutionFacilities (last visited May 25, 2016).

31 See 81 FR at 8609.
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.32

The rules adopted today will, among other things, assign regulatory reporting duties for clearing transactions (i.e., security-based swaps to which registered clearing agencies are direct counterparties). Any rule that would assign reporting duties for clearing transactions would affect the accessibility of data related to a large number of security-based swap transactions. In addition, the number of clearing transactions would affect the magnitude of the regulatory burdens associated with those reporting duties.

<table>
<thead>
<tr>
<th>TABLE 1—CLEARING AGENCIES CURRENTLY CLEARING INDEX AND SINGLE-NEXT CDS</th>
</tr>
</thead>
<tbody>
<tr>
<td>North American</td>
</tr>
<tr>
<td>----------------</td>
</tr>
<tr>
<td>ICE Clear Credit39</td>
</tr>
<tr>
<td>ICE Clear Europe34</td>
</tr>
<tr>
<td>CME35</td>
</tr>
<tr>
<td>LCH Clearnet36</td>
</tr>
<tr>
<td>JSCC37</td>
</tr>
</tbody>
</table>

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 swap data repositories and SDRs, respectively. 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 a swap data repository is registered with the CFTC and the required infrastructure for regulatory reporting and public dissemination is in place, the marginal costs for a swap data repository to also register with the Commission as an SDR, adding products and databases and implementing modifications to account for differences between Commission and CFTC rules, will likely be lower than the initial cost of registration with the CFTC.

c. Trade Repositories

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 TIW, which maintains a legal record of transactions.38 That there currently is a single dominant provider of post-trade 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.39 Registration requirements are part of the new rules discussed in the SDR Adopting Release.40 In the absence of SEC-registered SDRs, the analysis of the economic effects of the adopted rules and amendments discussed in this release on SDRs is informed by the experience of the CFTC-registered swap data repositories that operate in the swap market. The CFTC has provisionally registered four swap data repositories to accept transactions in swap credit derivatives.41

A current list of single-name and index CDS cleared by ICE Clear Credit is available at: http://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Cleared_Products_List.xlsm (last visited May 25, 2016).

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.xlsx (last visited May 25, 2016).


4. Security-Based Swap Market: Market Participants and Dealing Structures

a. Market Centers

Financial groups engaged in security-based swap dealing activity operate in multiple market centers and carry out such activity with counterparties entered the market for record keeping services for swaps by provisionally registering themselves, or their affiliates, as swap data repositories with the CFTC. Under the CFTC swap reporting regime, two provisionally registered swap data repositories 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, swap data repository.42 As a result, beta and gamma reporting and subsequent netting transactions that arise from the clearing process are reported by each of these clearing agencies to their associated swap data repositories.

ICE Clear Europe, Clearing, Eligible Products (last visited on May 25, 2016) (describing the function and coverage of TIW).


See 80 FR at 14457–69.

A list of swap data repositories provisionally registered with the CFTC is available at: http://sirt.cftc.gov/sirt/sirt.aspx?Topics=DataRepositories (last visited May 25, 2016).

CME Clearing Rule 1001 (Regulatory Reporting of Swap Data); ICE Clear Credit Clearing Rule 211 (Regulatory Reporting of Swap Data).
around the world. Several commenters noted that many market participants that engage in dealing activity prefer to use traders and manage risk for security-based swaps in the jurisdiction where the underlier is traded. Thus, although a significant amount of the dealing activity in security-based swaps on U.S. reference entities involves non-U.S. dealers, the Commission understands that these dealers tend to carry out much of the security-based swap trading and related risk-management activities in these security-based swaps within the United States. Some dealers have explained that being able to centralize their trading, sales, risk management, and other activities related to U.S. reference entities in U.S. operations (even when the resulting transaction is booked in a foreign entity) improves the efficiency of their dealing business.

Consistent with these operational concerns and the global nature of the security-based swap market, the available data appear to confirm that participants in this market are in fact active in market centers around the globe. Although, as noted above, the available data do not permit the Commission to identify the location of personnel in a transaction, TIW transaction records indicate that firms that are likely to be security-based swap dealers operate out of branch locations in key market centers around the world, including New York, London, Tokyo, Hong Kong, Chicago, Sydney, Toronto, Frankfurt, Singapore and the Cayman Islands.

Given these market characteristics and practices, participants in the security-based swap market may bear the financial risk of a security-based swap transaction in a location different from the location where the transaction is arranged, negotiated, or executed, or where economic decisions are made by managers on behalf of beneficial owners. And market activity may occur in a jurisdiction other than where the market participant or its counterparty books the transaction. Similarly, a participant in the security-based swap market may be exposed to counterparty risk from a counterparty located in a jurisdiction that is different from the market center or centers in which it participates.

b. Common Business Structures for Firms Engaged in Security-Based Swap Dealing Activity

A financial group that engages in a global security-based swap dealing business in multiple market centers may choose to structure its dealing business in a number of different ways. This structure, including where it books the transactions that constitute that business and how it carries out market-facing activities that generate those transactions, reflects a range of business and regulatory considerations, which each financial group may weigh differently.

A financial group may choose to book all of its security-based swap transactions, regardless of where the transaction originated, in a single, central booking entity. That entity generally retains the risk associated with that transaction, but it also may lay off that risk to another affiliate via a back-to-back transaction or an assignment of the security-based swap. Alternatively, a financial group may book security-based swaps arising from its dealing business in separate affiliates, which may be located in the jurisdiction where it originates the risk associated with those security-based swaps, or alternatively, the jurisdiction where it manages that risk. Some financial groups may book transactions originating in a particular region to an affiliate established in a jurisdiction located in that region.

Regardless of where a financial group determines to book its security-based swaps arising out of its dealing activity, it is likely to operate offices that perform sales or trading functions in one or more market centers in other jurisdictions. Maintaining sales and trading desks in global market centers permits the financial group to deal with counterparties in that jurisdiction or in a specific geographic region, or to ensure that it is able to provide liquidity to counterparties in other jurisdictions, for example, when a counterparty’s home financial markets are closed. A financial group engaged in security-based swap dealing business also may choose to manage its trading book in particular reference entities or securities primarily from a trading desk that can take advantage of local expertise in such products or that can gain access to better liquidity, which may permit it to more efficiently price such products or to otherwise compete more effectively in the security-based swap market. Some financial groups prefer to centralize risk management, pricing, and hedging for specific products with the personnel responsible for carrying out the trading of such products to mitigate operational risk associated with transactions in those products.

The financial group affiliate that books these transactions may carry out related market-facing activities, whether in its home jurisdiction or in a foreign jurisdiction, using either its own personnel or the personnel of an affiliated or unaffiliated agent. For example, the financial group may determine that another affiliate in the financial group employs personnel who possess expertise in relevant products or who have established sales relationships with key counterparties in a foreign jurisdiction, making it more efficient to use the personnel of the affiliate to engage in security-based swap dealing activity on its behalf in that jurisdiction. In these cases, the affiliate that books these transactions and its affiliated agent may operate as an integrated dealing business, each performing distinct core functions in carrying out that business.

Alternatively, the financial group affiliate that books these transactions may in some circumstances determine to engage the services of an unaffiliated agent through which it can engage in dealing activity. For example, a financial group may determine that using an interdealer broker may provide an efficient means of participating in the interdealer market in its own, or in another, jurisdiction, particularly if it is seeking to do so anonymously or to take a position in products that trade relatively infrequently. A financial group may also use unaffiliated agents that operate at its direction. Such an arrangement may be particularly valuable in enabling a financial group to service clients or access liquidity in

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42 See U.S. Activity Adopting Release, 81 FR at 8604.
43 See id.
44 There is some indication that this booking structure is becoming increasingly common in the market. See, e.g., “Regional swaps booking replacing global hubs,” Risk.net (Sept. 4, 2015), available at: http://www.risk.net/risk-magazine/feature/2423975/regional-swaps-booking-replacing-global-hubs.
45 These offices may be branches or offices of the booking entity itself, or branches or offices of an affiliated agent, such as, in the United States, a registered broker-dealer. See U.S. Activity Adopting Release, 81 FR at 8604–605.
46 The Commission understands that inter-dealer brokers may provide voice or electronic trading services that, among other things, permit dealers to take positions or hedge risks in a manner that preserves their anonymity until the trade is executed. These inter-dealer brokers also may play a particularly important role in facilitating transactions in less-liquid security-based swaps.
largely unchanged. Of the security-based swap dealers remain a small percentage of all market participants active in the security-based swap market. Based on an analysis of TIW data and filings with the Commission, the Commission estimates that 16 market participants that will register as security-based swap dealers have already registered with the Commission as broker-dealers and are thus subject to Exchange Act and Financial Industry Regulatory Authority (“FINRA”) requirements applicable to such entities. Finally, as the Commission discusses below, some dealers may be subject to similar requirements in one or more foreign jurisdictions.

Finally, the Commission also notes that it has adopted rules for the registration of security-based swap dealers and major security-based swap participants, although market participants are not yet required to comply with those rules. Thus, there are not yet any security-based swap dealers or major security-based swap participants registered with the Commission.

d. Arranging, Negotiating, and Executing Activity Using Personnel Located in a U.S. Branch or Office

Under rules recently adopted by the Commission as part of the U.S. Activity Adopting Release, non-U.S. persons will be required to apply transactions with other non-U.S. persons in connection with their dealing activity towards their de minimis thresholds when those transactions are arranged, negotiated, or executed by personnel located in a U.S. branch or office, or by personnel of an agent of such non-U.S. person located in a U.S. branch or office. As a result of this requirement, certain market participants will likely incur costs associated with determining the location of relevant personnel who arrange, negotiate, or execute a transaction, and, having determined the locations, these market participants will be able to identify those transactions that are arranged, negotiated, or executed by personnel located in a U.S. branch or office, or by personnel of an agent of such non-U.S. person located in a U.S. branch or office. The Commission estimated that an additional 20 non-U.S. persons, beyond the 56 identified under the Cross-Border Adopting Release, were likely to incur assessment costs in connection with the de minimis exception as a result of these rules.

To estimate the number of unregistered foreign entities that arrange, negotiate, or execute security-based swap transactions using U.S. personnel in connection with their dealing activity for the purpose of this rulemaking, Commission staff used 2015 TIW single-name CDS transaction data to identify foreign entities that have three or more counterparties that are not recognized as dealers by ISDA and that traded less than $3 billion in notional volume and identified four entities that are subject to the segregation requirements for SBS entities; the compliance date of final rules establishing recordkeeping and reporting requirements for SBS entities; the compliance date of final rules establishing business conduct requirements under Exchange Act Sections 15F(h) and 15F(k); or the compliance date for final rules establishing a process for a registered SBS entities to make an application to the Commission to allow an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on the SBS entities’ behalf. See 80 FR at 48964.

61 See Rule 3a71–3(C) under the Exchange Act, 17 CFR 240.3a71–3(C).
63 See id. at 8627.

54 See U.S. Activity Adopting Release, 81 FR at 8605.
55 See id.
56 These estimates are based on the number of accounts in TIW data with total notional volume in excess of de minimis thresholds, increased by a factor of two, to account for any potential growth in the security-based swap market, to account for the fact that the Commission is limited in observing transaction records for activity between non-U.S. persons that reference U.S. underliers, and to account for the fact that the Commission does not observe security-based swap transactions other than in single-name CDS. See U.S. Activity Adopting Release, 81 FR at 8605.
57 See id. 58 See id. at 8605–606.
59 In the SBS Entity Registration Adopting Release, the Commission established the compliance date for security-based swap dealer and major security-based swap participant registration (the “SBS entities registration compliance date”) as the later of six months after the date of publication in the Federal Register of a final rule release adopting rules establishing capital, margin and
met these criteria. In 2015, these four entities were counterparties to 1,080 transactions in single-name CDS, referencing 186 reference entities, with a total notional volume of $5.2 billion. The Commission believes that these foreign dealing entities that are likely to remain unregistered engage in transactions in essentially the same products as foreign dealing entities that are likely to register as security-based swap dealers. The Commission staff observed in the 2015 data that foreign dealing entities that are likely to register as security-based swap dealers based on single-name CDS transaction activity in 2015 traded in 185 out of the 186 reference entities that the smaller foreign dealing entities had traded in.

These smaller foreign dealing entities were counterparties to a very small number of security-based swaps involving foreign dealing entities engaging in U.S. activity. Using 2015 TIW data, the Commission estimates that foreign dealing entities that likely would register with Commission as security-based swap dealers based on their transaction activity in 2015, were counterparties to nearly all security-based swaps involving foreign dealing entities engaging in U.S. activity.64

5. Security-Based Swap Market: Levels of Security-Based Swap Trading Activity

As already noted, firms that act as dealers play a central role in the security-based swap market. Based on an analysis of 2015 single-name CDS data in TIW, accounts of those firms that are likely to exceed the security-based swap dealer de minimis thresholds and trigger registration requirements intermediated transactions with a gross notional amount of approximately $5.8 trillion, approximately 60% of which was intermediated by the top five dealer accounts.65

These dealers transact with hundreds or thousands of counterparties. Approximately 24% of accounts of firms expected to register as security-based dealers and observable in TIW have entered into security-based swaps with over 1,000 unique counterparty accounts as of year-end 2015.66 Another 24% of these accounts transacted with 500 to 1,000 unique counterparty accounts; 16% transacted with 100 to 500 unique accounts; and 36% of these accounts intermediated swaps with fewer than 100 unique counterparties in 2015. The median dealer account transacted with 481 unique accounts (with an average of approximately 635 unique accounts). Non-dealer counterparties transacted almost exclusively with these dealers. The median non-dealer counterparty transacted with three dealer accounts (with an average of approximately four dealer accounts) in 2015.

Figure 2 below describes the percentage of global, notional transaction volume in North American corporate single-name CDS reported to TIW between January 2008 and December 2015, separated by whether transactions are between two ISDA-recognized dealers (interdealer transactions) or whether a transaction has at least one non-dealer counterparty.

Figure 2 also shows that the portion of the notional volume of North American corporate single-name CDS represented by interdealer transactions has remained fairly constant and that interdealer transactions continue to represent a significant majority of trading activity, even as notional volume has declined over the past seven years,67 from more than $6 trillion in 2008 to less than $1.3 trillion in 2015.68

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64 The Commission staff analysis of TIW transaction records indicates that approximately 99.72% of single-name CDS price-forming transactions and 99.73% of price-forming transaction volume in 2015 that involved foreign dealing entities involved a foreign dealing entity likely to register with the Commission as a security-based swap dealer based on its 2015 transaction activity.

65 The Commission staff analysis of TIW data in 2015 single-name CDS price-forming transactions and 99.73% of price-forming transaction volume in 2015 that involved foreign dealing entities involved a foreign dealing entity likely to register with the Commission as a security-based swap dealer based on its 2015 transaction activity.64

66 The start of this decline predates the enactment of the Dodd-Frank Act and the proposal of rules thereunder, which is important to note for the purpose of understanding the economic baseline for this rulemaking.

68 This estimate is lower than the gross notional amount of $5.8 trillion noted above as it includes only the subset of single-name CDS referencing North American corporate documentation. See supra note 65.
For purposes of this discussion, the Commission has assumed that the registered office location reflects the place of domicile for the fund or account, but the Commission notes that this domicile does not necessarily correspond to the location of an entity's sales or trading desk. See U.S. Activity Adopting Release, 81 FR at 8607, n. 83.

The high level of interdealer trading activity reflects the central position of a small number of dealers, each of which intermediates trades with many hundreds of counterparties. While the Commission is unable to quantify the current level of trading costs for single-name CDS, those dealers appear to enjoy market power as a result of their small number and the large proportion of order flow that they privately observe.

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, as shown in Figure 3 below. Using the self-reported registered office location of the TTW accounts as a proxy for domicile, the Commission estimates that only 12% of the global transaction volume by notional volume between 2008 and 2015 was between two U.S.-domiciled counterparties, compared to 48% entered into between one U.S.-domiciled counterparty and a foreign-domiciled counterparty and 40% entered into between two foreign-domiciled counterparties.

If the Commission considers the number of cross-border transactions instead from the perspective of the domicile of the corporate group (e.g., by classifying a foreign bank branch or foreign subsidiary of a U.S. entity as domiciled in the United States), the percentages shift significantly. Under this approach, the fraction of transactions entered into between two U.S.-domiciled counterparties increases to 33%, and to 52% for transactions entered into between a U.S.-domiciled counterparty and a foreign-domiciled counterparty. By contrast, the proportion of activity between two foreign-domiciled counterparties drops from 40% to 16%. This change in respective shares based on different classifications suggests that the activity of foreign subsidiaries of U.S. firms and foreign branches of U.S. banks accounts for a higher percentage of security-based swap activity than U.S. subsidiaries of foreign firms and U.S. branches of foreign banks. It also demonstrates that financial groups based in the United States are involved in an overwhelming majority (approximately 85%) of all reported transactions in North American corporate single-name CDS.

Financial groups based in the United States are also involved in a majority of interdealer transactions in North American corporate single-name CDS. Of transactions on North American corporate single-name CDS between two ISDA-recognized dealers and their branches or affiliates, 93% of transaction notional volume involved at least one account of an entity with a U.S. parent.

The Commission notes, in addition, that a significant majority of North American corporate single-name CDS transactions occur in the interdealer market or between dealers and foreign non-dealers, with the remaining (and much smaller) portion of the market consisting of transactions between dealers and U.S.-person non-dealers. Specifically, 74% of North American corporate single-name CDS transactions involved either two ISDA-recognized dealers or an ISDA-recognized dealer.
and a foreign non-dealer. Approximately 16.5% of such transactions involved an ISDA-recognized dealer and a U.S.-person non-dealer.

6. Global Regulatory Efforts

In 2009, the G20 Leaders—whose membership includes the United States, 18 other countries, and the European Union—addressed global improvements in the OTC derivatives markets. They expressed their view on a variety of issues relating to OTC derivatives contracts. In subsequent summits, the G20 Leaders have returned to OTC derivatives regulatory reform and encouraged international consultation in developing standards for these markets.70

Foreign legislative and regulatory efforts have focused on five general areas: moving OTC derivatives onto organized trading platforms, requiring central clearing of OTC derivatives, requiring post-trade reporting of transaction data for regulatory purposes and public dissemination of anonymized versions of such data, establishing or enhancing capital requirements for non-centrally cleared OTC derivatives transactions, and establishing or enhancing margin and other risk mitigation requirements for non-centrally cleared OTC derivatives transactions. The rules being adopted in this release will affect a person’s obligations with respect to post-trade reporting of transaction data for public dissemination and regulatory purposes under Regulation SBSR.

Foreign jurisdictions have been actively implementing regulations of the OTC derivatives markets. Regulatory transaction reporting requirements are in force in a number of jurisdictions, including the European Union, Hong Kong SAR, Japan, Australia, Brazil, Canada, China, India, Indonesia, South Korea, Mexico, Russia, Saudi Arabia, and Singapore; other jurisdictions are in the process of proposing legislation and rules to implement these requirements.71 The CFTC, the 13 Canadian provinces and territories, the European Union, and Japan have adopted requirements to publicly disseminate transaction-level data about OTC derivatives transactions. In addition, a number of foreign jurisdictions have initiated the process of implementing margin and other risk mitigation requirements for non-centrally cleared OTC derivatives transactions.72 Several jurisdictions have also taken steps to implement the Basel III recommendations governing capital requirements for financial entities, which include enhanced capital charges for non-centrally cleared OTC derivatives transactions.73

![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 2015.](image)

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72 In November 2015, the Financial Stability Board reported that 12 member jurisdictions participating in its tenth progress report on OTC derivatives market reforms had in force a legislative framework or other authority to require exchange of margin for non-centrally cleared transactions and had published implementing standards or requirements for consultation or proposal. A further 11 member jurisdictions had a legislative framework or other authority in force or published for consultation or proposal. See Financial Stability Board, OTC Derivatives Market Reforms Tenth Progress Report on Implementation (November 2015), available at http://www.financialstabilityboard.org/wp-content/uploads/OTC-Derivatives-10th-Progress-Report.pdf (last visited on May 25, 2016).

73 In November 2015, the Financial Stability Board reported that 18 member jurisdictions participating in its tenth progress report on OTC derivatives market reforms had in force standards or requirements covering more than 90% of transactions that require enhanced capital charges for non-centrally cleared transactions. A further
has been limited progress in moving OTC derivatives onto organized trading platforms among G20 countries. The CFTC mandated the trading of certain interest rate swaps and index CDS on CFTC-regulated SEFs in 2014. Japan implemented a similar requirement for a subset of Yen-denominated interest rate swaps in September 2015. The European Union has adopted legislation that addresses trading OTC derivatives on regulated trading platforms, but has not mandated specific OTC derivatives to trade on these platforms. This legislation also should promote post-trade public transparency in OTC derivatives markets by requiring the price, volume, and time of derivatives transactions conducted on these regulated trading platforms to be made public in as close to real time as technically possible.\(^7\)

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### B. Economic Considerations

In the Regulation SBSR Adopting Release, the Commission highlighted certain overarching effects on the security-based swap market 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.\(^7\) Regulation SBSR requires market participants to make infrastructure investments in order to report security-based swap transactions to registered SDRs, and for SDRs to make infrastructure investments to receive and store that transaction data and to publicly disseminate transaction data in a manner required by Rule 902 of Regulation SBSR. The amendments to Regulation SBSR being adopted today will, among other things, impose certain requirements on the platforms, registered clearing agencies, and registered SDRs that constitute infrastructure for the security-based swap market and provide services to counterparties who participate in security-based swap transactions. The adopted amendments and the guidance provided will affect the manner in which these infrastructure providers compete with one another and exercise market power over security-based swap counterparties. In turn, there will be implications for the security-based swap counterparties who utilize these infrastructure providers and the security-based swap market generally. In addition, the Commission is adopting regulatory reporting and public dissemination requirements under Regulation SBSR for certain types of cross-border security-based swaps not currently addressed in Regulation SBSR. Subjecting additional types of security-based swaps to regulatory reporting and public dissemination will affect the overall costs and benefits associated with Regulation SBSR and have implications for transparency, competition, and liquidity provision in the security-based swap market.

1. Security-Based Swap Market Infrastructure

Title VII requires the Commission to create a new regulatory regime for the security-based swap market that, among other things, includes trade execution, central clearing, and reporting requirements aimed at increasing transparency and customer protection as well as mitigating the risk of financial contagion.\(^7\) These new requirements, once implemented, might require 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 prices that they earn from providing the required services.\(^7\) Because Title VII requires the Commission to implement rules requiring market

registered or exempt from registration. See Rule 9008(v), 17 CFR 242.9008(c).

\(^7\) These effects, as they relate specifically to the rules and amendments, as well as alternative approaches, are discussed in Section XIII, infra.

participants to use the services provided by platforms,\(^7\) registered clearing agencies,\(^8\) and registered SDRs,\(^3\) 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. 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 offset on the demand for their services. In turn, these changes in prices or quality could have negative effects on activity in the security-based swap market.

As discussed in Section XIII, infra, the amendments to Regulation SBSR being adopted today 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, welfare losses could result from higher costs to counterparties for hedging financial or commercial risks.

2. Competition Among Security-Based Swap Infrastructure Providers

As noted above, the Commission recognizes how regulatory requirements may affect the demand for services provided by platforms, registered clearing agencies, and SDRs, and, in turn, the ability of these entities to exercise their market power. The Commission’s economic analysis of the amendments adopted today 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 trade reporting and are unrelated to regulation, while others
may be a result of, or influenced by, the rules that the Commission is adopting in this release. To the extent that the adopted rules inhibit competition among infrastructure providers, they could result in fees charged to counterparties that deviate from the underlying costs of providing services. As a general matter, 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 investment to enter their respective markets, but once these startup costs are incurred, the addition of data management by SDRs or transaction clearing services by clearing agencies is likely to occur at low marginal costs. As a result, the per-transaction 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 large number of transactions. These economies of scale would be expected to 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.82

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 to make a similar investment for establishing a connection with a competitor.83 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 rules adopted today might also influence the competitive landscape for firms that provide security-based swap market infrastructure. Fundamentally, requiring the reporting of security-based swap transactions to SDRs creates an inelastic demand for reporting services 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 $12,250,000.84

The rules adopted today 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 to acquire competitors. For example, swap data repositories 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 XIII(A), infra, while adopting a reporting methodology that assigns reporting responsibilities to registered clearing agencies, which 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 preexisting infrastructure to provide services as an SDR at lower incremental cost than other new SDRs. 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.85

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 believes that this is likely to be true for clearing transactions, given that the clearing agency and the affiliated SDR would have greater control over the reporting process relative to sending clearing transaction data to an independent 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 competitive service models.

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

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82 See supra Section II(A).
83 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 1972. The authors describe how switching costs affect entry, noting that, on one hand, “switching costs hamper firms 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 leveraging its existing customer base, ceasing 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. This is because, in a competitive market with free entry and exit of firms, a firm that charges a price that is higher than marginal cost would lose sales to existing firms or entrants that are willing to provide the same service at a lower price. Such price competition prevents firms from charging prices that are above marginal costs.
84 See Regulation SBSR Adopting Release, 80 FR at 14718, n. 1343.
85 A registered clearing agency expanding to provide SDR services is an example of forward vertical integration. In the context of the rules adopted today, 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.
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 independent SDR. As a result, clearing-agency-affiliated SDRs would not directly compete with independent 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 affiliated SDRs relative to independent SDRs.

3. Security-Based Swaps Trading by Non-U.S. Persons Within the United States

Several broad economic considerations have informed the Commission’s approach to identifying transactions between two non-U.S. persons that should be subject to certain Title VII requirements. The Commission has taken into account the potential impact that rules already adopted as part of the Regulation SBSR Adopting Release might have on competition between U.S. persons and non-U.S. persons when they engage in security-based swap transactions with non-U.S. persons, along with the implications of these competitive frictions for the ability of market participants to obtain liquidity in a market that is predominantly over-the-counter. In particular, competitive disparities could arise between U.S. dealing entities and foreign dealing entities using personnel located in a U.S. branch or office where serving unregistered non-U.S. counterparties. In the absence of the rules adopted today, U.S. dealing entities and their agents would bear the costs associated with regulatory reporting and public dissemination requirements when trading with unregistered non-U.S. counterparties, while foreign dealing entities that use U.S.-based personnel to trade with the same unregistered non-U.S. counterparties would not bear such regulatory costs if these foreign dealing entities are not subject to comparable regulatory requirements in their home jurisdictions. Thus, these foreign dealing entities could offer liquidity at a lower cost to unregistered non-U.S. persons thereby gaining a competitive advantage over U.S. dealing entities. Competitive disparities could also arise between U.S. persons and non-U.S. persons that trade with foreign dealing entities that use U.S. personnel to arrange, negotiate, or execute security-based swap transactions.

A transaction between an unregistered U.S. person and a foreign dealing entity that uses U.S. personnel to arrange, negotiate, or execute the transaction is subject to regulatory reporting and public dissemination under existing Rule 908(a)(1). In the absence of newly adopted Rule 908(a)(1)v, a transaction between an unregistered non-U.S. person and the foreign dealing entity engaging in ANE activity would not be subject to Regulation SBSR. This could create a competitive advantage for unregistered non-U.S. persons over similarly situated U.S. persons when unregistered non-U.S. persons trade with foreign dealing entities that engage in ANE activity. Such a foreign dealing entity might be able to offer liquidity to an unregistered non-U.S. person at a lower price than to an unregistered U.S. person, because the foreign dealing entity that is engaging in ANE activity would not have to embed the potential costs of regulatory reporting and public dissemination into the price offered to the unregistered non-U.S. counterparty. By contrast, the price offered by that foreign dealing entity to an unregistered U.S. counterparty likely would reflect these additional costs.

The Commission acknowledges, however, that applying Title VII rules based on the location of personnel who engage in relevant conduct could provide incentives for these foreign dealing entities to restructure their operations to avoid triggering requirements under Regulation SBSR. For example, a foreign dealing entity could restrict its U.S. personnel from intermediating transactions with non-U.S. persons or use agents who are located outside the United States when engaging in security-based swap transactions with non-U.S. persons. In addition, disparate treatment of transactions depending on whether they are arranged, negotiated, or executed by personnel located in a U.S. branch or office could create fragmentation among agents that may seek to provide services to foreign dealing entities. To the extent that using agents with personnel located in a U.S. branch or office might result in regulatory costs being imposed on foreign dealing entities, such entities might prefer and primarily use agents located outside the United States, while U.S. dealers might continue to use agents located in the United States.

III. Reporting by Registered Clearing Agencies

A. Background

Section 13(m)(1)(F) of the Exchange Act 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 provides that each security-based swap (whether cleared or uncleared) shall be reported to a registered clearing organization. Section 13A(a)(3) of the Exchange Act obligates the party to report a security-based swap that is not accepted for clearing by any clearing agency or derivatives clearing organization. To implement these statutory provisions, the Commission in February 2015 adopted Rule 901(a) of Regulation SBSR, which designates the persons who must report all security-based swaps except: (1) Clearing transactions; (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.
side ("covered transactions"). This section addresses reporting duties for clearing transactions—i.e., the security-based swaps in category (1) above.92

1. Clearing Process for Security-Based Swaps

As discussed in the Regulation SBSR Adopting Release and the Regulation SBSR Proposed Amendments Release, two models of clearing—an agency model and a principal model—are currently used in the swap markets.93 In the agency model, which predominates in the United States, a swap that is submitted to clearing—typically referred to in the industry as an "alpha"—is, if accepted by the clearing agency, terminated and replaced with two new swaps, known as the "beta" and "gamma." One of the direct counterparties to the alpha becomes a direct counterparty to the beta, the other direct counterparty to the alpha becomes a direct counterparty to the gamma, and the clearing agency becomes a direct counterparty to each of the beta and the gamma.95 This release uses the terms "alpha," "beta," and "gamma" in the same way that the Commission understands they are used in the agency model of clearing in the U.S. swap market. As noted in the Regulation SBSR Adopting Release, an alpha is not a "clearing transaction" under Regulation SBSR, even though it is submitted for clearing, because it does not have a registered clearing agency as a direct counterparty.96

2. Proposed Rules and General Summary of Comments

In the Regulation SBSR Proposed Amendments Release, the Commission proposed a new paragraph (a)(2)(i) of existing rule 901(n), which would designate a registered clearing agency as the reporting side for all clearing transactions for a security-based swap which predates the adoption of Regulation SBSR. The Commission also proposed certain rules that would specify the reporting requirements for life cycle events attendant to the clearing process. The determination by a registered clearing agency of whether or not to accept an alpha for clearing is a life cycle event of the alpha.99 Existing paragraph (i) of Rule 901(e)(1) generally requires the reporting side for a security-based swap to report a life cycle event of that security-based swap, "except that the reporting side shall not report whether or not a security-based swap has been accepted for clearing." Under existing Rule 901(e)(2), a life cycle event must be reported "to the entity to which the original security-based swap transaction was reported." In the Regulation SBSR Proposed Amendments Release, the Commission proposed a new paragraph (ii) of Rule 901(e)(1) that 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 an alpha security-based swap for clearing.100 The Commission also proposed to amend the definition of "participant" in existing Rule 900(u) to include a registered clearing agency that is required to report whether or not it accepts an alpha for clearing.101

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 required by proposed Rule 901(e)(1)(ii). Therefore, the Commission proposed a new paragraph (3) of Rule 901(a), which would require the 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 will be or has been submitted to clearing.102

The Commission requested and received comment on a wide range of issues related to these proposed amendments. Four commenters generally supported the Commission’s proposal to require the registered clearing agency to report clearing transactions and to allow it to select the SDR to which it reports.103 One of these commenters noted that a clearing agency is "the sole party who holds the complete and accurate record of transactions and positions" for clearing transactions.104 Another commenter that does not result in any change to the contractual terms of the security-based swap. See 17 CFR 242.900(q).

100 See Regulation SBSR Proposed Amendments Release, 80 FR at 14748.

101 See id. at 14751.

102 See id. at 14748.

103 See LCH.Clearnet Letter at 3; Better Markets Letter at 2; ISDA/SIFMA Letter at 24; ICE Letter at 1.5.

104 ICE Letter at 1, 3 (arguing that no person other than a clearing agency has complete information
agreed, noting that alternative reporting workflows “could require a person who does not have information about [a] clearing transaction at the time of its creation to report that transaction.” 105 The commenter expressed the view that the Commission’s proposal for reporting clearing transactions “is simple in that the same party in each and every transaction will be the party with the reporting requirement,” and that this approach would eliminate confusion “as to who has the obligation to report the initial trades and different life-cycle events.” 106 Two commenters expressed the view that clearing agencies can leverage existing reporting processes and the existing infrastructure that they have in place with market participants and vendors to report clearing transactions. 107 A third commenter observed that requiring clearing agencies to report clearing transactions would be “efficient, cost effective and promote [ ] global data consistency,” because clearing agencies already report transactions under swap data reporting rules established by the CFTC and certain foreign jurisdictions, such as the European Union and Canada. 108

However, one commenter opposed assigning the reporting duty to the registered clearing agency, arguing instead that the reporting side for the alpha transaction should be the reporting side for any subsequent clearing transactions. 109 Another commenter expressed support for the Commission’s proposal to require registered clearing agencies to report betas and gammas, but disagreed with the Commission’s proposal to permit registered clearing agencies to choose the registered SDR that receives these reports. 110

B. Discussion and Final Rules

After careful consideration of the comments, the Commission is adopting paragraph (2)(i) of Rule 901(a) as proposed. As a result, a registered clearing agency is the reporting side for all clearing transactions to which it is a counterparty. 111 In its capacity as the reporting side, the registered clearing agency is permitted to select the registered SDR to which it reports. The Commission believes that, because a 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 to a registered SDR about the clearing transactions resulting from the security-based swaps that it clears. Two commenters noted that swap clearing agencies currently report clearing transactions to CFTC-registered swap data repositories, thus evidencing their ability to report clearing transactions. 112 The Commission’s determination to assign to registered clearing agencies the duty to report clearing transactions should promote efficiency in the reporting process under Regulation SBSR by leveraging these existing workflows.

In the Regulation SBSR Proposed Amendments Release, the Commission considered three alternatives to requiring the clearing agency to report clearing transactions: (1) Utilize the reporting hierarchy in existing Rule 901(a)(2)(ii); (2) modify that reporting hierarchy to place registered clearing agencies above other non-registered persons, but below registered security-based swap dealers and major security-based swap participants; and (3) require the reporting side of the alpha to report both the beta and the gamma. 113 The Commission assessed each alternative and expressed the preliminary view that none would be as efficient and reliable as assigning the reporting duty to the registered clearing agency. 114 The Commission noted that each of the three alternatives could place the duty to report the clearing transaction on a person who does not have information about the clearing transaction at the time of its creation; to discharge its duty, this person would have to obtain necessary transaction information from the registered clearing agency or from a counterparty to the registered clearing agency. 115

One commenter urged the Commission to adopt Alternative 3—i.e., to designate the reporting side for the alpha as the reporting side for the beta and gamma. 116 The commenter stated that the non-clearing-agency counterparties to the beta and gamma will always obtain information regarding their clearing transactions as a part of the clearing process. 117 The commenter suggested, therefore, that Alternative 3 would not result in unnecessary data transfers prior to reporting. In support of Alternative 3, the commenter noted that an alpha counterparty could rely on a “middleware reporting agent [who] could perform all steps necessary to report an alpha transaction as well as the associated beta and gamma security-based swaps in a matter of seconds, while a clearing agency could, at best, perform only the last two steps.” 118 Furthermore, while endorsing Alternative 3, the commenter also believed that Alternatives 1 and 2 would be preferable to the Commission’s proposed approach. 119

Finally, the commenter suggested a fourth alternative to address the concern of an alpha counterparty having to report a clearing transaction to which it is not a counterparty. The commenter suggested that “the platform would remain the reporting side for all platform-executed trades while for bilateral or off platform cleared transactions, the reporting side would be the clearing agency. However, the clearing agency would be required to submit beta and gamma trade records to the alpha SDR (which would be determined by the alpha trade reporting side and not the clearing agency).” 120

The Commission believes that assigning reporting duties for clearing transactions to registered clearing agencies will be more efficient and reliable than any of the alternatives discussed in the Regulation SBSR Proposed Amendments Release or

110 See Markit Letter at 13.
111 See id. at 5, 13. The commenter stated that a clearing agency “must, as a matter of course, send the cleared SBS trade record straight through to the sides of the trade or, if relevant, any non-affiliated reporting side (e.g., the platform or reporting agent). In other words, for the clearing agency to transmit a message indicating that a trade has or has not been accepted for clearing (a necessary last step to conclude cleared transactions between the clearinghouse and the parties to the beta and gamma trades) there is no ‘extra step.’” Id. at 5.
112 Id. at 7 (also stating that the interconnectedness of the middleware provider makes it “better able to ensure the accuracy of trade records and the linkage between alpha, beta, and gamma trade records.”).
113 See id. at 13 (“these other alternatives, relative to the Proposal, encourage competition based on quality of service and cost and the rule of reporting agents and are more likely to result in outcomes whereby the same SDR will receive alpha, beta, and gamma trades”).
114 Id.
115 See id. at 13.
raised by the commenter. Because each of these alternatives could assign the reporting duty to a person who does not have information about the clearing transaction at the time of its creation, the person with the reporting duty would have to rely on the clearing agency, directly or indirectly, to provide it with the information to be reported:  
- Alternative 1 would be to utilize the existing reporting hierarchy in Regulation SBSR. Since a registered clearing agency is not a registered security-based swap dealer or registered major security-based swap participant, the registered security-based swap dealer or registered major security-based swap participant would incur the reporting duty. However, the registered security-based swap dealer or registered major security-based swap participant would select the registered clearing agency as the reporting side for the clearing transactions.
- Under the fourth alternative, while the Commission concurs with the approach of requiring the registered clearing agency to report the resulting beta and gamma transactions, the Commission believes that the registered clearing agency, when it has the duty to report security-based swaps, should be able to choose the registered SDR to which it reports. In general, the Commission believes that Regulation SBSR should not assign reporting obligations to persons who lack direct access to the information necessary to make the report. With respect to clearing transactions, a person who lacked direct access to the necessary information would be obligated to obtain the information from the clearing agency or another party who has access to that information to discharge its reporting duties. Placing the reporting duty on the non-clearing-agency side would create additional reporting steps and each extra reporting step could introduce some possibility for discrepancy, error, or delay. The Commission believes that discrepancies, errors, and delays are less likely to occur if the duty to report clearing transactions is assigned to registered clearing agencies directly, because there would be no intermediate steps where data would have to be transferred between parties before it is sent to a registered SDR. Therefore, the Commission is adopting Rule 901(n)(2)(i) as proposed. A registered clearing agency has complete information about all clearing transactions to which it is a counterparty. This includes not only betas and gammas that arise from clearing alphas, but also security-based swaps that result from the clearing agency netting together betas and gammas of the same person in the same product to create new open positions in successive netting cycles. Under the alternatives discussed above, a person other than the registered clearing agency would have to obtain information from the clearing agency to report the clearing transactions—not just once, to report the initial beta and gamma, but potentially with every netting cycle of the registered clearing agency. This further increases the risks that there could be discrepancies, errors, or delays in reporting new clearing transactions as they are created.

The commenter who endorsed Alternative 3 also argued that “[the Proposal’s] failure to acknowledge the efficiency benefits and reduced costs that result from the presence of middleware reporting agents is a serious defect.” To the contrary, the Commission has considered the potential economic effects of new Rule 901(a)(2)(i) and the alternatives noted above, including the role that agents might play in reporting security-based swap transactions under these different alternatives. The Commission notes that, while Regulation SBSR permits the use of agents to carry out reporting duties, it does not require the use of an agent.

C. Choice of Registered SDR for Clearing Transactions

In the Regulation SBSR Proposed Amendments Release, the Commission considered whether, if a registered clearing agency is assigned the duty to report clearing transactions, the clearing agency should be permitted to choose the registered SDR to which it reports or whether it should be required to report them to the alpha SDR. The Commission proposed to allow a registered clearing agency to choose the registered SDR to which it reports clearing transactions. The Commission recognized that this approach might result in beta and gamma security-based swaps being reported to a registered SDR other than

For any clearing transaction between a registered clearing agency and a non-registered person that is not guaranteed by a registered security-based swap dealer or registered major security-based swap participant, the reporting hierarchy in existing Rule 901(a)(2)(i) would require the sides to select the reporting side. In these circumstances, it is likely that the counterparties would select the registered clearing agency as the reporting side for the clearing transactions. Assigning the duty to report clearing transactions directly to the clearing agency is consistent with the Commission’s objective of minimizing the possibility that the reporting obligation would be imposed on a non-registered counterparty. See Regulation SBSR Adopting Release, 80 FR at 14598.
the alpha SDR, thereby requiring the Commission to link these trades together across SDRs.\textsuperscript{120} Some commenters supported the Commission’s proposal to allow the registered clearing agency to select the registered SDR to which it reports.\textsuperscript{130} Other commenters, however, recommended that the Commission require the registered clearing agency to report the beta and gamma transactions to the alpha SDR.\textsuperscript{131} These commenters generally believed that requiring beta and gamma security-based swaps to be reported to the alpha SDR would reduce data fragmentation and enhance the Commission’s ability to obtain a complete and accurate understanding of the security-based swap market.\textsuperscript{132}

One commenter endorsed the view that clearing should be considered a life cycle event of the alpha transaction, and that the clearing agency should be required to report the termination of the alpha, as well as the beta and gamma, to the alpha SDR.\textsuperscript{133} In this commenter’s view, “[i]n maintaining all records related to an alpha trade in a single SB SDR will help to ensure that regulators are able to efficiently access and analyze all reports related to an SB swap regardless of where or how the transaction was executed and whether it is cleared.”\textsuperscript{134}

Another commenter noted that, in its experience with CFTC swap data reporting rules, clearing agencies “generally send beta and gamma records to an affiliated SDR” even though other market participants generally prefer using an SDR not affiliated with the clearing agency.\textsuperscript{135} In this commenter’s view, clearing agencies do not “provide services or fees that make them sufficiently competitive for all swap trade records.”\textsuperscript{136} The commenter believed that the Commission’s proposed approach would result in tying of clearing services to SDR services and create a market for SDR and post-trade processing services that is unresponsive to market forces.\textsuperscript{137} The commenter also stated that “middleware reporting agents can offer an even lower price” than registered clearing agencies for reporting beta and gamma transactions.\textsuperscript{138}

Regulation SBSR generally allows the person with a duty to report to choose the registered SDR to which it reports.\textsuperscript{139} This approach is designed to promote efficiency by allowing the person with the reporting duty to select the registered SDR based on greatest ease of use, the lowest fees, or other factors that are relevant to the person with whom the duty rests. 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.\textsuperscript{140} Under Rule 901(a)(2)(i), as adopted herein, a registered clearing agency is the reporting side for all clearing transactions to which it is a counterparty; because the registered clearing agency has the duty to report, it also has the ability to choose the registered SDR. The Commission considered requiring the registered clearing agency to report the beta and gamma to the alpha SDR. But had the Commission done so, the registered clearing agency would be required to report clearing transactions to a registered SDR that might not offer the clearing agency what it believes to be the most efficient or convenient means of discharging its reporting duty, as others with a reporting duty are permitted to do. As noted in Section XIII(A), infra, a clearing agency may be able to realize efficiency gains through vertical integration of clearing and SDR services and may choose to use an affiliated SDR. However, if an independent SDR or middleware reporting agent offers a competitive service model that provides a clearing agency with a duty to report a more efficient or cost-effective means of fulfilling its reporting obligations, the registered clearing agency may choose to use those instead.

One commenter expressed the view that requiring the beta and gamma to be reported to the alpha SDR would help to ensure that regulators are able to efficiently access and analyze all reports related to a security-based swap.\textsuperscript{141} The commenter cautioned, furthermore, that “[t]he proposed process assumes that, in all instances, the transaction ID provided to the clearing agency would be accurate.”\textsuperscript{142} The commenter stated that only the alpha SDR would be able to ascertain whether the alpha transaction ID is valid based on its existing inventory.\textsuperscript{143} The commenter concluded that, “[r]ather than establishing a complex reporting process for clearing transactions and potentially introducing data quality issues . . . the Commission [should] consider preservation of high quality data and ready access to a full audit trail as the paramount concerns that should govern the choice of SB SDR for clearing transactions.”\textsuperscript{144} Finally, the commenter questioned the ease with which the Commission would be able to track related transactions across SDRs through the transaction ID, stating that “the Commission would likely be forced to expend significant resources harmonizing data sets from multiple SDRs, thereby hindering the Commission’s ready access to a comprehensive audit trail.”\textsuperscript{145}

The Commission has considered the commenter’s arguments but continues to believe that it is appropriate to allow a registered clearing agency to choose the registered SDR to which it reports. Although the commenter is correct that Regulation SBSR will require a

\textsuperscript{120} See id.
\textsuperscript{121} See ICE Letter at 1; LCH.Clearnet Letter at 3; ISDA/SIFMA Letter at 24.
\textsuperscript{122} See Better Markets Letter at 2, 4–5 (“we are concerned that allowing the clearing agency to report data to a different SDR than the one to which the initial alpha trade was reported could cause potential complications, such as double-counting or bifurcated data”); DTCC Letter at 2, 6; Markit Letter at 6.
\textsuperscript{123} See id. See also DTCC Letter at 5 (predicting that the Commission “would encounter various implementation challenges” in linking alpha security-based swaps to the associated beta and gamma transactions that had been reported to different SDRs); ISDA Letter at 6 (“SDRs might thereby be required to expend significant resources to reformat reports from different sources”).
\textsuperscript{124} See DTCC Letter at 4, 6.
\textsuperscript{125} DTCC Letter at 4.
\textsuperscript{126} Markit Letter at 6.
\textsuperscript{127} See id. at 2–3, 12 (stating that, if a registered clearing agency is permitted to choose the registered SDR to which it reports clearing transactions, the clearing agency “can more easily leverage a dominant clearing agency position to gain a dominant SDR position by selecting an affiliated SDR as its SDR of choice for beta and gamma trades”).
\textsuperscript{128} See id. at 4, 7–8 (noting that, “[i]n contrast to currently registered SBS clearing agencies . . . middleware reporting agents, such as MarkitSERV, are connected to numerous trade repositories globally and have achieved economies of scale with respect to the straight-through processing of cleared swaps across numerous clearinghouses and regulatory reporting regimes”).
\textsuperscript{129} See Regulation SBSR Adopting Release, 80 FR at 14597–98 (“The reporting side may select the registered SDR to which it makes the required report”).
\textsuperscript{130} See 80 FR at 14599, n. 291. 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 transaction. As discussed above, new Rule 901(e)(1)(ii) requires a registered clearing agency to report these life cycle events to the alpha SDR.
\textsuperscript{131} See DTCC Letter at 5.
\textsuperscript{132} Id. The commenter added that it has encountered issues under the CFTC’s swap reporting framework when transaction IDs have been reported inconsistently for the same trade. See id.
\textsuperscript{133} See id.
\textsuperscript{134} Id.
\textsuperscript{135} Id.
registered clearing agency to report to the alpha SDR whether or not the clearing agency accepts the alpha for clearing, this does not necessarily mean that the clearing agency would find it more efficient or convenient to make initial (and life cycle event) reports of clearing transactions to the alpha SDR. Betas, gammas, and transactions that arise from subsequent clearing cycles are independent security-based swaps. It is possible that a registered clearing agency might conclude that a registered SDR other than the alpha SDR is better suited for clearing agency new transactions. Of course, if the registered clearing agency determines that reporting beta and gamma security-based swaps to the alpha SDR is, in fact, equally convenient or more convenient than connecting and reporting to a different SDR, the registered clearing agency would be free to make this choice under new Rule 901(a)(2)(ii).

The Commission shares the commenter’s concern about ensuring that a termination reported by a registered clearing agency to an alpha SDR includes a valid transaction ID of an alpha held by that SDR and acknowledges the commenter’s observation that this might not always occur in the CFTC’s swap reporting regime. Because 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), the registered SDR should know the transaction ID of every security-based swap reported to it on a mandatory basis. If a registered clearing agency submits a termination report with a transaction ID that the registered SDR cannot match to an alpha transaction report, the registered SDR’s policies and procedures must specify how this situation will be addressed.147 The SDR’s policies and procedures could provide, for example, that the registered SDR will hold the termination report from the registered clearing agency in a pending state until either (1) the registered SDR obtains a valid transaction ID from the registered clearing agency (if the registered clearing agency originally had reported an incorrect transaction ID); or (2) the registered SDR determines that it can otherwise match the termination report against the correct alpha (if the clearing agency reported the correct transaction ID but the correct transaction ID did not for some reason appear in the report of the alpha transaction). Furthermore, in the Regulation SBSR Proposed Amendments Release, the Commission acknowledged that it might not be possible for a registered SDR to determine immediately whether a particular transaction ID is invalid because a registered clearing agency could report whether or not it has accepted an alpha for clearing before the registered SDR has received a transaction report for that alpha.148 The Commission stated that, in such case, the registered SDR should address this possibility in its policies and procedures, which could provide, for example, that the registered SDR would hold a registered clearing agency’s report of the disposition of an alpha in a pending state until the registered SDR receives the transaction report of the alpha; the registered SDR could then disseminate as a single report the security-based swap transaction information and the fact that the alpha had been terminated.149 Because the reporting side for an alpha generally has 24 hours from the time of execution to report the transaction,150 the duration of the pending state generally should not exceed 24 hours after receipt of the clearing agency’s report of whether or not it has accepted the alpha for clearing. The Commission staff intends to evaluate whether the termination reports submitted by registered clearing agencies to an alpha SDR are appropriately matched to the alpha.

The Commission also believes that the adopted approach of allowing a registered clearing agency to choose the registered SDR to which it reports clearing transactions is, unlike any alternatives considered,151 properly designed to account for the possibility that alphas could be reported to several different SDRs. Consider the following example:

- On Day 1, Party A executes three alpha transactions (T1, T2, and T3) in Product XYZ.
- T1 is reported to SDR1. T2 is reported to SDR2. T3 is reported to SDR3.
- All three alpha transactions are submitted to Clearing Agency K and accepted for clearing.
- Clearing Agency K creates Beta1 and Gamma1 after terminating T1, Beta2 and Gamma2 after terminating T2, and Beta3 and Gamma3 after terminating T3.
- Assume that Party A is the direct counterparty to Beta1, Beta2, and Beta3.

If, as suggested by some commenters, the Commission required Beta1 and Gamma1 to be reported to SDR1, Beta2 and Gamma2 to be reported to SDR2, and Beta3 and Gamma3 to be reported to SDR3, operational difficulties would result when Clearing Agency K nets Beta1, Beta2, and Beta3 as part of its settlement cycle because each of the Betas has been reported to a different SDR.

- At the end of Day 1, Clearing Agency K nets Beta1, Beta2, and Beta3 together to create a net open position (NOP) of Party A in Product XYZ.
- As part of the netting process, Clearing Agency K terminates Beta1, Beta2, and Beta3. Under new Rule 901(e)(1)(ii), Clearing Agency K would have to report the terminations of Beta1 to SDR1, the termination of Beta2 to SDR2, and the termination of Beta3 to SDR3.
- NOP is a new security-based swap and must be reported to a registered SDR.

Under the commenters’ alternate approach, it is not apparent which registered SDR should receive the report of NOP, because NOP incorporates transactions that were originally reported to three different registered SDRs. Reporting NOP to each of SDR1, SDR2, and SDR3 serves no purpose because the same position would be reflected in three separate SDRs and could lead to confusion about the true size of the security-based swap market.

The Commission also disagrees with the commenter’s view that the Commission’s ability to understand or analyze reported data would be impaired by permitting registered clearing agencies to select the registered SDR for reporting clearing transactions.152 The Commission acknowledges that it will likely be necessary for the Commission’s staff to link an alpha to the associated beta and gamma across different SDRs to obtain a complete understanding of transactions that clear. The Commission believes, however, that there are sufficient tools to facilitate this effort. Existing Rule 901(d)(10), for example, requires reporting of the “prior transaction ID” if a security-based swap arises from the allocation, termination, novation, or assignment of one or more prior security-based swaps. Therefore, the Commission believes that it is

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147 See Rule 13n–5(b)(1)(i) under the Exchange Act, 17 CFR 240.13n–5(b)(1)(i) (requiring every SDR to establish, maintain, and enforce written policies and procedures reasonably designed for the reporting of complete and accurate transaction data); Rule 13n–5(b)(1)(iii) under the Exchange Act, 17 CFR 240.13n–5(b)(1)(iii) (requiring 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).

148 See Regulation SBSR Proposed Amendments Release, 80 FR at 14748.

149 See id.

150 See Rule 901(i).

151 See supra notes 113 to 124 and accompanying text.

152 See DTCC Letter at 4.
appropriate to allow a registered clearing agency to choose where to report the beta and gamma, even if it chooses to report to a registered SDR other than the alpha SDR.

The Commission acknowledges that permitting a registered clearing agency to report clearing transactions to a registered SDR other than the alpha SDR also could increase complexity for market participants who would prefer to have reports of all of their security-based swaps in a single SDR. The Commission notes that 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.” The Commission notes, in addition, that Regulation SBSR permits a security-based swap counterparty to make non-mandatory reports of security-based swaps to an SDR of its choice (if the SDR is willing to accept them). Thus, to the extent that SDRs are willing to accept such non-mandatory reports, non-clearing-agency counterparties of clearing transactions would have a mechanism for consolidating reports of their transactions in a single SDR if such counterparties wished to do so.

The Commission does not agree with the assertion made by one commenter that permitting a registered clearing agency to report clearing transactions to a registered SDR of its choice necessarily results in the tyding of clearing services to SDR services. Under the rules being adopted today, the user of clearing services—i.e., an alpha counterparty that clears a security-based swap at a registered clearing agency—has no obligation to report the subsequent clearing transaction.

Because Regulation SBSR does not require an alpha counterparty to have ongoing obligations to report subsequent information about the clearing transaction, such as life cycle events or daily marks, to the registered SDR that is selected by the clearing agency, alpha counterparties will not be required to establish connections to multiple SDRs and to incur fees for reporting information to those SDRs.

D. Scope of Clearing Agencies Covered by Final Rules

Proposed Rule 901(a)(2)(ii) would assign clearing agencies a duty to report under Regulation SBSR based on their registration status, not on their principal place of business. Thus, a foreign clearing agency, like a U.S. clearing agency, would be required to report all security-based swaps of which it is a counterparty if it is registered with the Commission. Commenters had differing recommendations with respect to the scope of clearing agencies that should be covered by proposed Rule 901(a)(2)(ii). Two commenters expressed the view that the rule should apply to all registered clearing agencies, regardless of their principal place of business. A third commenter agreed that a registered clearing agency with its principal place of business inside the United States should be required to report all clearing transactions, but took a different view with respect to a registered clearing agency with its principal place of business outside the United States; the non-U.S. clearing agency, according to the commenter, should be required to report only clearing transactions involving a U.S. person.

Final Rule 901(a)(2)(i) assigns the reporting obligation for a clearing transaction to a registered clearing agency that is a counterparty to the transaction. The rule applies to any registered clearing agency without regard to the location of its principal place of business. 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.

Conversely, new Rule 901(a)(2)(i) does not apply to unregistered clearing agencies (e.g., persons that act as clearing agencies outside the United States that are not required to, and choose not to, register with the Commission).

A fourth commenter requested the Commission to clarify whether clearing agencies that are “deemed registered” under the Exchange Act are “registered clearing agencies” for purposes of Regulation SBSR, which would trigger the duty to report clearing transactions even before they complete a full registration process with the Commission. The Commission previously has stated that each clearing agency that is deemed registered is required “to comply with all requirements of the Exchange Act and the rules and regulations thereunder applicable to Registered Clearing Agencies.” Pursuant to this guidance, a “deemed registered” clearing agency is required to comply with all requirements of Regulation SBSR that are applicable to registered clearing agencies.

E. Reporting Under the Principal Model of Clearing

Two commenters acknowledged that the agency model of clearing predominates in the United States but requested that the Commission clarify the application of Rule 901(a)(2)(ii) to security-based swaps cleared under the principal model of clearing. One of these commenters recommended that the Commission require all clearing transactions to be reported according to the workflows used in the agency model of clearing. By contrast, the other

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153 See id. at 16.
154 SDR Adopting Release, 80 FR at 14440.
155 See Rule 900(r) (defining a “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).
156 See Markit Letter at 3, 9–10.
157 See LCH.Clearnet Letter at 9 (“Registered clearing agencies are best placed to report cleared transactions. Assigning these obligations to other participants for foreign domiciled clearing agencies will needlessly complicate the reporting landscape.”). ISDA/SIFMA Letter at 24.
158 See ICE Letter at 5.
159 The Commission notes, however, that the reporting duty of a registered clearing agency under new Rule 901(a)(2)(ii) must be read in connection with Rule 900(a), amendments to which the Commission is adopting today. In other words, a registered clearing agency must report only those security-based swaps that fall within Rule 900(a). It is likely that many clearing transactions of a registered clearing agency having its principal place of business outside the United States would not fall within any prong of Rule 900(a) and thus would not have been reported to the Commission as a security-based swap dealer or major security-based swap participant, and who is not utilizing U.S. personnel to arrange, negotiate, or execute the clearing transaction, would not fall within any prong of Rule 900(a).
160 See ISDA/SIFMA at 26.
162 This commenter also sought guidance regarding the reporting obligations relating to a security-based swap between a clearing agency that has been exempted from registration by the Commission and a counterparty. See ISDA/SIFMA Letter at 26. The Commission does not believe that this issue is ripe for consideration. The Commission anticipates that it would be able to address this issue if it exempts from registration a clearing agency that acts as a central counterparty for security-based swaps.
163 See ISDA/SIFMA Letter at 25 (“Although we do not have reason to believe the principal model will become prevalent in the U.S. market, it will be used in a percentage of SBS reportable under SBSR especially by non-U.S. parties registered as SBSDs or MSBSPs which may be the direct or indirect counterparty to a SBS. Providing additional guidance on the treatment of SBS cleared via the principal model would be useful to promote data accuracy and consistency.”); ICE Letter at 2–3.
164 See ICE Letter at 3 (arguing that reporting principal clearing workflows is unnecessarily complicated and costly and “results in a

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The commenter argued that “a set of clearing transactions should be reported in accordance with the actual applied clearing model.”\textsuperscript{165} The Commission concurs with the latter commenter: Regulation SBSR requires reporting of clearing transactions in accordance with the actual clearing model. Under the rules adopted today, any security-based swap that is a clearing transaction—\emph{i.e.}, that has a registered clearing agency as a direct counterparty—must be reported by the registered clearing agency pursuant to new Rule 901(a)(2)(i).\textsuperscript{166} If a security-based swap is not a clearing transaction, it must be reported by the person designated by the other provisions of Rule 901(a).

\textbf{F. Clearing Transactions and Unique Identification Codes}\textsuperscript{167}

Rules 901(c) and 901(d), respectively, require the person with the duty to report to report all of the primary trade information and secondary trade information for each security-based swap to a direct counterparty. Noting that existing Rule 901(d)(2) requires the reporting side to report, as applicable, the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID of the direct counterparty on the reporting side, the Commission in the Regulation SBSR Proposed Amendments Release asked whether these types of unique identification codes (“UICs”)\textsuperscript{167} would ever be applicable to a registered clearing agency when it incurs the duty to report a clearing transaction.\textsuperscript{168} Three commenters argued that these UICs are not applicable to clearing transactions and should not have to be reported by the clearing agency.\textsuperscript{169} The Commission agrees. In its capacity as a central counterparty for security-based swaps, a registered clearing agency does not engage in market-facing activity and thus would not utilize a branch, broker, execution agent, trader, or trading desk to effect security-based swap transactions. Therefore, these UICs are not applicable to clearing transactions, and a registered clearing agency need not report any UICs pursuant to Rule 901(d)(2).\textsuperscript{170}

\textbf{G. Reporting Whether an Alpha Transaction Is Accepted for Clearing}\textsuperscript{171}

Existing Rule 901(e)(1)(i) addresses the reporting requirements for most life cycle events and assigns the reporting duty for reporting those life cycle events to the reporting side of the original transaction. However, Rule 901(e)(1)(i) specifically provides that “the reporting side shall not report whether or not a security-based swap to select the SDR that will later be accepted for clearing.” In the Regulation SBSR Proposed Amendments Release, the Commission proposed a new paragraph (ii) to Rule 901(e)(1) that would require a registered clearing agency that receives an alpha to report to the alpha SDR whether or not it has accepted the alpha for clearing.\textsuperscript{172}

Two commenters expressed support for proposed Rule 901(e)(1)(ii), noting that clearing agencies would be well positioned to terminate report for the alpha and subsequently to report the beta and gamma to a registered SDR.\textsuperscript{173} However, two commenters objected to proposed Rule 901(e)(1)(ii).\textsuperscript{174} One of these commenters argued that proposed Rule 901(e)(1)(ii) was unnecessary because the counterparties to the alpha would learn of the disposition of the alpha from the clearing agency in the normal course of business, and could report this information to the alpha SDR.\textsuperscript{175} This commenter further asserted that concerns regarding “data discrepancies, errors, or delays” cited by the Commission in support of proposed Rule 901(e)(1)(ii) were unfounded and could be addressed, if necessary, through rulemaking or enforcement action to encourage clearing agencies to provide accurate and timely data to platforms and counterparties about clearing dispositions.\textsuperscript{176} Similarly, the second commenter that objected to proposed Rule 901(e)(1)(ii) argued that the “party that originally reported the alpha trade is best placed to report the result of clearing”\textsuperscript{177} and that clearing agencies should not have to incur costs associated with establishing connectivity to alpha SDRs.\textsuperscript{178} This commenter also questioned why the Commission’s approach to the reporting of cleared transactions differed from its approach to the reporting of prime brokerage transactions,\textsuperscript{179} where the Commission is requiring that the person who reported the initial log of a prime brokerage transaction (not the prime broker) must report any life cycle event

\textsuperscript{165} ISDA/SIFMA Letter at 26.

\textsuperscript{166} Existing Rule 902(c)(6) provides that a registered SDR shall not disseminate any information regarding a clearing transaction that is a clearing transaction, and a registered clearing agency need not provide these UICs to the registered SDR with respect to any clearing transaction. As the Commission has previously stated when exempting most types of clearing transactions from public dissemination, clearing transactions “are mechanical steps taken pursuant to the rules of the clearing agency.” Regulation SBSR Adopting Release, 80 FR at 14610. See also Rule 902(c)(6).

\textsuperscript{167} The Commission also deems these UICs “not applicable” to the non-clearing agency side of a clearing transaction; therefore, under Rule 906(a), a registered SDR need not query a non-clearing agency participant for these UICs with respect to a clearing transaction, and the participant need not provide these UICs to the registered SDR with respect to any clearing transaction. As the Commission has previously stated when exempting most types of clearing transactions from public dissemination, clearing transactions “are mechanical steps taken pursuant to the rules of the clearing agency.” Regulation SBSR Adopting Release, 80 FR at 14610. See also Rule 902(c)(6).

\textsuperscript{168} Existing Rule 906(a) requires the reporting side to report, as applicable, the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID of the direct counterparty on the reporting side, the Commission in the Regulation SBSR Proposed Amendments Release asked whether these types of unique identification codes (“UICs”) would ever be applicable to a registered clearing agency when it incurs the duty to report a clearing transaction.\textsuperscript{169} Three commenters argued that these UICs are not applicable to clearing transactions and should not have to be reported by the clearing agency.\textsuperscript{169} The Commission agrees. In its capacity as a central counterparty for security-based swaps, a registered clearing agency does not engage in market-facing activity and thus would not utilize a branch, broker, execution agent, trader, or trading desk to effect security-based swap transactions. Therefore, these UICs are not applicable to clearing transactions, and a registered clearing agency need not report any UICs pursuant to Rule 901(d)(2).

\textsuperscript{169} See ICE Letter at 4.

\textsuperscript{170} The Commission’s approach to the reporting of cleared transactions differed from its approach to the reporting of prime brokerage transactions, where the Commission is requiring that the person who reported the initial log of a prime brokerage transaction (not the prime broker) must report any life cycle event.

\textsuperscript{171} The Commission notes that one of the commenters that supported the general approach of requiring registered clearing agencies to incur reporting duties argued also that “CASs [i.e., clearing agencies] should not incur SDR fees to report alpha termination messages. Requiring CASs to become a full ‘participant’ of alpha SDRs, is unnecessary and overly burdensome for CASs.” ICE Letter at 6.

\textsuperscript{172} See ICE Letter at 5 (‘‘Upon acceptance for clearing, CASs should be required to report the alpha termination to the appropriate SDR storing the alpha swap’’); ISDA/SIFMA Letter at 24 (noting that the proposal would prevent the “orphanning of alphas” that currently occurs under the CFTC swap data reporting rules). CFTC Letter at 5–6, 17 (expressing support for proposed Rule 901(e)(1)(ii), but in the context of DTCC’s view, discussed supra, that clearing agencies also should be required to report betas and gammas to the alpha SDR).

\textsuperscript{173} See Markit Letter at 5 (‘‘the clearing agency must, as a matter of course, send the cleared SBS transaction record straight through to the side to the trade or, if relevant, any non-affiliated reporting side (\emph{e.g.,} the platform or reporting agent). In other words, for the clearing agency to transmit a message indicating that a trade has or has not been accepted for clearing (a necessary last step to conclude cleared transactions between the clearinghouse and the parties to the beta and gamma trades), there is no ‘extra step.’ Moreover, the processing of cleared trades is nearly instantaneous, resulting in no operationally significant delay’’).

\textsuperscript{174} See id. This commenter also argued that Rule 901(e)(1)(ii) would be unnecessary if the Commission permitted the reporting side of the alpha trade to select the SDR that would receive reports of the associated beta and gamma. See id. at 15.

\textsuperscript{175} LCH.Clearnet Letter at 8.

\textsuperscript{176} See id. at 6–10 (arguing that the incremental costs of assigning the reporting obligation to the(alpha) reporting side would be small compared to the costs associated with registered clearing agencies having to establish connectivity to alpha SDRs). The Commission notes that one of the commenters that supported the general approach of requiring registered clearing agencies to incur reporting duties argued also that “CASs [i.e., clearing agencies] should not incur SDR fees to report alpha termination messages. Requiring CASs to become a full ‘participant’ of alpha SDRs, is unnecessary and overly burdensome for CASs.” ICE Letter at 6.

\textsuperscript{177} See LCH.Clearnet Letter at 7.
resulting from whether the prime broker accepts or rejects that transaction.176

After carefully considering the comments received, the Commission is adopting paragraph (ii) of Rule 901(e)(1) as proposed. Final Rule 901(e)(1)(ii) is consistent with the Commission’s general approach of assigning the reporting obligation for a security-based swap transaction to the person with the most complete and efficient access to the required information at the point of creation. Because a registered clearing agency determines whether to accept an alpha for clearing and controls the precise moment when the transaction is cleared, the Commission believes that the clearing agency is best placed to report the result of its decision.

One commenter argued that requiring a registered clearing agency to report to an SDR not of its choosing whether it accepts an alpha for clearing “is in contradiction with the Commission’s reasons for permitting a registered clearing agency to decide which registered clearing agency for reporting of beta and gamma trades.”179 The Commission does not believe that there is a contradiction in its reasoning. The person with the duty to report whether or not the alpha was accepted for clearing must report that information to the alpha SDR or else it would be difficult to pair the alpha transaction report with the report of its clearing disposition.180 The Commission believes that a registered clearing agency, because it chooses when and how to handle an alpha that is submitted for clearing, is best placed to report whether or not it accepts the alpha for clearing.

The Commission considered, but determined not to adopt, the alternative recommended by certain commenters of assigning to the person who has the duty to report the initial alpha (and thus can choose the alpha SDR) the duty of also reporting to the alpha SDR whether or not the registered clearing agency has accepted the alpha for clearing. The Commission acknowledges, as one commenter pointed out, that counterparties to security-based swaps that are submitted to clearing would in the normal course learn from the clearing agency whether or not a security-based swap has been accepted for clearing. The Commission believes, however, that requiring a registered clearing agency to report the termination of the alpha will increase the likelihood that the alpha termination will be reported accurately and without delay, thereby helping to minimize the problem of orphan alphas and helping to promote the integrity of reported security-based swap information. The adopted approach centralizes the function of reporting alpha dispositions in self-regulatory organizations that operate under rules approved by the Commission. Centralizing this reporting function into registered clearing agencies, rather than relying on a potentially large number of platforms and reporting sides to report alpha clearing dispositions, should help minimize the potential for data discrepancies and delays.181 Not all counterparties that may have a reporting obligation would be registered entities. The Commission thus has greater confidence in the ability of clearing agencies registered with the Commission to accurately report alpha dispositions. The Commission believes that the approach adopted today is preferable to an approach that would require platforms and reporting sides to report alpha clearing dispositions, rather than having one rule for reporting the disposition of alphas that are executed on-platform and a different rule for reporting the disposition of alphas that are executed off-platform. The potential candidates for reporting the disposition of on-platform alphas include the platform, one of the sides of the alpha, and the clearing agency. As noted above, a platform is not well-positioned to perform this function. Furthermore, because neither side has the duty to report an on-platform alpha (because the platform has the duty), difficulty could arise from attempting to assign to one of the sides the duty to report the alpha disposition, particularly if the sides traded anonymously on the platform. Given the alternatives and for the reasons noted above, the Commission believes that the clearing agency is in the best position to report whether or not it has accepted a transaction for clearing, with respect to both on- and off-platform alphas. In this regard, the Commission notes that, once a clearing agency has established a mechanism for reporting to an SDR whether or not it has accepted on-platform alphas for

176 See infra Section VII (discussing application of Regulation SBSR to security-based swaps arising from prime brokerage arrangements).

179 LCH.Clearnet Letter at 3.

180 Existing Rule 901(e)(2) requires a life cycle event to be reported to the same entity to which the original security-based swap transaction was reported. A termination of an alpha resulting from action by a registered clearing agency is a life cycle event of the alpha, and thus must be reported to the alpha SDR. Requiring the clearing disposition report to go to the alpha SDR will allow the alpha SDR to match the relevant reports and understand the disposition of the alpha. Allowing the registered clearing agency to report the disposition of the alpha to a registered SDR of its choice, rather than to the alpha SDR, could make it difficult, if not impossible, to match the alpha transaction report with the report of the alpha’s clearing disposition. The Commission seeks to minimize the problem of “orphan alphas,” where it cannot readily be ascertained whether a transaction involving a product that is customarily submitted to clearing has in fact been submitted to clearing and, if so, whether it was accepted for clearing. If alpha transactions are not reported as terminated or they are reported as terminated but the alpha SDR cannot match the reports of termination with the original transaction report—i.e., the alpha is “orphaned”—it would be more difficult for the Commission to carry out various oversight functions, such as calculating the total amount of open exposures resulting from security-based swap activity and understanding trends in clearing activity, including adherence to any clearing mandate.

181 The Commission estimates that four registered clearing agencies will clear security-based swaps and thus incur duties under Regulation SBSR. See infra Section XI(B)(2)(b)(i).

182 See Markit Letter at 5.
clearing, there would be only minimal incremental burdens to send additional messages to that SDR to report whether or not the clearing agency has accepted off-platform alphas for clearing.

As noted above, one commenter questioned why the Commission’s approach to the reporting of whether or not an alpha is accepted for clearing differs from its approach to the reporting of life cycle events stemming from the acceptance or rejection by a prime broker of the initial leg of a prime brokerage transaction.\(^\text{186}\) The commenter correctly understands that, in the prime brokerage context, the reporting side of the first transaction of a prime brokerage workflow (whether in a two- or three-legged scenario) must report the termination of that transaction.\(^\text{185}\) In contrast, for a transaction submitted to clearing, the registered clearing agency, rather than the reporting side for the initial alpha transaction, must report whether or not it has accepted the alpha for clearing. The commenter disagrees with this approach to the reporting of transactions submitted to clearing, asserting that the reporting side or platform, as applicable, should report whether the alpha has been accepted for clearing.\(^\text{186}\)

Although prime brokerage and clearing arrangements are similar in some ways, there also are differences that, the Commission believes, warrant different approaches to the reporting of a termination of the first leg of the overall transaction. A prime broker, like a registered clearing agency, has the most direct access to information about whether a transaction has been accepted. However, because a prime broker might not be subject to Rule 908(b) and thus might not be eligible to incur any duties under Regulation SBSR, there could be uncertainty as to who would be required to report the disposition of the first transaction. By contrast, a clearing transaction by definition includes a registered entity: The registered clearing agency. Therefore, there is no uncertainty as to whether the registered clearing agency could have the duty to report the disposition of the alpha.

Finally, two commenters expressed concern about the costs associated with requiring registered clearing agencies to report whether or not they accept alphas for clearing.\(^\text{187}\) One commenter stated, for example, that “[c]onnecting to all registered SDRs is necessary to ensure that the registered clearing agency is prepared to report to any SDR to which an alpha trade could be reported . . . [T]here is a significant cost to establishing and maintaining connectivity to registered SDRs to facilitate the reporting required by Rule 901.”\(^\text{187}\) The second commenter argued that “CAs [i.e., clearing agencies] should execute an agreement with [the alpha SDR] outlining the requirements to report termination messages; however, CAs should not incur SDR fees to report alpha termination messages.”\(^\text{189}\) This commenter cautioned, furthermore, that “[r]equiring CAs to become a full ‘participant’ of alpha SDRs is unnecessary and overly burdensome for CAs.”\(^\text{190}\)

With respect to whether a registered SDR may impose a fee on a registered clearing agency for reporting to the SDR whether or not an alpha transaction has been accepted for clearing, neither the statute nor the applicable rules prohibit such a fee. The Commission notes, however, that existing Rule 13n–4(c)(1)(i) under the Exchange Act\(^\text{191}\) requires an SDR to ensure that any dues, fees, or other charges imposed by the SDR are fair and reasonable and not unreasonably discriminatory.

With respect to the wider costs associated with clearing agencies’ reporting of alpha clearing dispositions to registered SDRs, the Commission notes that Rule 901(e)(1)(ii), by its terms, requires registered clearing agencies to report only a limited amount of information (i.e., whether or not they have accepted a security-based swap for clearing, along with the transaction ID of the relevant alpha) and therefore does not require the clearing agency to have connectivity sufficient to report all of the primary and secondary trade information of a security-based swap.\(^\text{192}\) The Commission believes that registered SDRs should consider providing a minimally burdensome means for registered clearing agencies to report termination messages”: LCH.Clearnet Letter at 8–10.\(^\text{188}\) LCH.Clearnet Letter at 3.\(^\text{189}\) ICE Letter at 6.\(^\text{190}\) Id.\(^\text{191}\) 17 CFR 240.13n–4(c)(1)(i).\(^\text{192}\) As described in more detail in Section XIII(A), infra, the Commission has considered the costs of requiring registered clearing agencies to have the capability to report clearing dispositions to multiple alpha SDRs and the benefits associated with ensuring that the clearing disposition report is made by the person with immediate and direct access to the relevant information.

Accordingly, for similar reasons that the Commission is assigning to registered clearing agencies the duty to report all clearing transactions, the Commission also believes that it is appropriate to assign to the registered clearing agency—rather than to the person who had the initial duty to report the alpha (i.e., a reporting side or a platform)—the duty to report to the alpha SDR whether or not the clearing agency has accepted the alpha for clearing.

H. A Registered Clearing Agency Must Know the Transaction ID of the Alpha and the Identity of the Alpha SDR

Existing Rule 901(e)(2) requires the person who 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. Under new Rule 901(e)(1)(ii), a registered clearing agency that accepts or rejects an alpha transaction from clearing incurs this duty. 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 of the alpha. Therefore, the Commission proposed a new paragraph (a)(3) of Rule 901(a), which would require the person who has the duty to report the alpha security-based swap to provide the registered clearing agency with the transaction ID of the alpha and the identity of the alpha SDR.

One commenter “acknowledged the value” of the proposed rule and noted that in other jurisdictions the data flows to clearing agencies are already including identification information for alpha transactions, so these data flows should be extensible to the security-based swap market.\(^\text{193}\) By contrast, a second commenter expressed the view that the proposed rule “would add a layer of complexity to the reporting framework” and noted that the reporting person for the alpha might provide an inaccurate transaction ID to the registered clearing

\(^{184}\) See LCH.Clearnet Letter at 7.
\(^{185}\) See infra Section VII(B) for a discussion of how Regulation SBSR applies to prime brokerage transactions, including both a two-legged and three-legged model.
\(^{186}\) See LCH.Clearnet Letter at 3, 7.
\(^{187}\) See ICE Letter at 6 (stating that a clearing agency “should not incur SDR fees to report alpha for clearing.”)
\(^{188}\) For example, a registered SDR should consider how it will comply with Rule 13n–4(c)(1)(i) under the Exchange Act, 17 CFR 240.13n–4(c)(1)(i), which requires that the SDR permit market participants to access specific services offered by the SDR separately, and Rule 13n–4(c)(1)(i) under the Exchange Act, 17 CFR 240.13n–4(c)(1)(ii), which requires the SDR to have objective criteria that would permit fair, open, and not unreasonably discriminatory access to services offered by data maintained by the SDR, when offering access to a registered clearing agency that seeks only to report whether or not it has accepted individual transactions for clearing.
\(^{189}\) See ISDA/SIFMA Letter at 25.
agency to which the trade is submitted.\footnote{DTCC Letter at 4–5.} After carefully considering the comments received, the Commission is adopting Rule 901(a)(3) as proposed. Although Rule 901(a)(3) adds an additional step to the reporting framework, the Commission believes that this additional step is necessary to facilitate the linking of related transactions. Under new Rule 901(e)(1)(ii), a registered clearing agency must report to the entity to which the original security-based swap was reported whether or not it accepts the alpha for clearing. For the alpha SDR to link the registered clearing agency’s report of acceptance or rejection to the appropriate transaction, the registered clearing agency must be able to include the transaction ID of the alpha transaction in its report to the alpha SDR. The Commission further believes that the person having the duty to report the alpha is best situated to also report the transaction ID of the alpha and the identity of the alpha SDR to the registered clearing agency. While it is true, as the commenter asserts, that the person having the duty to report the alpha might provide an inaccurate transaction ID to the registered clearing agency, the same could be said about any reporting requirement imposed by Regulation SBSR. This situation should be addressed, at least in part, by Rule 13n–5(b)(1)(i) under the Exchange Act,\footnote{17 CFR 240.13n–5(b)(1)(i).} which 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.\footnote{A registered SDR should consider including in its policies and procedures under Rule 13n–5(b)(1)(i) what actions to take if it receives clearing disposition information from a registered clearing agency that includes transaction IDs of alpha transactions that do not match to the records of any alpha transactions held at the registered SDR. The SDR might seek to call this discrepancy to the attention of the registered clearing agency so that the registered clearing agency could work with persons who are required by Rule 901(a)(3) to provide the registered clearing agency with the transaction IDs of the alphas.} Furthermore, the person with the duty to report the alpha is certain to learn the identity of the alpha SDR that holds the transaction ID of the alpha and the alpha’s transaction ID. There is no prohibition on utilizing existing infrastructure. Thus, market participants may determine the most efficient way of communicating this information. The Commission notes, however, that Rule 901(a)(3) applies on a transaction-by-transaction basis. Thus, while it might be possible for a registered clearing agency to obtain and store static data regarding a reporting person’s SDR preferences, Rule 901(a)(3) requires the person having the duty to report a particular alpha transaction to ensure that the registered clearing agency learns the identity of the SDR that holds the record of the particular alpha. If the person with the duty to report attempts to satisfy this obligation with static data and the data become stale or inaccurate with respect to a particular alpha, the reporting person would not satisfy its obligation under Rule 901(a)(3).

I. Alpha Submitted to Clearing Before It Is Reported to a Registered SDR

In the Regulation SBSR Adopting Release, the Commission described the interim phase for regulatory reporting and public dissemination,\footnote{See ISDA/SIFMA Letter at 25; WMBAA Letter at 3.} under which security-based swap transactions may be reported 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).\footnote{WMBAA Letter at 3.} However, the reporting timeframe for a life cycle event and any adjustment due to a life cycle event is within 24 hours after the occurrence of the life cycle event or the adjustment due to the life cycle event. Thus, an alpha might be submitted for clearing immediately after execution but not reported until 24 hours later (or longer, if 24 hours after the time of execution would fall on a day that is not a business day), and the clearing agency’s obligation under new Rule 901(e)(1)(ii) to inform the alpha SDR whether or not it has accepted the alpha for clearing could arise before the alpha SDR has received the alpha’s initial transaction report.\footnote{Id.} To account for this possibility, the Commission proposed to amend existing Rule 901(e)(2) to require a life cycle event (which would include a notification by a registered clearing agency whether or not it has accepted an alpha for clearing) to be reported “to the entity to which the original security-based swap transaction will be reported or has been reported” (emphasis added). This amendment mirrors the language in new Rule 901(a)(3), which requires a person who reports an alpha to provide

\footnote{See Rule 901(j).\footnote{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) (i.e., the security-based swap is accepted for clearing by a clearing agency having its principal place of business in the United States), Rule 901(j) requires reporting within 24 hours of the time of acceptance for clearing (or, if 24 hours after the time of acceptance would fall on a day that is not a business day, by the same time on the next day that is a business day).} To submit the report contemplated by new Rule 901(e)(1)(ii), the registered clearing agency must know the transaction ID of the alpha. The person with the duty to report the alpha might know the alpha’s transaction ID before it reports the transaction to a registered SDR. Under existing Rules 901(a) and 907(a)(5) there is no requirement that a registered SDR itself assign a transaction ID. Under those rules, a registered SDR may allow third parties to assign the 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 alpha’s 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 accepted by the registered SDR. If, however, the person with the duty to report the alpha does not obtain the alpha’s transaction ID until it reports the alpha to a registered SDR, the person could not provide the transaction ID 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 receives the alpha’s transaction ID.}
the registered clearing agency the alpha’s transaction ID and the identity of the registered SDR to which the alpha “will be reported or has been reported.”

The Commission received two comments on this proposed amendment, discussed below.206 For the reasons discussed below, the Commission is adopting the amendment to Rule 901(e)(2) as proposed.

One commenter stated that, “[i]n the situation where a termination message to an alpha swap is not found, the SDR should queue this message and attempt to reapply the termination message to newly submitted SBSs. This process should continue until the end of the current business day at which time an error message should be reported back to the clearing agency since the termination message could not be applied to a corresponding alpha.” 207

The Commission notes that it is not requiring a registered SDR to use a particular workflow to account for circumstances where the report of a life cycle event precedes the initial transaction report. Under Rule 901(e)(2), each registered SDR may use the workflow that it finds most effective, provided that it satisfies the requirements of the rule. A registered SDR generally should consider whether the policies and procedures it establishes under Rule 907(a) will 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 receives a transaction report of the alpha. The policies and procedures could provide, for example, that the registered SDR would hold in a pending state a report from a registered clearing agency that it accepted the alpha for clearing until the SDR receives the alpha transaction report, and then disseminate the security-based swap transaction information and the fact that the alpha has been terminated as a single report.

The second commenter argued that Regulation SBSR should “prohibit [the alpha SDR] from publicly disseminating the rejection or acceptance report from the clearing agency ahead of the point at which the SDR receives and has publicly disseminated the report for the alpha.” 208 While the Commission shares the commenter’s concern that a “stand alone” termination not be publicly disseminated without the associated transaction report, the Commission does not believe that a new rule is necessary to avoid this result. Under existing rules, a registered SDR that receives a termination report of a security-based swap before it receives the initial transaction report cannot disseminate anything relating to the transaction. Existing Rule 902(a) requires this result because it provides, in relevant part, that the public report “shall consist of all the information reported pursuant to [Rule 901(c)].” Because the registered SDR has not yet received the transaction report of the alpha, it would lack “all of the information reported” pursuant to Rule 901(c) and thus could not make the report required by Rule 902(a). If the registered SDR holds in queue the notice of the disposition of the alpha, it would be required—when it subsequently receives the initial alpha transaction report—to immediately disseminate the Rule 901(c) information pertaining to the alpha as well as the fact that the alpha has been terminated if the alpha has been accepted for clearing.209

J. Consequences of Rejection

Two commenters raised issues relating to the reporting of an alpha that is rejected from clearing.210 One of these commenters stated that “[c]areful consideration needs to be made by SDRs as to how a report by the clearing agency that a trade has not been accepted for clearing would be reflected in the record for the SBS.” 211 The other commenter noted that “[i]t is unclear what lifecycle event the registered clearing agency should report for rejected trades.” 212 This commenter stated that an alpha that is rejected from clearing might remain a bilateral trade, might be submitted to a different registered clearing agency, might be re-submitted to the same registered clearing agency, or might be torn up.213

In some cases, depending on the contractual arrangement between the alpha counterparties, a registered clearing agency’s rejection of an alpha will result in the immediate termination of the transaction.214 In other cases, as the commenter indicates, an alpha that is rejected from clearing could remain a bilateral trade with different terms. The latter case implies that the counterparties had effected a bilateral, off-platform transaction and that their contractual arrangement specifically contemplated that the counterparties could elect to preserve the original security-based swap as a bilateral transaction if the clearing agency rejects it from clearing.215 If the alpha counterparties do not have such an arrangement, then rejection from clearing terminates the alpha.216 But if the counterparties have such an arrangement and elect to preserve a transaction that has been rejected from clearing, the reporting side of the original transaction would be required by Rule 901(e) to report the amended terms of the security-based swap to the registered SDR as a life cycle event of the original transaction.217 A registered SDR must establish and maintain written policies and procedures for specifying procedures for reporting life cycle events, including those relating to a clearing agency’s rejection of an alpha. A registered SDR could, for example, provide in its policies and procedures that it would, in the absence of any information provided by the reporting side to the contrary or in the case of a platform-executed alpha, treat the clearing agency’s rejection of the alpha as a termination of the alpha.

As noted in Section III(I), supra, during the interim phase for regulatory reporting and public dissemination,218 an alpha might be submitted for clearing immediately after execution but not reported until more than 24 hours later, and the clearing agency’s duty under new Rule 901(e)(1)(ii) to inform the alpha SDR whether or not the clearing agency has accepted the alpha for clearing could arise before the alpha SDR receives the initial transaction report of the alpha.219

206 Comments pertaining to the reporting of an alpha that is rejected from clearing are discussed in the section immediately following.

207 ICE Letter at 6.

208 ISDA/SIFMA Letter at 24.

209 To address the case where an alpha is rejected from clearing, the Commission is adopting new Rule 902(c)(6), discussed in the subsection immediately below.

210 See ISDA/SIFMA Letter at 24; LCH.Clearnet Letter at 6.

211 ISDA/SIFMA Letter at 24.

212 LCH.Clearnet Letter at 6.

213 See id.

214 Under Rule 901(e)(1)(ii), as adopted herein, a registered clearing agency is required to report whether or not it has accepted a security-based swap for clearing.

215 In the case of a platform-executed alpha, the security-based swap arises by operation of the platform’s rules, and there likely would not be a separate agreement between the counterparties that would allow for amendment in case of rejection, particularly for anonymous trades.

216 The counterparties could choose to negotiate a new security-based swap, but this would be a different transaction than the alpha that had been rejected from clearing.

217 A life cycle event is defined, in part, as “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 Rule 901(c).” Because the resulting bilateral transaction would no longer be intended to be submitted to clearing, the reporting side would be required, among other things, to modify the information previously reported pursuant to Rule 901(c)(6) (whether or not the counterparties intend that the security-based swap be submitted to clearing).

218 See Regulation SBSR Adopting Release, 80 FR at 14616–25.
report for the alpha. Therefore, during the interim phase, a registered SDR might receive notice of a clearing agency’s rejection of an alpha before receiving the initial transaction report for that alpha.

In this limited case, the Commission believes that no transaction report should be disseminated, and it is adopting a minor revision to existing Rule 902(c) to accomplish that end. Rule 902(c) lists the types of reported information and the types of security-based swap transactions that a registered SDR shall not publicly disseminate. The Commission is adding a new paragraph (c)(8) to Rule 902(c) to prohibit a registered SDR from disseminating “[a]ny information regarding a security-based swap that has been rejected from clearing or rejected by a prime broker.219 If the original transaction report has not yet been publicly disseminated.”220 New Rule 902(c)(8) is designed to avoid public dissemination of an alpha transaction that has been rejected by the clearing agency, if the original transaction report has not already been publicly disseminated by a registered SDR. Rule 902(c)(8) should help minimize public dissemination of events that do not reflect any ongoing market activity.221 New Rule 902(c)(8) applies only in cases of rejection prior to public dissemination of the original transaction report of the alpha. When the action of a registered clearing agency results in a termination of an alpha—whether because it was accepted by the clearing agency and replaced by the beta and gamma, or because it was rejected by the clearing agency—the termination of the alpha is a life cycle event of the alpha. If the registered SDR already has publicly disseminated the primary trade information of the alpha, the termination life cycle event also must be publicly disseminated. Rule 907(a)(3) requires a registered SDR to have policies and procedures for flagging the

222 See Regulation SBSR Adopting Release, 80 FR at 14643 (“public reports of life cycle events should allow observers to identify the security-based swap subject to the lifecycle event”). However, the registered SDR may not use the transaction ID for this function and must use other means to link the transactions. See id.

223 For example, assume that two counterparties bilaterally execute a transaction that they wish to clear. The reporting side for the alpha reports the transaction to a registered SDR, which immediately publicly disseminates it. The counterparties then submit the transaction to clearing, but the alpha is rejected because there are clerical errors in the clearing submission report. The registered clearing agency reports the rejection to the alpha SDR, and the alpha SDR disseminates a termination. Shortly thereafter, the alpha counterparties re-execute the transaction, and the reporting side submits a second transaction report to the registered SDR, which immediately publicly disseminates it. The counterparties submit the new transaction to the clearing agency; this time the alpha successfully clears. The registered clearing agency reports this fact to the alpha SDR, which publicly disseminates the termination. If the condition flag indicates only that the alpha is terminated, market observers would likely draw the conclusion that twice as much market activity had occurred than was the case. However, if the condition flag distinguishes termination for successful clearing from termination for rejection from clearing, market observers would understand that only the second transaction resulted in ongoing risk positions in the market.

K. Scope of Clearing Transactions

One commenter expressed the view that the proposed rule does not address the reporting of trades that are part of a registered clearing agency’s end-of-day pricing process.224 The commenter recommended that these trades be reported by a clearing agency because the clearing agency is “the sole party who holds the necessary information to report trades resulting from downstream clearing processes.”225 In the Regulation SBSR Adopting Release, the Commission noted that the definition of “clearing transaction”—i.e., any security-based swap that has a clearing agency as a direct counterparty—includes “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.”226 In this release, the Commission is adopting new Rule 901(a)(2)(ii), as proposed, that makes a registered clearing agency the reporting side for any security-based swap to which it is a counterparty. Thus, a security-based swap that arises from a clearing agency’s process for establishing a price for a cleared product must be reported by the registered clearing agency if it is a counterparty to the transaction. Otherwise, the transaction must be reported by the person determined by the reporting hierarchy in existing Rule 901(a)(2)(ii).

L. Reporting of Historical Clearing Transactions

One commenter requested that the Commission clarify that a registered clearing agency “is solely responsible for reporting historical SBS that are clearing transactions.”227 The Commission concurs with this statement. Existing Rule 901(i) provides that, with respect to any historical security-based swap, the reporting side shall report all of the information required by Rules 901(c) and 901(d) to the extent that information about the transaction is available. Under new Rule 901(a)(2)(ii), the reporting side for a clearing transaction is the registered clearing agency that is a counterparty to the transaction. The Commission

224 See ICE Letter at 9.

225 See Rules 900(g).

226 See Rule 900(g).

227 80 FR at 14599.

228 ISDA/SIFMA Letter at 26.
understands that all clearing agencies that are counterparties to historical security-based swaps are “deemed registered” clearing agencies.\textsuperscript{229} Therefore, a registered clearing agency is the reporting side for every historical clearing transaction to which it is a counterparty and must report information about such transactions, to the extent that information is available.

This commenter also stated that “a clearing agency should not be expected to report the transaction ID of the alpha for an historical clearing transaction since such value may not be readily available.”\textsuperscript{230} The Commission notes that a registered clearing agency would not be the counterparty to an alpha transaction and thus would incur no duty to report any primary or secondary trade information about the alpha.\textsuperscript{231}

IV. Reporting by Platforms

A. Overview

In the Regulation SBSR Proposed Amendments Release, the Commission proposed a new paragraph (1) of Rule 901(a) providing that, if a security-based swap is executed on a platform and will be submitted to clearing (a “platform-executed alpha”), the platform would incur the duty to report. In proposing Rule 901(a)(1), the Commission carefully assessed the transaction information that the platform might not have or might not be able to obtain easily, and proposed to require the platform to report only the information set forth in Rules 901(c) (the primary trade information), 901(d)(1) (the participant ID or execution agent ID for each counterparty, as applicable), 901(d)(9) (the platform ID), and 901(d)(10) (the transaction ID of any related transaction).\textsuperscript{232} For platform-executed security-based swaps that will not be submitted to clearing, existing Rule 901(a)(2) provides that one of the sides, as determined by that rule’s “reporting hierarchy,” will have the duty to report.

Five commenters generally supported proposed Rule 901(a)(1).\textsuperscript{233} However, two commenters, while not objecting to platforms having reporting duties, argued that the Commission should expand Rule 901(a)(1) to require a platform to report every transaction executed on the platform.\textsuperscript{234} In the view of one of these commenters, this approach would eliminate the confusion that could arise if a platform makes an erroneous determination about whether the transaction will be submitted to clearing.\textsuperscript{235} The second commenter cautioned that requiring a platform to report only platform-executed transactions that will be submitted to clearing would “depart from current market practice . . . and create different reporting process flows for SEF-executed and cleared trades versus SEF-executed and uncleared trades.”\textsuperscript{236} Another commenter, however, recommended that the Commission not expand the scope of Rule 901(a)\textsuperscript{2} to require platforms to report all platform-executed security-based swaps.\textsuperscript{237}

After carefully considering all the comments, the Commission has determined to adopt Rule 901(a)(1) largely as proposed, but with minor revisions. The revisions, discussed further below, reduce the scope of information that platforms are required to report by eliminating the need for platforms to identify the participation of indirect counterparties. New Rule 901(a)(1) is intended to promote the accuracy and completeness of security-based swap transaction data, while aligning the reporting duty with persons that are best able to carry it out. As the person with the duty to report the transaction, the platform would be able to select the registered SDR to which it reports.\textsuperscript{238}

B. A Platform Is Not Required To Report All Transactions Occurring on Its Facilities

If a platform-executed security-based swap will not be submitted to clearing, the platform would have no reporting duty under Regulation SBSR, and the reporting hierarchy in existing Rule 901(a)(2)(ii) would determine which side is the reporting side for the transaction.

One commenter argued that “a platform should report all trades executed on a SB SEF regardless of whether an SB swap will be submitted to clearing.”\textsuperscript{239} The Commission disagrees. The Commission did not propose and is not adopting an extension to Rule 901(a)(1) that would require a platform to report all security-based swaps that are executed on its facilities. Moreover, the approach being adopted by the Commission avoids the need to develop an overly complicated rule that would be needed to identify, with respect to a platform-executed transaction that will not be submitted to clearing, what information would be reported by the platform and what information would be reported by one of the sides.\textsuperscript{240} The commenter acknowledges that requiring a platform to report uncleared security-based swaps executed on its facilities would necessitate additional reporting by at

\textsuperscript{229} The Commission understands that ICE Clear Credit and Clear Europe are the only registered clearing agencies that are counterparties to historical security-based swaps that fall within the definition of “clearing transaction” and thus would incur the duty to report those historical transactions. Both ICE Clear Credit LLC and ICE Clear Europe Limited were “deemed registered” in accordance with Title VII of the Dodd-Frank Act. See 15 U.S.C. 78q–1(j) (the “Deemed Registered Provision”). This provision allows certain depository institutions that cleared swaps as multilateral clearing organizations and certain derivatives clearing organizations (“DCOs”) to cleared swaps pursuant to an exemption from registration as a clearing agency. As a result, ICE Clear Credit LLC, ICE Clear Europe Limited, and the Chicago Mercantile Exchange, Inc. ("CME") were deemed registered with the Commission on July 16, 2011, solely for the purpose of clearing security-based swaps.

\textsuperscript{230} ISDA/SIFMA Letter at 26.

\textsuperscript{231} This commenter also noted that “in some cases a reporting side may be unable to report an historic alpha as before there was no regulatory need to distinguish the alpha from the beta or gamma and some firms may only have booked a position against the clearing agency. In that instance, our understanding is that the historical alpha would not be reportable.” Id. If it is true that transaction information about a historical alpha no longer exists, there would be no duty to report the alpha pursuant to Rule 901(1). As the Commission stated in the Regulation SBSR Adopting Release, Rule 901(1) requires the reporting of historical security-based swaps only to the extent that information about such transactions is available. See 80 FR at 14591.

\textsuperscript{232} See Rule 901(c), FRA, 17 CFR 38.3.

\textsuperscript{233} See Regulation SBSR Proposed Amendments Release, 80 FR at 14749–50.

\textsuperscript{234} See Better Markets Letter at 2, 4 (noting that the “proposition ensures that the reporting party is specified and has all requisite information”); DTCC Letter at 6, 15 (stating that “a platform is best placed to report the alpha trade because it has performed the execution and has all the relevant economic terms, IDs, and timestamps, to report to the [registered SDR]”); ICE Letter at 4; ISDA/SIFMA Letter at 5, 27; LCH.Clearnet Letter at 3.

\textsuperscript{235} See DTCC Letter at 6; WMBAA Letter at 2.

\textsuperscript{236} See WMBAA Letter at 2–3. Specifically, the commenter noted that the proposed rule could cause an SDR to receive duplicate reports, “if the platform believes the transaction will be cleared and the counterparties do not clear the trade,” or no post-trade report, “if the platform believes the transaction will not be cleared and counterparties clear the trade.” Id. at 3.

\textsuperscript{237} See DTCC Letter at 6, n. 14.

\textsuperscript{238} See ISDA/SIFMA Letter at 27 (agreeing with the Commission’s approach of not requiring shared reporting of the same transaction and noting that “[u]nder the CFTC Rules, we have experienced the difficulty of a shared obligation for reporting a swap.”).

\textsuperscript{239} This is consistent with the Commission’s guidance in the Regulation SBSR Adopting Release that, for transactions subject to the reporting hierarchy, the reporting side may choose the registered SDR to which it makes the report required by Rule 901. See 80 FR at 14507–98.

\textsuperscript{240} WMBAA Letter at 2.
least one of the sides.241 As discussed in the subsection immediately below, the Commission believes that the transaction information germane to a platform-executed alpha can and should be reported by the platform.242 However, a transaction that will not be submitted to clearing is more likely to include bespoke or more counterparty-specific data elements that would be more difficult for the platform to obtain from the counterparties and to report because such non-standardized transactions would not lend themselves to routing.243 Rather than adopting an approach that would seek to identify each potential data element and to assign the duty to report it (as between the platform and one of the sides), the Commission instead is adopting an approach that requires the platform to report only those transactions executed on its system that will be submitted to clearing. In cases where a platform-executed transaction will not be submitted to clearing, existing Rule 901(a)(2)(ii) provides that one of the sides will have the duty to report, and this duty is not divided between the platform and the side. The commenter expressed concern that this approach could lead to confusion over reporting obligations when “it is uncertain whether the transaction will be cleared upon execution.”244 A platform can determine whether a particular security-based swap will be submitted to clearing implicitly through the product ID (e.g., if the security-based swap has a product ID of a “made available to trade” product or if the product ID otherwise specifies that the product will be submitted to clearing) or explicitly because the counterparties inform the platform of their intent.245 Counterparties could signal to a platform that they intend to clear a particular security-based swap using communications infrastructure provided by the platform to submit transaction information to a registered clearing agency or by otherwise specifically informing the platform before or at the time of execution of their intent to submit the trade to clearing. Absent an implicit or explicit indication before or at the time of execution that a particular security-based swap will be submitted to clearing, the platform can reasonably conclude that the transaction will not be submitted to clearing and thus that the platform has no reporting obligation. Thus, if the direct counterparties do not inform the platform before or at the point of execution that they intend to submit the transaction to clearing, the platform incurs no duty to report. In that case, the reporting hierarchy in existing Rule 901(a)(2)(ii) would apply to the security-based swap and the reporting side identified under Rule 901(a)(2)(ii) would be obligated to report the transaction.246

Furthermore, the Commission believes that another alternate approach—of requiring all platform-executed transactions, even those that will be submitted to clearing, to be reported by one of the sides and not imposing any reporting duties on platforms—is impractical. As the Commission has noted, platform-executed alphas can be executed anonymously.247 Although some platform-executed transactions that will be submitted to clearing might not be executed anonymously, the Commission believes that it is 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 believes that assigning the duty to report to the platform minimizes the number of reporting steps and thus minimizes the possibility of errors or delays in reporting the transaction to a registered SDR. Thus, the Commission believes that all platform-executed transactions that will be submitted to clearing should be reported by the platform. The Commission believes that this approach will 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. C. Data Elements That a Platform Must Report

The Commission continues to believe that platforms should not be required to report information that they do not have or that it would be impractical for them to obtain. In the Regulation SBSR Proposed Amendments Release, the Commission carefully reviewed each data element contemplated by Rules 901(c) and 901(d) and proposed to require platforms to report only those data elements that it believed that would be readily obtainable and germane to the transaction.248 One commenter stated that “[p]latforms could reasonably be expected to gather and report the primary trade information contained under Rule 901(c),” but cautioned that “requiring platforms to report a subset of the secondary trade information contained under Rule 901(d) will be problematic,” specifically noting that the platform could not reasonably be expected to know the guarantors of the direct counterparties.249 A second commenter also pointed to difficulties with a platform identifying indirect counterparties.250 In view of these comments, the Commission is adopting, largely as proposed, the list of data elements that the platform must report, but with minor revisions that remove any need for platforms to learn about indirect counterparties.251

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241 See WMBAA Letter at 3 (“For uncleaned SB swaps . . . the platform should provide all readily available information, and the reporting side should be responsible for reporting the information not provided to the SB SEF”) (emphasis added).

242 Thus, the sides would have no duty to report anything except missing UCIs, as required by existing Rule 906(a). In Rule 906(a), the Commission established a mechanism for obtaining missing UCIs from non-reporting sides because it anticipated counterparties would be able to inform others of the missing UCIs or are otherwise specifically requiring platforms to learn about counterparty

243 See 80 FR at 14749–50. One commenter generally agreed that platforms would have the information that the Commission proposed to require them to report. See Barnard I at 2.

244 ICE Letter at 4.

250 See ISDA/SIFMA Letter at 27.

251 The Commission also is making a minor revision to replace the phrase “the information required by” in proposed Rule 901(a)(1) with “the information set forth in” in final Rule 901(a)(1). This revision is designed to clarify that a platform that incurs a reporting duty under Rule 901(a)(1) must discharge that duty by reporting certain elements that are set forth in Rules 901(c) and 901(d).
The Commission continues to believe that platforms will have or can readily obtain the primary trade information contemplated by Rules 901(c)(1)–(4). For example, the platform will have information that identifies the products that it offers for trading.\(^{252}\) When a transaction is effected on the platform’s facilities, the platform should have the ability to capture the price, the notional amount, and the date and time of execution.\(^{253}\) As discussed in the subsection immediately above, platforms should be able to ascertain either implicitly (via the product traded) or explicitly (from the counterparties) whether the direct counterparties intend that the security-based swap will be submitted to clearing, as required by Rule 901(c)(6). If the direct counterparties do not inform the platform before or at the point of execution that they intend to submit the transaction to clearing, the platform incurs no duty under Rule 901(c)(6).\(^{254}\)

The platform will know the direct counterparty on each side of the transaction—or if one side will be allocated among a group of funds or accounts, the execution agent of that side. Therefore, final Rule 901(a)(1) requires the platform to report the counterparty ID or the execution agent ID, as applicable, of each direct counterparty.

The platform also can readily provide its own platform ID, as required by Rule 901(d)(9). Rule 901(d)(10) applies only if the security-based swap being reported arises from the allocation, termination, novation, or assignment of one or more existing security-based swaps. To the extent that a platform facilitates allocations, terminations, novations, or assignments of existing security-based swaps, the platform would be in a position to require its participants that engage in such exercises to provide the platform with the transaction IDs of the relevant existing security-based swaps, which the platform would report—along with the transaction information about any newly created transaction(s)—pursuant to Rule 901(d)(10).

As noted above, two commenters noted that it would be impractical for platforms to learn the identity of indirect counterparties to transactions effectuated on their facilities.\(^{255}\) The Commission agrees that it would be burdensome to require a platform to learn from the direct counterparties, on a trade-by-trade basis, whether either direct counterparty has a guarantor. Furthermore, the Commission now believes that there would be little benefit to imposing such a requirement. A platform-executed security-based swap, if it will be cleared, will be submitted to clearing shortly after execution and thus will have only a short lifespan. Shortly, or perhaps even immediately, after being submitted to clearing, it will likely either be terminated because it is accepted for clearing or terminated because it is rejected from clearing. In either case, the potential exposure of a guarantor of the alpha transaction—if there is a guarantor—is likely to be fleeting. In view of the potential burdens that a requirement to report indirect counterparties could place on platforms against only marginal benefits, the Commission has determined not to adopt any requirement for platforms to report indirect counterparties.\(^{256}\)

Existing Rule 901(c)(5) requires reporting of whether both sides of a security-based swap include a registered security-based swap dealer. One of the commenters who argued for the removal of the requirement for platforms to report indirect counterparties also noted that it would be difficult for platforms to comply with Rule 901(c)(5) if a registered security-based swap dealer was an indirect counterparty.\(^{257}\) The Commission agrees. Therefore, for the same reasons that it has decided not to adopt a requirement for platforms to report whether either direct counterparty has a guarantor, the Commission has revised final Rule 901(a)(1) to require a platform to indicate only when both direct counterparties of a security-based swap are registered security-based swap dealers—not, as originally proposed, if a registered security-based swap dealer is present on both sides (e.g., as a guarantor). A platform will be able to learn from publicly available sources when its participants who effect transactions as direct counterparties are registered as security-based swap dealers.\(^{258}\)

\section*{D. Platform Duty To Report Secondary Trade Information}

Final Rule 901(a)(1) makes clear that the only secondary trade information that a platform must report is the counterparty ID of each direct counterparty (or execution agent, if applicable);\(^{259}\) the platform ID;\(^{260}\) and the transaction ID of the prior security-based swap if the platform-executed security-based swap results from the allocation, termination, novation, or assignment of the prior transaction.\(^{261}\) One commenter expressed concern about a platform having to report other secondary trade information, such as the title and date of any agreements incorporated by reference into the security-based swap contract.\(^{262}\) Rule 901(a)(1), both as proposed and as adopted, requires a platform to report only the secondary trade information specifically enumerated in the rule. The agreements contemplated by Rule 901(d)(4) are not so enumerated.\(^{263}\)

\section*{E. Platform Has No Duty To Report Life Cycle Events}

One commenter argued that platforms should have no duty to report life cycle event information because platforms have no involvement in a security-based swap after execution and would not have access to such information.\(^{264}\) The Commission agrees. Therefore, the Commission did not propose and is not adopting a requirement for platforms to report any life cycle events.

Existing Rule 901(a)(1)(i) provides that most life cycle events (and

\(^{252}\) See Rule 901(c)(1).

\(^{253}\) See Rule 901(c)(2)–(4).

\(^{254}\) The Commission believes that this approach responds to the commenter who noted that, in some instances, a platform might not know the identity of the counterparties and thus would have difficulty complying with Rule 901(c)(6). See WMBAA Letter at 3.

\(^{255}\) See ICE Letter at 4; ISDA/SIFMA Letter at 27 (stating that “[a] platform will not likely have advance access to complete information pertaining to whether there is an indirect counterparty on either side of the transaction,” and that building a mechanism to capture the existence of indirect counterparties “would factor into the implementation timeframe for platforms”).

\(^{256}\) This revision in final Rule 901(a)(1) does not affect the existing requirements for reporting a platform-executed transaction that will not be submitted to clearing. Such a transaction is governed by existing Rule 901(a)(2)(ii), which requires one of the sides to be the reporting side. The reporting side must report, among other things, all of the information required by Rule 901(d) including, as applicable, the identity of its own guarantor and any guarantor of the direct counterparty on the other side. Reporting of the guarantor(s) of a security-based swap will assist the Commission and other relevant authorities in monitoring the ongoing exposures of market participants.

\(^{257}\) See ISDA/SIFMA Letter at 27.

\(^{258}\) See ISDA/SIFMA Letter at 27 (correctly observing that the Commission did not propose to require platforms to report agreement information).

\(^{259}\) See SBS Entry Registration Adoption Release, 80 FR at 48972 (“The Commission intends to notify entities electronically through the EDGAR system when registration is granted, and will make information regarding registration status publicly available on EDGAR”).

\(^{260}\) See Rule 901(d)(1). As noted above, final Rule 901(a)(1) requires a platform to report the counterparty IDs only of the direct counterparties to the transaction, not of any indirect counterparties.

\(^{261}\) See Rule 901(d)(9).

\(^{262}\) See Rule 901(d)(10).

\(^{263}\) See WMBAA Letter at 4 (referencing requirement in Rule 901(d)(4)).

\(^{264}\) See ISDA/SIFMA Letter at 27 (correctly observing that the Commission did not propose to require platforms to report agreement information).
adjustments due to life cycle events] must be reported by the reporting side. A platform is not a counterparty to a security-based swap and thus cannot be a reporting side. Therefore, existing Rule 901(e)(1)(ii), by its terms, imposes no duty on platforms to report life cycle events. Furthermore, Rule 901(e)(1) includes one exception to the general rule that the reporting side must report life cycle events: New paragraph (e)(1)(iii), as adopted today, requires the registered clearing agency to which the platform-executed alpha is submitted to report to the alpha SDR whether or not it has accepted a security-based swap for clearing. The Commission believes that these are the only life cycle events germane to a platform-executed alpha—the transaction will either be terminated because it is accepted for clearing or terminated because it is rejected from clearing—and therefore is not imposing any requirement on the platform or either of the sides to report additional types of life cycle events for platform-executed alphas.

F. Implementation Issues

One commenter encouraged the Commission “to allow the use of existing reporting technology and reporting architecture to reduce the amount of additional technology investment required to comply” with any reporting obligations. This commenter further requested that the Commission “make clear in its final rules that platforms have discretion to determine the most appropriate technological manner in which they comply with the Commission’s rules.” The Commission has been sensitive to the current state of the security-based swap industry and, in particular, the technological baseline that is utilized by market participants and infrastructure providers to carry out business and regulatory functions. The Commission has sought to adopt final rules that minimize changes to systems and processes so far as they can be adapted to new reporting duties, while recognizing that new systems or processes, or fairly significant revisions to existing systems or processes, might be necessary in some cases.

The Commission acknowledges that Rule 901(a)(1) will require platforms to develop, test, implement, and maintain technology to ensure connectivity to at least one registered SDR. Rule 901(a)(1) does not specify the reporting technology or reporting architecture for platforms to use, and platforms may use their existing technology and architecture to reduce the amount of additional technology investment required to comply with the rule. Moreover, the Commission affirms that platforms may retain third-party service providers to facilitate compliance with their reporting obligations. The Commission notes that platforms are different from other persons having a duty to report that elect to use an agent to carry out that function; the person with the reporting duty would retain responsibility under Regulation SBSR for providing the required information in the required format.

Finally, this commenter also urged the Commission to “clearly outline the specific data fields, and permissible formats for reporting those data fields, required for post-trade reporting.” When it adopted Regulation SBSR, the Commission took the approach of generally requiring reporting of general categories of data (such as the “price”) while requiring registered SDRs to establish and maintain written policies and procedures that specify the manner in which persons having a duty to report must provide security-based swap transaction data to the SDR. In the Regulation SBSR Adopting Release, the Commission considered whether to prescribe formats for the data elements required by Regulation SBSR, and concluded that “it is neither necessary or 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.” In the Regulation SBSR Proposed Amendments Release, the Commission did not propose a new approach for specifying how the required data elements must be reported to a registered SDR, and declines to adopt a new approach here.

G. Reporting Duty Applies Even to Unregistered Platforms

New Rule 901(a)(1) imposes a reporting duty on any “platform” if a security-based swap that will be submitted to clearing is executed on the platform. One commenter requested the Commission to clarify “whether an alpha SBS entered into via an execution venue in advance of its registration or exemption as a national securities exchange or security-based swap execution facility is required to be reported to one of the sides.” The commenter stated that “[i]deal registration or exemption of platforms would precede the compliance date for reporting under [Regulation] SBSR. Otherwise, the industry will need to transition the reporting responsibility which may lead to gaps or duplications in reporting since the relevant static data and any system architectural changes will not occur simultaneously.”

In the Regulation SBSR Adopting Release, the Commission explained that there are certain entities that currently meet the definition of “security-based swap execution facility” but that are not yet registered with the Commission and will not have a mechanism for registering as SB SEFs 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 provisions of the Exchange Act. To ensure that transactions that occur on such exempt SB SEFs are captured by Regulation...


274 ISDA/SIFMA Letter at 28.

275 Id. 276 Id.

277 WMBAA Letter at 5.


In this order, the Commission granted entities that there are certain entities that currently meet the definition of “security-based swap execution facility” but that are not yet registered with the Commission and will not have a mechanism for registering as SB SEFs 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 provisions of the Exchange Act. To ensure that transactions that occur on such exempt SB SEFs are captured by Regulation...

265 See Regulation SBSR Adopting Release, 80 FR at 14602.

266 See WMBA Letter at 2.

267 See Rule 901(e)(3).

268 See Rules 907(a)(1) and 907(a)(2). The Commission did, however, require reporting of some specific data elements. See, e.g., Rule 901(c)(3)(i) requiring reporting of whether the direct counterparties intend that the security-based swap will be submitted to clearing; Rule 901(d)(9) requiring reporting of the platform ID, if applicable.

270 80 FR at 14595. The Commission noted, furthermore, that new security-based swap products are likely to develop over time and a rule establishing a fixed schedule of data elements could become obsolete as new data elements might become necessary to reflect material economic terms of new security-based swap products.

271 The Commission notes, however, that it has proposed an amendment to Rule 13n-4a(5) under the Exchange Act, 17 CFR 240.13n-4(a)(5) that would specify the form and manner with which SDRs will be required to make security-based swap data available to the Commission. See Securities
SBSR, existing Rule 900(v) defines “platform” as “a national securities exchange or security-based swap execution facility that is registered or exempt from registration” (emphasis added). Therefore, the Commission does not believe that it is necessary, as the commenter suggests, to transfer reporting duties from the platform to one of the sides, or to exempt alphas from reporting entirely, until the Commission adopts registration rules for SB SEFs. Doing so could significantly delay the benefits of regulatory reporting and public dissemination of platform-executed alpha transactions. Furthermore, the Commission understands that, although platforms for security-based swaps might not yet be registered with the Commission, they likely already possess significant post-trade processing capabilities because of their activities in the swaps market, which subjects them to reporting duties under CFTC rules. In any event, unregistered platforms will have an extended period in which to prepare for their reporting duties under Regulation SBSR, as new transactions in an asset class will not have to be reported until at least six months after the first SDR that can accept transactions in that asset class registers with the Commission.

V. Additional Matters Concerning Platforms and Registered Clearing Agencies

A. Extending “Participant” Status

Existing Rule 901(b) requires “a reporting side” to electronically transmit the information required by Rule 901 in a format required by the registered SDR. In the Regulation SBSR Proposed Amendments Release, the Commission proposed to replace the term “reporting side” in Rule 901(h) with the phrase “person having a duty to report.” Under Rule 901(a), as amended by this release, a platform or registered clearing agency might incur a reporting duty even if it is not one of the sides to the transaction. All persons who have a duty to report under Regulation SBSR—i.e., platforms, reporting sides, and registered clearing agencies that must report whether or not a security-based swap is accepted for clearing—must electronically transmit the information required by Rule 901 in a format required by the registered SDR.

Replacing “reporting side” with “person having the duty to report” in Rule 901(h) extends this requirement to all persons with reporting duties, even if they are not one of the sides. The Commission received no comments that specifically addressed the amendment to Rule 901(h) and is adopting this amendment as proposed.

Under existing Rule 900(u), platforms and registered clearing agencies would not be participants of registered SDRs solely as a result of having a duty to report security-based swap transaction information pursuant to Rule 901(a)(1) or 901(e)(1)(ii), respectively. In the Regulation SBSR Proposed Amendments Release, the Commission expressed the preliminary view that platforms and registered clearing agencies should be participants of any registered SDR to which they report security-based swap transaction information on a mandatory basis. Consistent with this view, the Commission proposed to amend the definition of “participant” in Rule 900(u) to include a platform that is required to report a security-based swap pursuant to Rule 901(a)(1) or a registered clearing agency that is required to report a life cycle event pursuant to Rule 901(e)(1)(ii). One commenter expressed general support for requiring platforms and clearing agencies to become participants of the registered SDRs to which they report. A second commenter agreed that a clearing agency or platform must be a participant of a registered SDR to which it reports to ensure that reports are submitted in a format required by the registered SDR. The second commenter, however, also expressed its understanding that “in this context, participant means a registered user of an SDR, submitting data in the format as requested by the SDR, rather than a ‘participant’ as defined in Final SBSR.”

A third commenter agreed that platforms should be required to report transaction data to a registered SDR “in a format required by that registered SDR”; however, the commenter “does not believe that it should be required to become a member of an SDR.” A fourth commenter stated that, although a clearing agency “should execute an agreement outlining the requirements to report termination messages” to the alpha SDR, the clearing agency should not become a full participant of the alpha SDR because it is not a counterparty to the alpha. This commenter also argued that the clearing agency “should not incur SDR fees to report alpha termination messages.”

After carefully considering the comments, the Commission is adopting the amendment to Rule 900(u) as proposed. Conferring “participant” status on these additional entities subjects them to the requirement in Rule 906(c), as amended herein, for enumerated participants to establish, 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. The Commission believes that these policies and procedures will increase the accuracy and reliability of information reported to registered SDRs. Without written policies and procedures for carrying out their reporting obligations, clearing agencies and the other entities enumerated in Rule 906(c), as amended, might depend too heavily on key individuals or ad hoc and unreliable processes. Written policies and procedures, however, can be shared throughout an organization and generally should be independent of any specific individuals. Requiring clearing agencies, as well as the other participants enumerated in Rule 906(c), to adopt and maintain written policies and procedures relevant to their reporting responsibilities should help to improve the degree and quality of overall compliance with the reporting requirements of Regulation SBSR. Periodic review of these policies and procedures, as required by Rule 906(c), should help to ensure that these policies

279 See 17 CFR 43.8(h) (reporting by SEF or designated contract market).
280 See infra Section X (discussing compliance dates).
281 The Commission proposed to expand Rule 908(b) to include all platforms and registered clearing agencies. This amendment to Rule 908(b) is discussed in Section IX, infra.
282 But see ISDA/SIFMA Letter at 29 (endorsing a similar amendment to Rule 905(a)(1) that expands that rule from “the reporting side” to “the person having the duty to report”)
283 Existing Rule 900(u) provides that a “[p]articipant, with respect to a registered security-based swap data repository, means a counterparty, that meets the criteria of [Rule 900(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)].”
284 The Commission proposed to amend the definition of “participant” in Rule 900(u) to include platforms that are required to report a security-based swap pursuant to Rule 901(a)(1) or a registered clearing agency that is required to report a life cycle event pursuant to Rule 901(e)(1)(ii). One commenter expressed general support for requiring platforms and clearing agencies to become participants of the registered SDRs to which they report. A second commenter agreed that a clearing agency or platform must be a participant of a registered SDR to which it reports to ensure that reports are submitted in a format required by the registered SDR. The second commenter, however, also expressed its understanding that “in this context, participant means a registered user of an SDR, submitting data in the format as requested by the SDR, rather than a ‘participant’ as defined in Final SBSR.”
285 Id. at 24.
287 ICE Letter at 6.
288 Id.
289 See infra Section VII(C).
and procedures remain well-functioning over time.

A registered clearing agency that clears security-based swaps or a platform that executes security-based swaps that will be submitted to clearing incurs reporting duties under Regulation SBSR, which requires the platform or registered clearing agency, among other things, to submit transaction information to one or more registered SDRs. As a result of the amendment to Rule 900(u) being adopted today, the platform or registered clearing agency automatically becomes a “participant”—under Regulation SBSR—of any SDR to which it submits transaction information on a mandatory basis. The Commission notes, however, that “participant” status under Rule 900(u) does not require a platform or registered clearing agency to sign a formal participant agreement with a registered SDR or to establish connectivity sufficient to report all of the primary and secondary trade information of a security-based swap.292 A registered SDR may impose certain obligations on persons who utilize the SDR’s services, regardless of whether such persons are deemed “participants” under Regulation SBSR. For example, an SDR may impose fees on such persons for submitting data.293

B. Examples of Reporting Workflows Involving Platforms and Registered Clearing Agencies

The following examples illustrate the reporting process for alpha, beta, and gamma security-based swaps, assuming an agency model of clearing under which a counterparty to an alpha security-based swap becomes a direct counterparty to a subsequent clearing transaction:294

• 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 existing Rule 901(a)(2)(ii) and must report this alpha transaction to a registered SDR (and may choose the registered SDR).
  ○ New Rule 901(a)(3) requires 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.
  ○ New Rule 901(e)(1)(ii) requires the registered clearing agency to report to the alpha SDR that it accepted the transaction for clearing.
  Æ Under new Rule 901(a)(2)(i), the registered clearing agency is the reporting side for each of the beta and the gamma. Therefore, the registered clearing agency must report the beta and gamma to a registered SDR (and the clearing agency may select the registered SDR). The report for each of the beta and the gamma must include the transaction ID of the alpha, as required by existing Rule 901(d)(10).
  • Example 2. Same facts as Example 1, except that the private fund and the registered security-based swap dealer transact on a SB SEF.
  ○ New Rule 901(a)(1) requires the SB SEF to report the alpha transaction (and allows the SB SEF to choose the registered SDR).
  ○ After the alpha has been submitted to clearing, new Rule 901(a)(3) requires 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.

C. Amendments to Rule 905(a)

Existing Rule 905(a) provides a mechanism for reporting corrections of previously submitted security-based swap transaction information.295 Rule 905(a)(1) requires a non-reporting side that discovers an error in a previously submitted security-based swap to promptly notify “the reporting side” of the error.296 Under existing Rule 905(a)(2), once “the reporting side” receives notification of an error from the non-reporting side or discovers an error on its own, “the reporting side” is required to promptly submit an amended report containing the corrected information to the registered SDR that received the erroneous transaction report.

In the Regulation SBSR Proposed Amendments Release, the Commission proposed—and today is adopting—amendments to Rule 901(a) that require platforms and registered clearing agencies to report certain transaction information. To preserve the principle in existing Rule 905(a) that the person responsible for reporting information also should have responsibilities for correcting errors, the Commission proposed to replace the term “reporting side” in existing Rules 905(a)(1) and 905(a)(2) with the phrase “person having a duty to report.” This amendment was necessitated by the fact that a platform—and a registered clearing agency, when it has the duty to report whether or not it has accepted a security-based swap for clearing—is not a side to the transaction, and thus is not covered by existing Rule 905(a).

Under the proposed amendment to Rule 905(a)(1), a person that is not the reporting side who discovers an error in a previously submitted security-based swap would be required to promptly notify “the person having the duty to report” of the error. Under the proposed amendment to Rule 905(a)(2), “the person having the duty to report” a security-based swap 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. Four commenters expressed general support for the proposed amendments to Rule 905(a).297

After carefully considering the comments received, the Commission is adopting the amendments to Rule 905(a) as proposed. The Commission believes that, in light of the amendments to Rule 901(a) that also are being adopted today,298 Rule 905(a) is necessary to account for the possibility that a person who is not a counterparty and is thus

292 At the same time, nothing in Regulation SBSR prevents a platform or registered clearing agency from signing such a participation agreement.

293 See supra note 191 and accompanying text. However, an SDR must offer fair, open, and not unreasonably discriminatory access to users of its services and ensure that any fees that it charges are fair and reasonable and not unreasonably discriminatory. See Rules 13n–4(c)(1)(i) and 13n–4(c)(1)(ii) under the Exchange Act, 17 CFR 240.13n–4(c)(1)(i) and 240.13n–4(c)(1)(ii).

294 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. See supra Section III(A)(1) (discussing the clearing process in the United States).

295 See Regulation SBSR Adopting Release, 80 FR at 14641–42.

296 See Regulation SBSR Adopting Release, 80 FR at 14673.

297 See DTCC Letter at 18; LCH.Clearnet Letter at 11; ISDA/SIFMA Letter at 29; WBMAA Letter at 5. Another commenter acknowledged that the proposed amendments are “technical changes to the rules to incorporate these new reporting participants,” but made no further commentary on the proposed amendments to Rule 905(a). See Better Markets Letter at 3–4.

298 See supra Section III(B).
not on either side of the transaction could have a duty to report. Thus, a platform or registered clearing agency (when the clearing agency is reporting whether or not it has accepted an alpha for clearing and thus is not the reporting side of the alpha) can incur a duty to report a correction, because it also can incur the initial duty to report the relevant information.

One commenter, discussing general difficulties in making non-reporting sides become "onboarded users" of registered SDRs, stated that only reporting sides—who presumably would be onboarded users—should be responsible for amending errors and omissions associated with previously submitted security-based swaps.\(^\text{299}\) The Commission agrees that the person having the duty to report the initial transaction should be responsible for amending errors and omissions. There is no scenario under Rule 905(a), as amended, in which a non-reporting side must report anything to a registered SDR. If a non-reporting side discovers an error, Rule 905(a)(1) requires the non-reporting side to inform the person who had a duty to report the initial transaction—which could be a platform, a registered clearing agency, or the reporting side—not the registered SDR.

A second commenter expressed the view that "when a correction is made to a trade which has already been accepted by a registered clearing agency or prime broker, then that party must also notify the registered clearing agency or prime broker of the correction.\(^\text{300}\) Nothing in Regulation SBSR requires a person to notify the registered clearing agency or prime broker of a correction after the person reports the correction to a registered SDR. Rule 905(a) is concerned with maintaining accurate information in registered SDRs. The acceptance of a security-based swap by a registered clearing agency or a prime broker (in the case of a three-legged prime brokerage structure) terminates the initial transaction and results in the creation of new security-based swaps pursuant to the rules of the relevant registered clearing agency or the terms of the prime brokerage arrangement, respectively.\(^\text{301}\) Rule 905(a) requires that, if the person having the duty to report the original transaction becomes aware of erroneous information in the report of the transaction, that person must submit a correction to the registered SDR. If the sides of the security-based swap also provided incorrect information about the initial transaction to the registered clearing agency or prime broker, the sides presumably would follow the procedures required by the registered clearing agency or the prime brokerage arrangement to correct the error—but nothing in Regulation SBSR compels that result.

**D. Requirements Related to Participant Providing Ultimate Parent and Affiliate Information to Registered SDR**

As described in Section V(A), supra, the Commission is adopting, as proposed, an amendment to the definition of "participant" in Rule 900(u) to include platforms that are required to report platform-executed security-based swaps that will be submitted to clearing and registered clearing agencies that are required to report whether or not an alpha is accepted for clearing. Existing Rule 906(b) requires each participant—as defined by Rule 900(u)—of a registered SDR to provide the SDR with information sufficient to identify any affiliate(s) of the participant that also are participants of the SDR and any ultimate parent(s) of the participant.\(^\text{302}\) By amending Rule 900(u) to make platforms and registered clearing agencies participants, these entities would become subject to Rule 906(b). In the Regulation SBSR Proposed Amendments Release, however, the Commission proposed to amend Rule 906(b) to exclude platforms or registered clearing agencies from the requirement to provide information about affiliates and ultimate parents to an SDR.

Three commenters expressed support for the Commission’s proposal to exempt platforms and registered clearing agencies from the obligations of Rule 906(b).\(^\text{303}\) The Commission continues to believe that platforms and registered clearing agencies should be exempt from the obligations of Rule 906(b) and is adopting the amendment to Rule 906(b) as proposed.

The Commission also proposed to make a similar amendment to existing Rule 907(a)(6), which 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.\(^\text{304}\) The Commission proposed to amend Rule 907(a)(6) to require registered SDRs to have policies and procedures to obtain this information from each participant “other than a platform or a registered clearing agency.” One commenter supported the Commission’s proposal.\(^\text{305}\) The Commission continues to believe that this amendment to Rule 907(a)(6) is appropriate and is adopting the amendment as proposed.

One commenter asked the Commission to exclude from Rule 906(b) transactions that include an execution agent ID.\(^\text{306}\) The commenter stated: “Aggregation across affiliated entities under a common parent makes the most sense from a regulatory or systemic risk perspective where there is coordinated trading activity and/or the risk of such swap positions is borne by the parent under an explicit or implicit guarantee. In the context of asset management, neither is typically present. For separate account clients, virtually all the asset management assignments undertaken by our members are on a discretionary basis . . . As a result, the separate account client (let alone its affiliates or parent) would not be responsible under its trading contracts for trading losses incurred by a manager acting on its behalf beyond the assets it has provided to that manager.”\(^\text{307}\)

Rule 906(b) is designed to facilitate the Commission’s ability to measure security-based swap exposure within the same ownership group. The Commission believes that requiring the funds and accounts described in the commenter’s letter to report parent and affiliate information to the registered SDRs to have policies and

\(^{299}\) See DTCC/ICE/CME Letter at 2 (also stating that requiring reporting sides to amend errors and omissions would support “current operational workflows since the reporting side is the only party with a contractual relationship with the non-reporting side as it relates to the trade details”).

\(^{300}\) LCH.Clearnet Letter at 11.

\(^{301}\) See supra Section III(E) (discussing prime brokerage structure); infra Section VIII(B) (discussing prime brokerage workflows).

\(^{302}\) See Regulation SBSR Adopting Release, 80 FR at 14645.

\(^{303}\) See LCH.Clearnet Letter at 11; ISDA/SIFMA Letter at 29; WMBAAA Letter at 5.

\(^{304}\) ISDA/SIFMA Letter at 29 (“as we support the assignment of reporting duties to platforms and clearing agencies, [we] also agree with the conforming changes to . . . Rule 907(a)(6)”).

\(^{305}\) See SIFMA–AMG II at 3–4. The commenter appears to be of the view that ultimate parent IDs and affiliate IDs are fields that must be included in reports of individual transactions. See id. at 3 (“AMG requests clarification that the parent and affiliate fields are not applicable (or ‘N/A’) for a trade if the trade report includes an execution agent’s ID”). The Commission notes, however, that a participant’s ultimate parent and affiliate information must be disclosed to the registered SDR of which it is a participant in a separate report, not in individual transaction reports.

\(^{306}\) Id. at 3–4. See also id. at 4 (“[T]here is even less reason to require identification of the affiliates or parent of a collective investment vehicle. While funds in the same complex could be viewed as affiliated for certain purposes, aggregating swap positions across funds where recourse is legally and contractually limited would be misleading from a systemic risk and regulatory oversight perspective”).
affiliate information would not serve this goal. Accordingly, the Commission is amending Rule 906(b) to exclude externally managed investment vehicles from the requirement to provide ultimate parent and affiliate information to any registered SDR of which it is a participant. The Commission is not acting upon the commenter’s specific suggestion to base an exclusion on the fact that the transaction reports submitted by a fund includes an ID of an execution agent. There could be situations where a corporate entity within a group that Rule 906(b) is designed to cover might use an execution agent and thus would be required to report an execution agent ID. Therefore, basing an exclusion from Rule 906(b) on the use of an execution agent ID would be broader than necessary. The Commission believes instead that an exclusion for externally managed investment vehicles is well tailored to satisfy the concerns raised by the commenter while minimizing the risk of unduly broadening the exclusion. In light of this amendment to Rule 906(b), the Commission is making a conforming change to Rule 907(a)(6). Under Rule 907(a)(6), as amended, a registered SDR need not include in its policies and procedures for obtaining ultimate parent and affiliate information a mechanism for obtaining such information from externally managed investment vehicles.

The Commission declines to grant the commenter’s request to exclude accounts from Rule 906(b). Although, as the commenter notes, the parent(s) or affiliate(s) of a separate account client may not be responsible for losses incurred in the account, the security-based swap exposure in multiple accounts of a parent would be relevant to understanding the total exposure within the same ownership group. Thus, an account’s reporting of its parent and affiliate information will serve the purposes of Rule 906(b) by assisting the Commission in monitoring enterprise-wide risks related to security-based swaps.

E. Additional Entities Must Have Policies and Procedures for Supporting Their Reporting Duties

Existing 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 that the participant complies with any obligations to report information to a registered SDR in a manner consistent with Regulation SBSR. 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.

In the Regulation SBSR Proposed Amendments Release, the Commission proposed to extend the requirements of Rule 906(c) to registered clearing agencies and platforms that are participants of a registered SDR. Four commenters generally supported this amendment.

In the U.S. Activity Proposal, the Commission proposed to extend the requirements of Rule 906(c) to any registered broker-dealer that incurs reporting obligations solely because it effects transactions between two unregistered non-U.S. persons that do not fall within proposed Rule 908(b)(5). The Commission received no comments regarding the amendment to Rule 906(c) for registered broker-dealers. The Commission continues to believe that this amendment is appropriate and is adopting the amendment as proposed.

One commenter stated that the Commission should expand Rule 906(c) “to include all parties with reporting obligations under Regulation SBSR, including platforms and registered clearing agencies.” While the Commission is expanding Rule 906(c) to include platforms and registered clearing agencies, the Commission did not propose and is not adopting any amendment to expand Rule 906(c) to include “all parties” with reporting obligations under Regulation SBSR, which would include unregistered persons. Regulation SBSR was designed to minimize, to the extent feasible, instances where unregistered persons have the primary duty to report security-based swaps; an unregistered person that is a participant of a registered SDR in most cases will have only limited duties under Regulation SBSR, such as the duty to report UIC information pursuant to Rule 906(a). The Commission does not believe that it is appropriate to require unregistered persons to establish policies and procedures to support this limited reporting function.

VI. Reporting and Public Dissemination of Security-Based Swaps Involving Allocation

A. Background

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.” That release

307 In the Cross-Border Adopting Release, the Commission added an express reference to “investment vehicle” in the non-exclusive list of legal persons that could fall within the final definition of “U.S. person” in Rule 3a71–3(a)(4) under the Exchange Act, 17 CFR 240.3a71–3(a)(4). The Commission observed that investment vehicles are commonly established as partnerships, trusts, or limited liability entities and required that an investment vehicle will be treated as a U.S. person for purposes of Title VII if it is organized, incorporated, or established under the laws of the United States or has its principal place of business in the United States. The Cross-Border Adopting Release, 79 FR at 47307. Thus, an investment vehicle—despite being incorporated, organized, or established under the laws of a foreign jurisdiction—could be a U.S. person if it is externally managed from the United States, i.e., its operations “are primarily directed, controlled, and coordinated from a location within the United States.” Id. at 47310.

308 See 80 FR at 14759.

309 See Better Markets Letter at 6; DTCC Letter at 18; ISDA/SIFMA Letter at 29; LCH.Clearnet Letter at 11.

310 Existing Rule 906(c) is titled: “Policies and procedures of registered security-based swap dealers and registered major security-based swap participants.” As the Commission has proposed to subject various other types of persons to Rule 906(c), the Commission also proposed to revise the title to “Policies and procedures to support reporting compliance.” The Commission is adopting the amended title.

311 LCH.Clearnet Letter at 11.

312 Existing Rule 906(a) applies to all participants of a registered SDR, including a participant that is the non-reporting side of a security-based swap reported to the registered SDR on a mandatory basis. Rule 906(a) is to the extent relevant, an amendment to a participant of a registered SDR, with respect to a transaction to which it is a direct counterparty, to provide the SDR with any UICs that the SDR lacks, including a counterparty ID “or if applicable, the broker ID, branch ID, execution agent ID, desk ID, and trader ID.” In the Regulation SBSR Adopting Release, the Commission explained why it adopted the term “trading desk” and “trading desk ID,” rather than, as in earlier proposed versions, “desk” and “desk ID.” See 80 FR at 14583–84. However, in one place in Rule 906(a), the Commission failed to revise the term “desk ID” to “trading desk ID” even though it had done so in another place in Rule 906(a). There, the Commission in this release is adopting a technical correction to Rule 906(a) to utilize the term “trading desk ID” in both places. In addition, one commenter requested clarification “that trading desk ID and trader ID fields are not applicable (or N/A) for trades entered into by an execution agent.” SIFMA-AMG II at 2. Based on the rule text, the Commission believes that this is a reasonable interpretation of Rule 906(a). Therefore, the Commission in this release is adopting a technical correction to Rule 906(a) to utilize the term “trading desk ID” in both places. In addition, one commenter requested clarification “that trading desk ID and trader ID fields are not applicable (or N/A) for trades entered into by an execution agent.” SIFMA-AMG II at 2. Based on the rule text, the Commission believes that this is a reasonable interpretation of Rule 906(a).
explained how Regulation SBSR applies to executed bunched orders that are subject to the reporting hierarchy in existing Rule 901(a)(2)(i), including bunched order alphas that are not executed on a platform and platform-executed bunched orders that will not be submitted to clearing. That release also explained 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.

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 counterpart, typically a security-based swap dealer, on behalf of multiple clients. The bunched order can be executed on- or off-platform. After execution of the bunched order, the asset manager allocates 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.314 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 Rule 901 requires a bunched order execution and the security-based swaps resulting from the allocation of the bunched order execution, if they are not cleared, to be reported like other security-based swaps.315 The Commission further explained that Rule 902(a) requires the registered SDR that receives the report required by Rule 901 to disseminate the information enumerated in Rule 901(c) for 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.”316 Existing Rule 902(c)(7) provides that a registered SDR shall not publicly disseminate any information regarding the allocation of a bunched order execution, which would include information about the security-based swaps resulting from the allocation of the initial transaction as well as the fact that the bunched order execution is terminated following this allocation.

B. Guidance on How Regulation SBSR Applies to Bunched Order Executions

In the Regulation SBSR Proposed Amendments Release, the Commission provided guidance explaining how Regulation SBSR would apply to a bunched order that is executed on a platform and will be submitted to clearing, and— if the bunched order execution is accepted for clearing—the security-based swaps that result.317 Consistent with the principles laid out in the Regulation SBSR Adopting Release with respect to the reporting of bunched order executions that will not be submitted to clearing, the reporting hierarchy in existing Rule 901(a)(2)(i) will apply to the reporting of original bunched order executions that will be submitted to clearing. However, the reporting of the security-based swaps resulting from the allocation of the original bunched order execution is different if a registered clearing agency is involved. Because the Commission proposed a new approach for the reporting of all clearing transactions, the Commission could not offer guidance on how Regulation SBSR applies to bunched order executions that are allocated through the clearing process until the Commission adopted final rules for the reporting of clearing transactions. Today, the Commission is adopting amendments to Rule 901 that will govern how clearing transactions must be reported, and also now is providing guidance for how bunched order executions and related allocations are to be reported when they are cleared.

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 existing Rule 901(a)(2)(ii) 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 existing Rule 901(a)(2)(ii)(B), 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) 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.318

When the registered security-based swap dealer submits the bunched order alpha to a registered clearing agency for clearing, Rule 901(a)(3), as adopted today, requires 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 facilitates the registered clearing agency’s ability to report whether or not it has accepted the bunched order alpha for clearing, as required by Rule 901(e)(1)(ii), which also is being adopted today.

b. Reporting the Security-Based Swaps Resulting From Allocation

New Rule 901(a)(2)(ii) requires 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.319 If the asset manager provides allocation instructions prior to or contemporaneously 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 accounts 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

314 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. However, as one commenter noted, “due to cross-border considerations the aggregate notional of a bunched order will not always tie out completely in reported SBSR data to the sum of the notional of its related allocations.” See ISDA/SIFMA Letter at 28.

315 See 80 FR at 14625.

316 Id. at 14626.


318 Pursuant to Rule 906(a), the registered SDR also would be required to obtain any missing UICs from the counterparties.

319 Like other clearing transactions that arise from the acceptance of a security-based swap for clearing, these security-based swaps are not 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”).
be treated differently under Regulation SBSR than any other clearing transactions.

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. The registered clearing agency would report the intermediate gamma to a registered SDR of its choice. As the registered clearing agency receives the allocation information, it would either 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 existing Rule 901(o)(1)(i). Existing Rule 901(o)(2) requires the registered clearing agency to report these life cycle events to the same registered SDR to which it reported the intermediate gamma.

Under new Rule 901(a)(2)(i), as adopted today, the registered clearing agency also is 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 intermediate gamma series), existing Rule 901(d)(10) 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 Rule 901(a)(1), as adopted today, to report the bunched order alpha to a registered SDR. To satisfy this reporting obligation, the platform must provide the information required by Rule 901(a)(1). 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, would 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. Existing Rule 902(a) 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 existing Rule 906(a), 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) 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

320 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 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.

321 One commenter stated that a registered SDRs will be unable to compel non-reporting sides to become “onboarded users” of the SDR; the commenter recommended, therefore, that the Commission require any reports, such as those required by Rule 906(a), “to only be provided to onboarded users.” DTCC/ICE/CME Letter at 2. In the Regulation SBSR Adopting Release, the Commission resolved the issue of whether a non-reporting side becomes a participant of a registered SDR. It does, if the non-reporting side falls within Rule 908(b) and the transaction was reported to the registered SDR. See Regulation SBSR Adopting Release, 80 FR at 14465 (“The Commission recognizes that some non-reporting sides may not wish to connect directly to a registered SDR but 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.”).

322 See ISDA/SIFMA Letter at 28 (supporting “the requirement for a reporting side to report a bunched order executed off-platform, proposed rule 901(a)(1) that would require a platform to report a bunched order alpha executed on its facility, and proposed rule 901(a)(2)(i) that would require a registered clearing agency to report a bunched order, if applicable, and the allocations that result from the cleared bunched order” and stating that “a bunched order should be subject to public dissemination instead of the related allocations”); ICE Trade Vault Letter at 7 (supporting inclusion of the transaction ID of the bunched order execution on each security-based swap resulting from its allocation as a “critical data element necessary to improve data quality”).

323 See ISDA/SIFMA Letter at 28.
bunched order is subject to reporting under SBSR can only be based on the reporting side’s understanding of the execution agent’s status as a U.S. person. The U.S. person status of the funds to which the bunched order will be allocated will determine whether the allocations are subject to reporting and will have no bearing on whether the bunched order is reported.”

The Commission shares the commenter’s concern that there be clear and workable solutions for reporting transactions under Regulation SBSR even under complex cross-border scenarios. The Commission also notes that, as discussed below,325 compliance with Regulation SBSR will be required independent of when security-based swap dealers register as such with the Commission.

In the U.S. Activity Proposal, the Commission proposed a new paragraph (a)(1)(v) to existing Rule 908(a)(1) that would subject to regulatory reporting and public dissemination any transaction in connection with a non-U.S. person’s security-based swap dealing activity that is arranged, negotiated, or executed by personnel of such non-U.S. person located in a U.S. branch or office (an “ANE branch or office, or by personnel of an ANE branch or office (an “ANE transaction”). New Rule 908(a)(1)(v)—which is being adopted today326—coupled with the existing provisions of Rule 908(a)(1), will further clarify how the guidance discussed above applies to various cross-border scenarios, as illustrated in the following examples:

- If the dealing entity who executes the bunched order with the asset manager/execution agent is a U.S. person, whether registered or unregistered, the bunched order execution is subject to both regulatory reporting and public dissemination because of the U.S.-person status of the dealing entity. Regardless of the U.S.-person status of the asset manager/execution agent or of the funds/accounts that later receive allocations.

- If the dealing entity who executes the bunched order with the asset manager/execution agent is a non-U.S. person but the bunched order execution is an ANE transaction, the bunched order execution is again subject to both regulatory reporting and public dissemination, regardless of the U.S.-person status of the asset manager/execution agent or of the funds/accounts that later receive allocations.

- If all of the funds/accounts that could be eligible to receive allocations are U.S. persons, the bunched order execution is subject to both regulatory reporting and public dissemination because of the U.S.-person status of the funds/accounts, regardless of the U.S.-person status of the dealing entity or the location of the personnel (or agent) of the dealing entity. In other words, however the asset manager/execution agent allocates the bunched order execution in this example, there is no scenario where any part of the bunched order execution could be viewed as involving a non-U.S. person. Therefore, the initial bunched order execution involving the dealing entity on one side necessarily has a U.S. person on the other side, and the initial bunched order execution is subject to both regulatory reporting and public dissemination.

The Commission acknowledges that a more complex situation arises if the bunched order execution is between an unregistered non-U.S. person who is not engaging in ANE activity and an asset manager/execution agent acting on behalf of funds/accounts at least some of which are non-U.S. persons. In some cases, the status of the initial bunched order execution would be resolved if the asset manager/execution agent ultimately makes allocations only to funds/accounts that are U.S. persons.327 In other cases, however, the asset manager/execution agent328 might make allocations to some funds/accounts that are non-U.S. persons or might not, in unusual cases, make any allocations until more than 24 hours after the time of execution of the initial bunched order. Ordinarily, the U.S.-person status of the asset manager/execution agent is not determinative of whether the bunched order execution is subject to regulatory reporting and public dissemination under Rule 908(a)(1) or any other provision of Rule 908(a).329 In this limited situation, however, the Commission believes that it would be reasonable for the sides to look to the U.S.-person status of the asset manager/execution agent to resolve whether or not the bunched order execution should be subject to regulatory reporting and public dissemination. Given that the true counterparties might be unknown or unknowable when the transaction report for the bunched order execution is due, the U.S.-person status of the asset manager/execution agent can serve as a reasonable proxy. Even if some or all of the allocation is subsequently made to funds/accounts that are not U.S. persons, it would not be inconsistent with Regulation SBSR if a regulatory report and public dissemination of the initial bunched order execution, including the full notional size, is made. Furthermore, if the asset manager/execution agent is not a U.S. person and the counterparties determine not to report the transaction on that basis, and if allocations are made to one or more funds/accounts that are U.S. persons, those security-based swaps resulting from the allocation would have to be reported, and the Commission would still have at least partial understanding of the overall transaction.330 The Commission intends to evaluate this issue after required reporting commences.

D. Conforming Amendment to Rule 901(d)(4)

Existing Rule 901(d)(4) requires the reporting side to report, as applicable, the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID of the direct counterparty on the reporting side. One commenter requested that, for bunched order executions, the reporting side be

324 Id.
325 See infra Section X(C).
326 See infra Section IX(C).
327 The Commission understands from discussions with market participants that allocation determinations are generally made within 24 hours after execution. In such cases, the asset manager/execution agent would know that all of the security-based swaps resulting from the initial bunched order execution are subject to regulatory reporting and public dissemination, because of the U.S.-person status of all of fund/account counterparties, before a transaction report for the initial bunched order execution is due, at least during the first interim phase of security-based swap reporting.
328 Existing Rule 908(a)(1)(i) provides that a security-based swap shall be subject to regulatory reporting and public dissemination if there “is a direct or indirect counterparty to the executed bunched order unless it was the primary obligor or a guarantor for the bunched order execution. See Rule 900(i) (defining “counterparty” for purposes of Regulation SBSR). If the asset manager/execution agent is the primary obligor or a guarantor of the security-based swap, it would be a counterpart party for the outcome of the reporting hierarchy would have to reflect this fact. The commissioner of the “due to cross-border considerations the aggregate notional of a bunched order would not always tie out completely in reported SBSR data to the sum of the notional of its related allocations.” ISDA/SIFMA Letter 28. This could occur if, for example, the initial bunched order execution is reported to a registered SDR, but certain security-based swaps resulting from the allocation were not, because they did not fall within any of the prongs of Rule 900(i). The Commission notes that some security-based transactions may involve multiple agents.”
excused from this requirement because the relevant information “can only be determined upon allocation as any reported values would refer to applicable agreements with each party to an allocation and not the execution agent. SBSR should explicitly absolve platforms, clearing agencies and reporting sides from the obligation to report the information required by § 242.901(d)(4) for bunched orders.” 331

The Commission agrees and has decided to amend Rule 901(d)(4) so that it does not apply to the initial bunched order execution, and instead applies only to the security-based swaps that result from the allocation of that bunched order execution. The relevant agreements that are to be reported pursuant to Rule 901(d)(4) are between the clients of the execution agent—i.e., the funds that receive allocations—and the security-based swap dealer. The Commission believes that it is unnecessary to require these agreements to be reported twice, once with the report of the bunched order execution and once with the report of each security-based swap resulting from the allocation of the original bunched order execution. Requiring the reporting of agreement information for the bunched order execution could be challenging in instances when the clients that will receive the allocated security-based swaps are not known at the time of execution of the bunched order. Furthermore, the title and date of the relevant agreements will be included in the reports of the security-based swaps resulting from the allocation. Therefore, the Commission does not believe it is necessary to require the names and dates of the agreements to be reported with the initial bunched order execution.

VII. Reporting and Public Dissemination of Prime Brokerage Transactions

A. Background

In the Regulation SBSR Proposed Amendments Release, the Commission discussed how Regulation SBSR would apply to security-based swap transactions arising out of prime brokerage arrangements. 332 The Commission understands that, under a typical prime brokerage arrangement, a prime broker and a client enter into an agreement whereby the prime broker facilitates the client’s participation in the security-based swap market by providing credit intermediation services. The prime brokerage arrangement permits the client to negotiate and agree to the terms of security-based swaps with one or more third-party “executing dealers,” subject to limits and parameters specified in the prime brokerage agreement. An executing dealer would negotiate a security-based swap with the client expecting that it would face the prime broker, rather than the client, for the duration of the security-based swap. The executing dealer and/or the client would submit the transaction that they have negotiated to the prime broker. In the Regulation SBSR Proposed Amendments Release, the Commission set forth its understanding that a typical prime brokerage transaction involved three security-based swap transactions or “legs”: 333

- **Transaction 1.** The client and the executing dealer negotiate and agree to the terms of a security-based swap transaction (the “client/executing dealer transaction”) and notify the prime broker of these terms. Transaction 1 is terminated upon the creation of Transaction 2 and 3, as described below.

- **Transaction 2.** If the terms of Transaction 1 are within the parameters established by the prime brokerage arrangement, the prime broker accepts the transaction and faces the executing dealer in a new security-based swap (the “prime broker/executing dealer transaction”) having the same economic terms agreed to by the executing dealer and the client in Transaction 1.

- **Transaction 3.** Upon executing Transaction 2 with the executing dealer, the prime broker will enter into an offsetting security-based swap with the client (the “prime broker/client transaction”).

The Commission received three comments regarding this proposed interpretation. One commenter disagreed with the Commission’s view that a typical prime brokerage transaction comprises three legs, arguing that the negotiation of terms between the executing dealer and the client does not result in a transaction between the executing dealer and the client. The commenter also stated that, if the prime broker did not accept the transaction, there would be no security-based swap to report (i.e., there would not be a client/executing dealer transaction in the absence of acceptance by the prime broker). 334 Accordingly, the commenter requested that the Commission limit all reporting requirements arising from a prime brokerage arrangement to Transactions 2 and 3. 335 Another commenter concurred that a typical prime brokerage arrangement would result in only two legs, one between the prime broker and the executing dealer and one between the client and the prime broker. 336 The commenter expressed the view that there is not a transaction between the executing dealer and the client, and that the initial negotiation between the executing dealer and the client results in a security-based swap between the executing dealer and the prime broker, with the client acting as the prime broker’s agent. 337

After considering these comments, the Commission is supplementing its views regarding the application of Regulation SBSR to prime brokerage arrangements. The Commission understands that the documentation used to structure a prime brokerage arrangement may vary. As described more fully below, the documentation may provide that the client acts as agent for the prime broker when negotiating the first leg with the executing dealer, resulting in a prime brokerage structure comprised of two legs (the prime broker/executing dealer transaction and the prime broker/client transaction). Alternatively, the documentation could provide that the negotiation between the client and the executing dealer results in a transaction between those two parties, resulting in a prime brokerage structure comprised of three legs (the client/executing dealer transaction, the prime broker/executing dealer transaction, and the prime broker/client transaction). In cases where the client is acting as agent for the prime broker, the arrangement would result in the following two legs:

- **Transaction A.** The client, acting as agent for the prime broker, and the executing dealer negotiate a security-based swap transaction and notify the prime broker of its terms. If the transaction does not satisfy the parameters in the prime brokerage agreement, the prime broker may reject

331 ISDA/SIFMA Letter at 28–29. The commenter noted that the Commission had not proposed to require a platform to report the title and date of agreements incorporated by reference for a bunched order alpha that will be submitted to clearing. See id. at 28.

332 See Regulation SBSR Proposed Amendments Release, 80 FR at 14755–57.

333 See id. at 28.

334 See id. at 14755.

335 See ISDA/SIFMA Letter at 20.

336 See id.

337 See Memorandum from the Division of Trading and Markets regarding a November 13, 2015, meeting with representatives of SIFMA and Cleary Gottlieb Steen & Hamilton LLP (November 20, 2015), at slide 5.

338 See id. at slide 11.

339 See id. at slide 5.

340 For example, the client and executing dealer could agree in advance that, in the event of rejection by the prime broker, they would preserve their contract without the involvement of the prime broker. See ISDA, 2005 ISDA Compensation Agreement (“ISDA Compensation Agreement”) at Section 2.
the transaction. If the prime broker accepts the transaction, the prime broker and the executing dealer are counterparties to the security-based swap.

- **Transaction A**: The prime broker accepts Transaction A, the prime broker also will enter into an offsetting security-based swap with the client.

In cases where the documentation provides for a three-legged structure, the Commission is making a minor modification to Rule 902(c) to account for the situation where a registered SDR receives notice that the prime broker has rejected the transaction before the SDR has received the initial transaction report. The Commission discusses below the application of the reporting and dissemination requirements to the two-legged structure and provides additional clarification in response to comments.

### B. Reporting of Security-Based Swaps Resulting From Prime Brokerage Arrangements

In the Regulation SBSR Proposed Amendments Release, the Commission stated its understanding 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, the application of Regulation SBSR’s reporting and dissemination requirements to a prime brokerage arrangement detailed below assumes none of the security-based swaps resulting from a prime brokerage arrangement is a clearing transaction, and that none is intended to be cleared.

#### 1. If There Are Three Legs

In the Regulation SBSR Proposed Amendments Release, the Commission set forth its proposed interpretation of the application of Regulation SBSR to the three-legged prime brokerage structure. The Commission is finalizing this interpretation substantially as proposed.

Because Transaction 1 (i.e., the client/executing dealer transaction) is not a clearing transaction and it is not intended to be cleared, the reporting hierarchy in existing Rule 901(a)(2)(ii) assigns the reporting duty for Transaction 1. If the prime broker accepts the transaction, 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 existing Rule 901(o)(2) requires the reporting side for Transaction 1 (likely the executing dealer) to report this life cycle event to the same registered SDR to which it reported Transaction 1.

Transactions 2 and 3 (i.e., the prime broker/execute dealer transaction and the prime broker/client transaction, respectively) also are security-based swaps that must be reported pursuant to Rule 901(a)(2)(ii). Because each of these transactions is a security-based swap that arises from the termination of another security-based swap (i.e., Transaction 1), existing Rule 901(d)(10) requires the reporting of Transaction 1’s transaction ID as part of the secondary trade information for each of Transaction 2 and Transaction 3.

#### 2. If There Are Two Legs

The Commission is providing the following interpretation of the application of the reporting requirements of Regulation SBSR in cases where the documentation provides for a two-legged structure.

Existing Rule 901(a)(2)(ii) assigns the reporting duty for Transaction A (i.e., the prime broker/execute dealer transaction), because Transaction A is not a clearing transaction and it is not intended to be cleared. When the client, acting as agent for the prime broker, executes Transaction A with the executing dealer, the sides (i.e., the executing dealer and the prime broker) would determine the reporting side pursuant to the hierarchy set forth in existing Rule 901(a)(2)(ii). The reporting side would have up to 24 hours after the time of execution to report the applicable primary and secondary trade information of Transaction A. The client would be disclosed as the execution agent of the prime broker pursuant to Rule 901(d)(2) (if the prime broker is the reporting side) or Rule 906(a) (if the prime broker is not the reporting side).

If the prime broker accepts the transaction, the prime broker would initiate Transaction B between itself and the client. The reporting side for Transaction B also would be determined pursuant to Rule 901(a)(2)(ii). The reporting side would have up to 24 hours after the time of execution to report the applicable primary and secondary trade information of Transaction B.

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341 See infra Section VII(D).
342 See 60 FR at 14755.
343 See id. at 14755–57.
344 One commenter agreed with this approach, stating that the reporting obligation should remain with the original reporting side. See LCH.Clearnet Letter at 11.
345 See infra Section VIII(D) (discussing the effect of rejection by the prime broker). See also supra Section III(I).
346 See ISDA/SIFMA Letter at 21.
347 See id.
348 See 80 FR at 14756.
349 See id.
obtained by requesting it from a [prime broker].” 350 The Commission, however, continues to believe that disseminating each leg of a prime brokerage arrangement will enhance price discovery by helping market observers to distinguish between the price of a security-based swap and the cost of credit intermediation. Market participants should not have to request information from a prime broker regarding the manner in which the cost of a prime broker’s credit intermediation service might affect the price of a security-based swap. When the mandate of Section 13(m)(1)(C) provides all market observers with the ability to observe the prices directly. Even if the fees charged for prime brokerage services are not always reflected in transaction prices, at least some transaction prices will include the cost of credit intermediation. Therefore, the Commission believes that none of the legs of a prime brokerage transaction should be excluded from public dissemination.

In this regard, the Commission notes that Rule 907(a)(4) requires the policies and procedures of a registered SDR, in relevant part, to identify characteristics of a security-based swap that could, in the fair and reasonable estimation of the registered SDR, cause a person without knowledge of those characteristics to receive a distorted view of the market. The Commission believes that it would be difficult to comply with that requirement if a registered SDR did not identify whether individual security-based swaps are related legs of a prime brokerage transaction. If market observers are not given the ability to identify the two or three legs of a prime brokerage transaction as related, it would be difficult for market observers to avoid developing a distorted view of the market. 351

One commenter acknowledged that a prime brokerage flag had “potential value” for regulatory reporting but strongly disagreed with the Commission’s view that a prime brokerage flag should be publicly disseminated.352 The commenter argued that the market for security-based swap prime brokerage services is limited, so a prime brokerage flag would have a “high probability of compromising the anonymity” of executing dealers and prime brokers.353 The Commission considered similar issues in the Regulation SBSR Adopting Release relating to thinly traded security-based swaps.354 There, the Commission declined to provide any exception to public dissemination based on the fact that only a small number of market makers were active in particular segments of the market. Here, the Commission declines to make any exception to its approach to public dissemination of prime brokerage transactions. Absent a prime brokerage flag, market observers would have no ability to know that the separate legs of a single prime brokerage transaction are related, and would incorrectly conclude that there was more market activity than in fact occurred.

Finally, one commenter noted that a prime broker/client leg might be a bunched order execution where the allocations “are provided upfront,” and argued that the dissemination of these multiple transactions would not enhance price discovery.355 In the Regulation SBSR Adopting Release, the Commission provided guidance regarding how a bunched order execution must be reported and publicly disseminated (assuming that the bunched order execution is not cleared): The initial bunched order execution and any security-based swaps that result from allocating the bunched order execution are subject to regulatory reporting, while only the bunched order execution is subject to public dissemination.356 Thus, the Commission agrees with the commenter that the security-based swaps resulting from the allocation of a prime broker/client transaction should not be publicly disseminated. However, the initial bunched order execution between the prime broker and the client is subject to public dissemination.

### D. If the Prime Broker Rejects the Initial Security-Based Swap

Under either the two-leg or three-leg prime brokerage arrangements described above, the prime broker could reject the initial transaction negotiated between the client and the executing dealer. The Commission is providing guidance regarding how Regulation SBSR applies to this possibility.

The effect of the rejection by the prime broker would depend on what, if any, contractual agreement exists between the executing dealer and its client. In some cases, the client and the executing dealer could have a pre-existing agreement that would allow them to revise the security-based swap with new terms if the prime broker rejects a transaction that they have negotiated.357 If there is such an agreement and the client and executing dealer elect to preserve a security-based swap between them, the result would have to be reported in one of two ways. If the governing documentation provides that there are only two security-based swaps that could result from the prime brokerage arrangement (i.e., the initial leg is between the prime broker and the executing dealer, with the client acting as agent for the prime broker), the rejection by the prime broker would have the effect of terminating this leg, and the termination would have to be reported by the reporting side of the initial leg. The security-based swap arising between the client and the executing dealer would, because there are new counterparties, be a new security-based swap, and the reporting side for this security-based swap would be determined by the reporting hierarchy. On the other hand, if the governing documentation provides that three security-swaps would result from the prime brokerage arrangement and the client and executing dealer intend to preserve the security-based swap with different terms, the rejection by the prime broker and the amendment with the new terms would have to be reported as a life cycle event of the initial leg (presumably by the executing dealer). If there is no pre-existing agreement between the client and the executing dealer that would allow for an amendment to the initially negotiated leg or such an agreement exists but the client and executing dealer elect not to keep the security-based swap in existence, the prime broker’s rejection would terminate the initial leg and the reporting side of the initial leg would have to report the termination.

If rejection by the prime broker results in a termination, one of two things must occur next. If the registered SDR that received the report of the initial leg has already disseminated it, the SDR must then disseminate a follow-up report indicating that the initial security-based swap has been terminated.358 However, situations could arise where the registered SDR had not yet disseminated a report of the initial leg when it

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350 ISDA/SIFMA Letter at 21.
351 See supra note 223.
352 See ISDA/SIFMA Letter at 22.
353 Id.
354 See 80 FR at 14612.
355 ISDA/SIFMA Letter at 21.
356 See 80 FR at 14625–27. See also Rule 902(c)(7) (requiring a registered SDR to refrain from disseminating any information regarding the allocation of a security-based swap).
357 See, e.g., ISDA Compensation Agreement, at Section 2.
358 See Rule 902(a) (requiring, in relevant part, dissemination of life cycle events when there are changes to information provided under Rule 901(c)); Rule 907(a)(3) (requiring a registered SDR, in relevant part, to have written policies and procedures for flagging transaction reports involving life cycle events).
releases notice of the termination. As noted in Section III(J), supra, the Commission is adopting a new paragraph (c)(8) to existing Rule 902(c) providing that a registered SDR shall not publicly disseminate “[a]ny information regarding a security-based swap that has been rejected from clearing or rejected by a prime broker if the original transaction report has not yet been publicly disseminated.” Therefore, if the registered SDR had not disseminated the transaction report for Transaction 1/Transaction A at the time that it receives the report of the termination of that transaction, the registered SDR would not disseminate any information regarding Transaction 1/Transaction A. Conversely, if the registered SDR had disseminated a transaction report of Transaction 1/Transaction A before receiving the termination report for that transaction, the registered SDR would disseminate a report of the termination of Transaction 1/Transaction A.

VIII. Prohibition on Registered SDRs From Charging Fees for or Imposing Usage Restrictions on Publicly Disseminated Data

A. Background

Existing Rule 902(a) 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 existing Rule 902(c). Existing Rule 906(cc) 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.” In the Regulation SBSR Proposed Amendments Release, the Commission stated its preliminary belief 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.

Accordingly, the Commission proposed new Rule 900(tt), which would define the term “widely accessible”—as used in the definition of “publicly disseminate” in existing Rule 906(cc)—to mean “widely available to users of the information on a non-fee basis.” As discussed in the SBSR Proposed Amendments Release, this proposed definition of “widely accessible” 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.

In proposing this requirement, the Commission considered the statutory requirements to establish post-trade transparency in the security-based swap market, the CFTC’s rules for public dissemination, and comments received in response to Regulation SBSR, as originally proposed and as re-proposed. Title VII contains numerous provisions directing the Commission to establish a regime for post-trade transparency in the security-based swap market, which are designed to give the public pricing, volume, and other relevant information about all executed security-based swap transactions.

In the Regulation SBSR Proposed Amendments Release, the Commission expressed the preliminary view that the statutory requirement to make this transaction information publicly available would be frustrated if registered SDRs could charge members of the public for the right to access the disseminated data.

The Commission also expressed the preliminary belief 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 existing Rule 903(b). Rule 903(b) provides that a registered SDR may disseminate information using UICs (such as product IDs or other codes, such as reference entity identifiers, that are 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 continues to be concerned that a registered SDR that wished to charge (or allow others to charge) users for the information necessary to understand these UICs—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 the manner in which 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). Accordingly, the Commission took the preliminary view that permitting a registered SDR to charge users for receiving the publicly disseminated transaction data could undermine the purposes of Rule 903(b).

The CFTC, in adopting its own rules for public dissemination of swap transactions, addressed the issue of whether a swap data repository could be allowed to charge for its publicly disseminated data. In Section 43.2 of its rules, 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.” The CFTC stated that “implicit in this mandate [of public dissemination] is the requirement that the data be made available to the public at no cost,” 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.” Although prohibiting fees on the data that swap data repositories are required to publicly disseminate, the CFTC’s rules permit a swap data repository to charge for a fee, value-added data products derived from the freely available regulatorily mandated public data and to charge fair and reasonable fees for those products.
B. Comments Received and Final Rule

The Commission received six comments on whether registered SDRs should be permitted to charge fees or impose usage restrictions on publicly disseminated data.\textsuperscript{370} Several commenters generally agreed with prohibiting an SDR from charging fees or imposing usage restrictions on the transaction data that it is required to publicly disseminate.\textsuperscript{371} However, one commenter argued against imposing a prohibition against usage restrictions\textsuperscript{372} and another requested that the Commission clarify the applicability of the prohibition.\textsuperscript{373} After carefully considering all of the comments received, the Commission is adopting Rule 900(tt) as proposed and provides clarification, below, regarding application of the rule.

The Commission stated in the Regulation SBDR Proposed Amendments Release that the 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 transaction data that the registered SDR publicly disseminates. Despite the objections of one commenter,\textsuperscript{380} the Commission continues to believe that allowing unencumbered access best serves the policy goals of wide availability of the data and minimization of information asymmetries in the security-based swap market. Because the Commission is prohibiting registered SDRs from imposing a restriction on bulk redistribution, third parties (as well as registered SDRs themselves, as discussed below) will 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.

The Commission acknowledges the concern of the commenter who stated that “SB SDRs must be able to protect themselves from claims related to data sourced or scraped from the trade repository and redistributed by others where there are quality issues with respect to data redistributed.”\textsuperscript{381} However, a registered SDR may not, consistent with its duty to publicly disseminate under Rule 902(a) when read in connection with Rule 900(tt), require a user of the data to “agree” to any terms purporting to disclaim the SDR’s responsibility for incorrect data before the user may access the regulatorily mandated public security-based swap data, as this would constitute a usage restriction. The Commission declines to make an exception for usage restrictions that are designed to limit a registered SDR’s potential liability to third parties. The Commission believes that unencumbered access best serves the policy goals of wide availability of the data and minimization of information asymmetries in the security-based swap market, and that the speculative risk of SDR liability does not justify foregoing the public benefits of promoting free and unrestricted access to the security-based swap transaction data that registered SDRs are required to disseminate.

The Commission recognizes that establishing and operating a registered SDR entails various costs. The Commission does not believe, however, that prohibiting a registered SDR from charging for data that it is required to publicly disseminate will impede its ability to carry out these functions because other viable sources of revenue are available to registered SDRs. One such source may be fees imposed on persons who are required to report transactions to the SDR. Thus, the Commission believes that, with the adopted definition of “widely accessible,” a registered SDR will have adequate sources of funding even if it is prohibited from charging users fees for receiving the security-based swap

\textsuperscript{369} See id. at 1207.

\textsuperscript{370} See Barnard I at 2; Better Markets Letter at 5; DTCC Letter at 14–15, 18–19; ICE Letter at 7; ISDA/SIFMA Letter at 29; Markit Letter at 15.

\textsuperscript{371} See Barnard I at 2; ISDA/SIFMA Letter at 29; Markit Letter at 15. One commenter noted that providing data on a non-fee basis is “critical,” but that the Commission’s rules should also ensure equal access. See Better Markets Letter at 5.

\textsuperscript{372} See DTCC Letter at 14–15, 16–19.

\textsuperscript{373} See id.

\textsuperscript{374} See Regulation SBDR Adopting Release, 80 FR at 14761.

\textsuperscript{375} See ISDA/SIFMA Letter at 29.

\textsuperscript{376} See DTCC Letter at 15, 19.

\textsuperscript{377} See id. at 15.

\textsuperscript{378} See id.

\textsuperscript{379} Id. at 19. See also id. at 15 (“Typical restrictions on the use of data obtained from the trade repository’s public dissemination might include restricting data to internal use without a license and limiting publishing, redistributing, databasing, archiving, creating derivative works, or using the data to compete with the trade repository or in a manner otherwise adverse to the trade repository. These are statutory standard clauses in data licenses.”). Even if these restrictions are “standard clauses in data licenses,” the Commission notes that they are not permitted under Regulation SBDR, in light of the amendments being adopted today.

\textsuperscript{380} See id. (“there should be no limitations on a registered trade repository’s ability to manage the redistribution of data it has previously disseminated”).

\textsuperscript{381} Id. at 15.
transaction data that the SDR is required to publicly disseminate.\textsuperscript{382}

\textbf{C. Other Interpretive Issues}

Two commenters advocated that a registered SDR be permitted to offer value-added services related to publicly disseminated data.\textsuperscript{383} One of these commenters stated, for example, that a registered SDR “should be permitted to commercialize aggregated SB swap data and charge fees for value-added data products that incorporate the regulatorily mandated transaction data.”\textsuperscript{384} As the Commission stated in the Regulation SBSR Proposed Amendments Release,\textsuperscript{385} existing Rule 902(a) does 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) to publicly disseminate the regulatorily mandated transaction data in accordance with the definition of “widely accessible.” To comply with Rule 902(a), a registered SDR must publicly disseminate a transaction report of a security-based swap (assuming that the transaction does not fall within Rule 902(c)) immediately upon receipt of information about the security-based swap. Thus, a registered SDR would not be permitted to make its value-added product available before it publicly disseminated the regulatorily mandated transaction report because such dissemination would not comply with the requirement in Rule 902(a) that a registered SDR publicly disseminate a transaction report of a security-based swap immediately upon receipt of information about the security-based swap.

This approach is consistent with parallel CFTC rules that require regulatorily mandated data to 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.\textsuperscript{386} This approach also allows potential competitors in the market for value-added security-based swap data products to obtain the regulatorily mandated transaction information from registered SDRs that have a monopoly on this information until it is publicly disseminated.\textsuperscript{387} Potential competitors to the registered SDR could benefit by evaluating and using the raw data they received from the SDR in combination with the raw data that they received under existing Rule 13n–4(c)(1)(i) under the Exchange Act requires an SDR to ensure that any dues, fees, or other charges imposed by an SDR are fair and not unreasonably discriminatory); Rule 13n–4(c)(1)(ii) (requiring an SDR to permit market participants to access specific services offered by the SDR separately); Rule 13n–4(c)(1)(iii) (requiring 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).\textsuperscript{388}

Markit Letter at 15.

\textsuperscript{389} Id. (stating that eliminating all user fees and usage restrictions on information contained in publicly disseminated SBS data)’’\textsuperscript{390}

The commenter further stated that there would not be any significant benefit to post-trade transparency from restrictions on user fees and usage in pre-trade contexts.\textsuperscript{391} The Commission declines to make the clarification requested by the commenter. In fact, it is the Commission’s intention to eliminate all fees and usage restrictions on the information that a registered SDR is required to publicly disseminate. In the Commission’s view, the commenter’s distinction between “post-trade contexts”—where fees and usage restrictions could not be imposed—and “pre-trade contexts”—where, according to the commenter, they could be imposed—would be unworkable. The Commission intends for market observers to be able to take in the security-based swap transaction data that are publicly disseminated by registered SDRs on a mandatory basis and scrub, reconfigure, aggregate, analyze, repurpose, or otherwise add value to that publicly disseminated data in any manner that they see fit, without fear that doing so might subject them to liability to a third party for violating a license agreement.\textsuperscript{392} It would be difficult if not impossible for a market observer to explain that its use of particular codes derives only from the “post-trade context” when utilization of the same codes “in the pre-trade context” might render the market observer liable to the third party who claims to own intellectual property in the code. When proposing the requirement that the information mandatorily disseminated by a registered SDR be “widely available on a non-fee basis,” the Commission stated that the requirement “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 data that it is required to publicly disseminate.”\textsuperscript{393} Thus, if a registered SDR requires or permits the use of any code or other data element where there is a reasonable threat that a third-party holder of rights in that code or in other data elements might attempt to enforce those rights against market observers, reference rates, underlier codes, prices, or indexes used in SBS transactions”).\textsuperscript{394}

See id.

For example, a third party could take in data that are publicly disseminated by one or more registered SDRs and develop its own value-added product. The third party would be entitled to include in its own value-added product any UCIs that are included in the information publicly disseminated by any registered SDR pursuant to Rule 902.

\textsuperscript{395} Regulation SBSR Proposed Amendments Release, 80 FR at 14761 (emphasis added).
the registered SDR would not be acting consistent with Rule 903 by requiring or permitting use of that code for reporting or publicly disseminating security-based swap transaction information pursuant to Regulation SBSR. If license restrictions or any other contractual restrictions in the “pre-trade context” could in any way impede usage of the data in a “post-trade context,” then any codes or other data elements that have license restrictions may not be used under Rule 903.

IX. Cross-Border Matters

A. Introduction

In November 2010, the Commission proposed Rule 908(a) to define the scope of cross-border transactions that would be subject to Regulation SBSR’s regulatory reporting and public dissemination requirements, and proposed Rule 901(a) to establish a reporting hierarchy for identifying the person that would have the duty to report the security-based swap in a variety of contexts, including cross-border contexts. In May 2013, the Commission re-proposed Rules 901 and 908 with substantial revisions as part of the Cross-Border Proposing Release. The Commission adopted modified versions of re-proposed Rules 901 and 908 as part of Regulation SBSR. When doing so, the Commission identified certain transactions involving non-U.S. persons that would not be addressed by Rules 901(a) and 908, as adopted in the Regulation SBSR Adopting Release, and stated its intention to seek additional comment regarding how Regulation SBSR should apply to those transactions. In April 2015, the Commission addressed those transactions in the U.S. Activity Proposal, which included proposed amendments to Rules 901(a), 908, and related rules in Regulation SBSR. These amendments would, among other things, apply Regulation SBSR’s regulatory reporting and public dissemination requirements to security-based swap transactions of a non-U.S. dealing entity that are arranged, negotiated, or executed by personnel of the non-U.S. person located in a U.S. branch or office, or by the personnel of its agent located in a U.S. branch or office. In addition, the Commission solicited comment on whether certain transactions of non-U.S. persons whose obligations under a security-based swap are guaranteed by a U.S. person should be exempt from the public dissemination requirement.

The Commission received 16 comments regarding the U.S. Activity Proposal, of which seven discussed the proposed amendments to Regulation SBSR. In February 2016, the Commission adopted rules that require a foreign dealing entity to count against its de minimis threshold transactions with non-U.S. persons where the foreign dealing entity is engaging in ANE activity. For the reasons discussed below, the Commission is adopting substantially as proposed the amendments to Regulation SBSR proposed in the U.S. Activity Proposal.

B. Existing Rules 901 and 908

Existing Rule 908(a)(1) requires regulatory reporting and public dissemination of any security-based swap transaction that (1) has a direct or indirect counterparty that is a U.S. person on either or both sides of the transaction, or (2) is accepted for clearing by a clearing agency having its principal place of business in the United States. Existing Rule 908(a)(2) requires regulatory reporting but not public dissemination of a transaction that has a direct or indirect counterparty that is a registered security-based swap dealer or registered major security-based swap participant on either or both sides of the transaction but does not otherwise fall within Rule 908(a)(1). In other words, Rule 908(a)(2) applies to uncleared security-based swaps of registered non-U.S. persons when there is no U.S. person on the other side.

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 does not incur any duties under Regulation SBSR.

Under Rule 908(a), as re-proposed in the Cross-Border Proposing Release, security-based swaps that would have fallen within the proposed definition of “transaction conducted within the United States” would have been among the security-based swaps subject to both regulatory reporting and public dissemination. In adopting Regulation SBSR, the Commission did not include in Rule 908(a)(1) a prong for “transactions conducted within the United States,” noting that commenters had expressed divergent views on this particular element of the re-proposed rule. Similarly, the Commission, in the Cross-Border Proposing Release, proposed to expand Rule 908(b) to include any counterparty to a transaction conducted in the United States. However, Rule 908(b), as adopted in the Regulation SBSR Adopting Release, included only U.S. persons, registered security-based swap dealers, and registered major security-based swap participants. Thus, under the rules adopted in the Regulation SBSR Adopting Release, a non-U.S.-person security-based swap dealer or major security-based swap participant would incur an obligation under Regulation SBSR only if it were registered. The Commission noted that it anticipated 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.

The Commission solicited comment on these questions in the U.S. Activity Proposal. While Rule 908(a) specifies what types of security-based swap transactions are subject to regulatory reporting and/or public dissemination and Rule 908(b) specifies the types of persons that will incur duties under Regulation SBSR, Rule 901(a) assigns the duty to report each individual transaction. Rule 901(a), as adopted in the Regulation SBSR Adopting Release, did not address the reporting of many types of cross-border transactions, and the Commission noted that it anticipated soliciting additional comment about how to apply Regulation SBSR, including which side should incur the reporting duty, in a security-based swap transaction between two unregistered non-U.S. persons and in a transaction between an unregistered...
U.S. person and an unregistered non-U.S. person. The U.S. Activity Proposal, among other things, proposed amendments to Rules 900, 901(a), 906, 907, and 908 of Regulation SBSR to address the regulatory reporting and public dissemination of transactions involving non-U.S. persons that were not addressed in the Regulation SBSR Adopting Release. The proposed amendments, the comments received, and final rules are discussed below.

C. Extending Regulation SBSR to All ANE Transactions

1. Description of Proposed Rule

In the U.S. Activity Proposal, the Commission proposed to add a new paragraph (a)(1)(v) to Rule 908(a)(1). Proposed Rule 908(a)(1)(v) would require any security-based swap transaction connected with a non-U.S. person’s security-based swap dealing activity that is arranged, negotiated, or executed by personnel of such non-U.S. person located in a U.S. branch or office—or by personnel of its agent located in a U.S. branch or office—to be reported and publicly disseminated.

This amendment would expand the scope of Regulation SBSR in two ways. First, it would require that a transaction of a foreign dealing entity be subject to both regulatory reporting and public dissemination if the non-U.S. person would be required to include the transaction in its de minimis threshold calculation under Rule 3a71–3(b)(1)(ii)(C) under the Exchange Act. Second, the proposed rule would require public dissemination of any ANE transaction of a foreign dealing entity, even if there is no U.S. person on the other side and the transaction is not accepted for clearing by a clearing agency having its principal place of business in the United States. Under existing Rule 908(a), a transaction of a registered foreign security-based swap dealer—even if it is an ANE transaction—would be subject to regulatory reporting but not public dissemination if there is no U.S. person on the other side and the transaction is not accepted for clearing by a clearing agency having its principal place of business in the United States.

As discussed in more detail in Section X. infra, the Commission in the Regulation SBSR Proposed Amendments Release did not propose to align Regulation SBSR compliance with security-based swap dealer registration. Thus, as proposed, there could have been a period of indefinite length when compliance with Regulation SBSR—including the cross-border reporting provisions thereof—could have been required when no security-based swap dealers had yet registered with the Commission. During such a period, the only way a foreign dealing entity could have been subject to duties under Regulation SBSR would have been if the foreign dealing entity were using U.S. personnel to engage in ANE activity, and the only way that a transaction involving only foreign persons would have been subject to reporting and public dissemination under Regulation SBSR would be if at least one side included a foreign dealing entity that was using U.S. personnel to engage in ANE activity with respect to that specific transaction. After security-based swap dealers register as such with the Commission, most foreign dealing entities will become subject to Regulation SBSR and assume the highest rung in the reporting hierarchy because of their registration status.

2. Discussion of Comments and Final Rule

Several commenters opposed extending Regulation SBSR’s regulatory reporting and public dissemination requirements to ANE transactions. One of these commenters stated, for example, that transactions between non-U.S. persons, where there is no guarantee by a U.S. person on either side, should not be required to be reported or publicly disseminated in the United States because they “lack the requisite nexus to the United States regardless of the location of conduct of the counterparties.” A second commenter stated that transactions that are ANE transactions do not involve a U.S. person counterparty and secrecy laws in local jurisdictions.

As long as there are trades between non-U.S. persons, where there is no guarantee by a U.S. person on either side, should not be required to be reported or publicly disseminated in the United States because they “lack the requisite nexus to the United States regardless of the location of conduct of the counterparties.”

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This amendment would expand the scope of Regulation SBSR in two ways. First, it would require that a transaction of a foreign dealing entity be subject to both regulatory reporting and public dissemination if the non-U.S. person would be required to include the transaction in its de minimis threshold calculation under Rule 3a71–3(b)(1)(ii)(C) under the Exchange Act. Second, the proposed rule would require public dissemination of any ANE transaction of a foreign dealing entity, even if there is no U.S. person on the other side and the transaction is not accepted for clearing by a clearing agency having its principal place of business in the United States. Under existing Rule 908(a), a transaction of a registered foreign security-based swap dealer—even if it is an ANE transaction—would be subject to regulatory reporting but not public dissemination if there is no U.S. person on the other side and the transaction is not accepted for clearing by a clearing agency having its principal place of business in the United States.

As discussed in more detail in Section X. infra, the Commission in the Regulation SBSR Proposed Amendments Release did not propose to align Regulation SBSR compliance with security-based swap dealer registration. Thus, as proposed, there could have been a period of indefinite length when compliance with Regulation SBSR—including the cross-border reporting provisions thereof—could have been required when no security-based swap dealers had yet registered with the Commission. During such a period, the only way a foreign dealing entity could have been subject to duties under Regulation SBSR would have been if the foreign dealing entity were using U.S. personnel to engage in ANE activity, and the only way that a transaction involving only foreign persons would have been subject to reporting and public dissemination under Regulation SBSR would be if at least one side included a foreign dealing entity that was using U.S. personnel to engage in ANE activity with respect to that specific transaction. After security-based swap dealers register as such with the Commission, most foreign dealing entities will become subject to Regulation SBSR and assume the highest rung in the reporting hierarchy because of their registration status.

2. Discussion of Comments and Final Rule

Several commenters opposed extending Regulation SBSR’s regulatory reporting and public dissemination requirements to ANE transactions. One of these commenters stated, for example, that transactions between non-U.S. persons, where there is no guarantee by a U.S. person on either side, should not be required to be reported or publicly disseminated in the United States because they “lack the requisite nexus to the United States regardless of the location of conduct of the counterparties.” A second commenter stated that transactions that are ANE transactions do not involve a U.S. person counterparty and secrecy laws in local jurisdictions.

As long as there are trades between non-U.S. persons, where there is no guarantee by a U.S. person on either side, should not be required to be reported or publicly disseminated in the United States because they “lack the requisite nexus to the United States regardless of the location of conduct of the counterparties.”

405 See Regulation SBSR Adopting Release, 80 FR at 4598.
407 Under Exchange Act Rule 3a71–1(c), 17 CFR 240.3a71–1(c), absent a limitation by the Commission, a security-based swap dealer is deemed to be a security-based swap dealer with respect to each security-based swap that it enters into, regardless of the type, class, or category of the security-based swap or the person’s activities in connection with the security-based swap. Accordingly, for purposes of this rule, any

410 See ISDA I at 13.
411 UBS Letter at 3.
412 See IIB Letter at 16; SIFMA/FSR Letter at 13 ("It is generally not possible to directly determine the location of counterparty conduct without substantial effort, expensive and operational changes to systematically capture and process this data—burdens on market participants that will certainly outweigh the perceived regulatory benefits of obtaining transaction data on non-U.S.-located swaps required to be reported as a result of U.S.-located conduct. These burdens will also fall on non-registrants that are only engaged in de minimis SBS activities.")
413 See IIB Letter at 16 stating that, to modify its systems in connection with the Commission’s requirements, a foreign dealing entity, including one operating below the de minimis threshold, “would need to install or modify a trade capture system capable of tracking, on a dynamic, trade-by-trade basis, the location of front-office personnel. The non-U.S. SBSD would then need to feed that data into its reporting system and re-code that system to account for the different rules that apply to non-U.S. SBS depending on whether they are arranged, negotiated or executed by U.S. personnel. The non-U.S. SBSD would also need to train its front office personnel in the use of this new trade capture system and develop policies, procedures, and controls to ensure that it can track and test the proper origin of that data. In addition, the non-U.S. SBSD would need to seek and obtain waivers from non-U.S. counterparties—to the extent such waivers are even permitted—with respect to privacy, blocking and secrecy laws in local jurisdictions").
application of Title VII requirements.\textsuperscript{414} The Commission believes that, when a foreign dealing entity uses U.S. personnel to arrange, negotiate, or execute a transaction in a dealing capacity, that transaction occurs at least in part within the United States and is relevant to the U.S. security-based swap market. The Commission has previously determined that ANE activity carried out by U.S. personnel warrants application of the security-based swap dealer registration requirements.\textsuperscript{415} The Commission believes that there is sufficient "nexus" to apply Title VII's regulatory reporting and public dissemination requirements to security-based swap transactions involving a foreign dealing entity that is using U.S. personnel to engage in ANE activity with respect to a particular transaction. As the Commission has stated previously, declining to apply Title VII requirements to security-based swaps of foreign dealing entities that use U.S. personnel to engage in ANE activity would have the effect of allowing such entities "to exit the Title VII regulatory regime without exiting the U.S. market."\textsuperscript{416} Further, as discussed in Section X, \textit{infra}, reporting under Regulation SBSR will commence following security-based swap dealer registration. Thus, for the vast majority of transactions of foreign dealing entities falling within the scope of Rule 908(a), the reporting obligation under Regulation SBSR will arise from an entity's status as a registered security-based swap dealer, and entities that are registered as security-based swap dealers will not be required to assess whether they have engaged in ANE activity with respect to a transaction. The costs associated with the reporting of ANE transactions are discussed more fully below.

\textbf{a. Impact on Regulatory Reporting}

The Commission notes that all security-based swaps of registered security-based swap dealers, whether U.S. or foreign, are subject to regulatory reporting under existing Rule 908(a)(2). For transactions involving foreign dealing entities that register with the Commission as security-based swap dealers, the regulatory reporting requirement stems from the involvement of the registered person, not from the presence of any ANE activity. Therefore, new Rule 908(a)(1)(v) does not subject any additional transactions involving registered security-based swap dealers to Regulation SBSR's regulatory reporting requirements.\textsuperscript{417} New Rule 908(a)(1)(v) extends the regulatory reporting requirements only to transactions involving an unregistered foreign dealing entity (when it engages in ANE activity) when no other condition is present that would trigger regulatory reporting (e.g., there is a U.S. person or registered security-based swap dealer on the other side). Thus, Rule 908(a)(1)(v) imposes regulatory reporting requirements only to transactions in which an unregistered foreign dealing entity enters into a transaction with another unregistered foreign person.

As noted in Section II(A)(4)(d), \textit{supra}, the Commission believes that foreign dealing entities that will register with the Commission as security-based swap dealers will be counterparties to the vast majority of security-based swaps involving foreign dealing entities engaging in U.S. activity. The Commission estimates that only a few foreign dealing entities will remain below the \textit{de minimis} threshold and utilize U.S. personnel to engage in ANE transactions with other unregistered foreign persons. Therefore, new Rule 908(a)(1)(v) will extend Regulation SBSR's regulatory reporting requirements to only a small number of additional transactions in which an unregistered foreign dealing entity engaged in ANE activity acts with another unregistered foreign person. In this release, the Commission estimates that only four foreign dealing entities likely will engage in ANE transactions and remain below the \textit{de minimis} threshold, and thus be counterparties to security-based swaps that fall within Rule 908(a)(1)(v).

As noted above,\textsuperscript{418} some commenters expressed concern about the costs associated with requiring ANE transactions of unregistered foreign dealing entities to be reported, which will require an assessment of whether

\textbf{ANE activity is present in a particular transaction.\textsuperscript{420} One commenter argued, for example, that regulatory reporting of these transactions "seems unnecessary in light of the fact that only small numbers of ANE transactions" would be captured by Rule 908(a)(1)(v).\textsuperscript{421} The Commission agrees that only a small number of additional transactions will become subject to regulatory reporting because of Rule 908(a)(1)(v). However, because all ANE transactions occur at least in part within the United States, reporting these transactions to a registered SDR will enhance the Commission's ability to oversee relevant security-based swap activity within the United States as well as to evaluate market participants for compliance with specific Title VII requirements (including the requirement that a person register with the Commission as a security-based swap dealer if it exceeds the \textit{de minimis} threshold).\textsuperscript{422} The reporting of these additional ANE transactions also will enhance the Commission's ability to monitor for manipulative and abusive practices involving security-based swaps or transactions in related assets, such as corporate bonds.\textsuperscript{423}

The Commission believes that certain unregistered foreign dealing entities generally will already be assessing whether they utilize U.S. personnel and, if so, whether such personnel are involved in arranging, negotiating, or executing particular security-based swaps, so that they can count such transactions against their \textit{de minimis} thresholds. Thus, the Commission believes that new Rule 908(a)(1)(v) will impose only limited assessment costs beyond those already being incurred by unregistered foreign dealing entities.\textsuperscript{424}

The Commission acknowledges that subjecting ANE transactions between unregistered non-U.S. persons to regulatory reporting requirements under new Rule 908(a)(1)(v) also will result in

\textsuperscript{415} See U.S. Activity Adopting Release, 81 FR at 8614 (“we do not believe that security-based swap dealing activity must create counterparty credit risk in the United States for there to be a ‘nexus’ sufficient to warrant security-based swap dealer registration”).
\textsuperscript{416} U.S. Activity Adopting Release, 81 FR at 8616. See also Cross-Border Adopting Release, 79 FR at 47288 (“Our territorial approach applying Title VII to dealing activity similarly looks to whether [relevant activities] occur with the United States, and not simply to the location of the risk”).
\textsuperscript{417} But see infra Section IX(C)(2)(b) (explaining that new Rule 908(a)(1)(v) subjects additional transactions involving registered security-based swap dealers to Regulation SBSR’s public dissemination requirements).
\textsuperscript{418} See infra note 885 and accompanying text.
\textsuperscript{419} See supra notes 412–413 and accompanying text.
\textsuperscript{420} Other comments also discussed the costs of assessing whether ANE activity is present in a transaction involving only unregistered foreign persons, but under the assumption that the Commission would require reporting compliance before requiring security-based swap dealers to register as such. See ISDA I, at 11–13; ISDA II at 3–10; ISDA III, passim; ISDA/SIFMA Letter at 8–12; SIFMA—AMG I at 6–7. These comments are addressed by Section X, \textit{infra}, where the Commission revises the proposed compliance schedule and adopts a final compliance schedule that aligns Regulation SBSR compliance with security-based swap dealer registration.
\textsuperscript{421} UBS Letter at 3.
\textsuperscript{422} See U.S. Activity Proposal, 80 FR at 27483.
\textsuperscript{423} See id.
\textsuperscript{424} See infra Section XII(B)(1).
certain programmatic costs.\textsuperscript{425} The Commission assesses those costs against the benefits of the rule to the Commission, other relevant authorities, and the market in general.\textsuperscript{426} The Commission continues to believe that reporting of these ANE transactions to a registered SDR will enhance the Commission’s ability to monitor relevant activity related to security-based swap dealing occurring within the United States as well as to monitor market participants for compliance with specific Title VII requirements (including the requirement that a person register with the Commission as a security-based swap dealer if it exceeds the de minimis threshold).

b. Impact on Public Dissemination

While Rule 908(a)(1)(v) will extend Regulation SBSR’s regulatory reporting requirements to additional cross-border security-based swaps—those involving unregistered foreign dealing entities when they engage in ANE transactions with other unregistered foreign persons—Rule 908(a)(1)(v) will extend Regulation SBSR’s public dissemination requirements to a potentially larger number of cross-border transactions that are, under existing Regulation SBSR, subject to regulatory reporting but not public dissemination. Under existing Rule 908(a)(2), a security-based swap that does not otherwise fall within Rule 908(a)(1) shall be subject to regulatory reporting but not public dissemination if there is a registered security-based swap dealer or registered major security-based swap participant on either or both sides of the transaction. Under existing Rule 908(a)(1), a security-based swap is subject to both regulatory reporting and public dissemination only 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 security-based swap is accepted for clearing by a clearing agency having its principal place of business in the United States. Nothing in existing Rule 908(a)(1) extends the public dissemination requirements to transactions of registered security-based swap dealers and registered major security-based swap participants based on the location of personnel who engage in relevant conduct. Thus, under existing Rule 908(a), a transaction involving only non-U.S. persons on both sides, even if one or both sides include a registered foreign security-based swap dealer, would not be subject to public dissemination. Under new Rule 908(a)(1)(v), however, the location of the personnel who engage in relevant activity on behalf of a foreign dealing entity becomes a dispositive factor for determining whether the transaction is subject to public dissemination. The Commission anticipates that a significant number of transactions between foreign registered security-based swap dealers will be with other non-U.S. persons (including other foreign registered security-based swap dealers). Under existing Rule 908(a), the overwhelming majority of these transactions would have been subject only to regulatory reporting. However, with the adoption of Rule 908(a)(1)(v), many of these transactions also will be subject to public dissemination, if there is a foreign dealing entity on either side that is engaging in ANE activity.

The Commission believes that it is appropriate to apply the public dissemination requirements to all ANE transactions, even those between two foreign counterparties where only one side is engaging in ANE activity. Transactions that are arranged, negotiated, or executed by U.S. personnel of a foreign dealing entity exist at least in part within the United States. Subjecting such transactions to public dissemination is consistent with the Commission’s territorial application of Title VII requirements.\textsuperscript{427} The Commission believes that the public dissemination of ANE transactions will increase price competition and price efficiency in the security-based swap market generally, and enable all market participants to have more comprehensive information with which to make trading and valuation determinations for security-based swaps and related and underlying assets.\textsuperscript{428} Thus, the Commission disagrees with the commenter who did “not believe the public dissemination of SBS between non-US Persons increases transparency to the public.”\textsuperscript{429} and another commenter who asserted that publicly disseminating such transactions between non-U.S. persons could result in the dissemination of information that is not informative or that gives a distorted view of prevailing market prices.\textsuperscript{430} The Commission believes, to the contrary, that public dissemination of transactions between non-U.S. persons, where one or both sides are engaging in ANE activity, will be informative and will provide useful information about prevailing market prices in the U.S. security-based swap market. The fact that a foreign dealing entity uses U.S. personnel to arrange, negotiate, or execute a transaction suggests that these personnel were selected because they have familiarity with the U.S. security-based swap market, and that the instruments involved in such transactions between non-U.S. persons are typically the same or similar to instruments traded between foreign dealing entities and U.S. persons.\textsuperscript{431} The Commission believes, therefore, that public dissemination of all ANE transactions will contribute to price discovery and price competition in the U.S. security-based swap market. The Commission further believes that—rather than providing a distorted view of prevailing market prices, as these commenters suggest—the dissemination of ANE transactions will provide a more comprehensive view of activity in the U.S. market.

Another commenter questioned the transparency benefits of publicly disseminating uncleared bilateral trades that may include bespoke terms.\textsuperscript{432} However, as the Commission previously discussed in the Regulation SBSR Adopting Release, even bespoke transactions have price discovery value and thus should be publicly

\textsuperscript{425} See infra notes 929 to 933 and accompanying text (discussing the programmatic costs associated with the reporting and public dissemination of ANE transactions). See also infra Section XIII(H)(discussing the importance of foreign dealing entities restructuring their operations to avoid triggering reporting requirements).

\textsuperscript{426} See infra Section XIII[A][A][a] (discussing the estimated costs and benefits of new Rule 908(a)(1)(v)).


\textsuperscript{428} See infra Section XIII(H)[2].

\textsuperscript{429} ISDA III at 11.

\textsuperscript{430} See SIFMA/FSR Letter at 12.

\textsuperscript{431} Various commenters noted, for example, that foreign dealing entities typically utilize U.S. personnel because such personnel have familiarity with instruments traded in the U.S. market. See ISDA I at 5 (“The prudent risk management of global market participants therefore requires sales and trading experts in SBS transactions to typically be located in the region of the underlying asset.”). Accordingly, experts in SBS products that are linked to U.S.-based underliers will usually tend to be located in the United States”); IIB Letter at 2 (“we believe that it would be desirable to foster the continued use of U.S. personnel by non-U.S. SBSDs to engage in market-facing activities. These activities are important to effective risk management by non-U.S. SBSDs in connection with SBS involving U.S. reference entities. This is because the traders with the greatest expertise and familiarity with those types of SBS are best positioned to risk manage those positions and are typically located in the United States. . . . Centralization of pricing, hedging and risk management functions and workable integration of these functions with sales activity by non-U.S. SBSDs also helps to promote U.S. market liquidity by integrating trading interest from non-U.S. counterparties into the U.S. market”); SIFMA/FSR Letter at 6 (“For U.S.-listed products and security-based swaps based on those products, many non-U.S. dealing entities concentrate that expertise in the United States to better serve client demands”).

\textsuperscript{432} See IIIB Letter at 15.
that the Commission’s analysis of the trade-off between transparency and liquidity did not fully address the costs and benefits of applying a U.S.-personnel test to the public dissemination requirement.437 Such fragmentation, in the commenter’s view, would lead to adverse effects on effective risk management, market liquidity, and U.S. jobs. The commenter also expressed concern that the costs associated with reporting ANE transactions could lead some non-U.S. security-based swap dealers to prevent their U.S. personnel from interacting with non-U.S. counterparties, and some non-U.S. counterparties to avoid interactions with U.S. personnel.438

The Commission acknowledges, as this commenter suggests, that to avoid public dissemination some foreign dealing entities might prevent their U.S. personnel from interacting with non-U.S. counterparties, and some non-U.S. counterparties might avoid interactions with U.S. personnel. The Commission believes, nevertheless, that public dissemination requirements on ANE transactions is necessary to advance the Title VII objectives of enhancing transparency in the security-based swap market. The Commission notes that new Rule 908(a)(1)(v) extends the public dissemination requirements only to ANE transactions of foreign dealing entities with non-U.S. persons; transactions of foreign dealing entities with U.S. persons—regardless of whether they are arranged, negotiated, with U.S. persons—already subject to existing Rule 908(a)(1)(i) by virtue of a U.S. person’s involvement in the transaction. The Commission believes, therefore, that extending the public dissemination requirements to ANE transactions involving non-U.S. persons will promote a level playing field. Without Rule 908(a)(1)(v), the U.S. personnel of a foreign dealing entity might be able to offer liquidity to non-U.S. persons at lower prices than to U.S. persons, because the foreign dealing entity would not have to embed the potential costs of public dissemination in the prices offered to their non-U.S. counterparties, and Rule 908(a)(1)(v) should not affect the prices that foreign dealing entities that engage in ANE transactions offer to their non-U.S. counterparts.

Comments also stated that the proposed rule could result in duplicative reporting because transactions covered by the proposed rule also would likely be reported in prices offered to their non-U.S. counterparties, and Rule 908(a)(1)(v) would not affect the prices that foreign dealing entities that engage in ANE transactions offer to their non-U.S. counterparts.

The commenter also argued that it would be problematic for foreign dealing entities to assess for ANE activity, which would trigger the public dissemination requirement.440 However, such an assessment is not required unless a foreign dealing entity wishes to exclude the transaction from public dissemination because relevant activity does not occur within the United States (and there is no other basis for public dissemination under Rule 908(a)(i)). For any transaction report, the default assumption is that it is subject to public dissemination, unless the person submitting the report has appropriately flagged it as “do not disseminate.”441 A registered foreign security-based swap dealer that does not wish to assess a transaction for ANE activity could simply refrain from applying the flag and the transaction would be publicly disseminated.442

c. Impact of Substituted Compliance

Comments also stated that the proposed rule could result in duplicative reporting because transactions covered by the proposed rule also would likely be reported in

433 See Regulation SSBR Adopting Release, 80 FR at 14611 (“The disseminated price [of a bespoke transaction] 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”).

434 See infra Section XIII(H)(2).

435 See Rule 901(j); Appendix to Rule 901 (Reports Regarding the Establishment of Block Thresholds and Dissemination of Delays for Regulatory Reporting of Security-Based Swap Data); Regulation SSBR Adopting Release, 80 FR at 14616–25.

436 See IB Letter at 14. According to this commenter, a non-U.S. counterparty whose transaction was subject to public dissemination would receive a worse execution price because a dealer might widen its quotes for the transaction to counteract the risk that other market participants would front-run the dealer’s hedges. The commenter suggested that, although a U.S. counterparty would have a similar incentive to avoid public dissemination of its trades, U.S. counterparties would not be in the same position as non-U.S. counterparties to avoid the application of U.S. public dissemination requirements. See id. at 14–15.

437 See id. at 15. See id. at 15–16. 438 However, to the extent that transactions of foreign dealing entities are subject to public dissemination requirements under the rules of a foreign jurisdiction, the costs of public dissemination should already be factored into the costs of lower prices obtained by non-U.S. persons would depend on the magnitude of the perceived costs of public dissemination, the Commission believes that it is appropriate to place the transactions of U.S. persons and non-U.S. persons on a more equal footing, so that non-U.S. persons do not have a competitive advantage over U.S. persons when engaging in security-based swap transactions that, due to the involvement of U.S. personnel of the foreign dealing entity, exist at least in part within the United States.

The commissioner also argued that it would be problematic for foreign dealing entities to assess for ANE activity, which would trigger the public dissemination requirement.440 However, such a requirement is not required unless a foreign dealing entity wishes to exclude the transaction from public dissemination because relevant activity does not occur within the United States (and there is no other basis for public dissemination under Rule 908(a)(i)). For any transaction report, the default assumption is that it is subject to public dissemination, unless the person submitting the report has appropriately flagged it as “do not disseminate.”441 A registered foreign security-based swap dealer that does not wish to assess a transaction for ANE activity could simply refrain from applying the flag and the transaction would be publicly disseminated.442

439 See ISDA III at 11 (noting that, even if the Commission were to defer Regulation SSBR compliance until after security-based swap dealer registration, “there would still be a need to exchange ANE on transactions between non-U.S. persons engaged in activity (including between non-U.S. registered SBSD) only so the reporting side will know that it needs to send a separate message or otherwise indicate to the SDR . . . that a SBS is subject to public reporting”).

440 See Regulation SSBR Adopting Release, 80 FR at 14610 (“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)(i)”).

441 Cf. U.S. Activity Adopting Release, 81 FR at 8628 (“a dealer may choose to report all transactions with other non-U.S. persons towards its de minimis threshold, regardless of whether counting them is required, to avoid the cost of assessing the locations of personnel involved with each transaction”).
another jurisdiction. These commenters recommended that the Commission obtain information about these transactions through information-sharing arrangements with foreign regulatory authorities, rather than establishing duplicative reporting requirements. One of these commenters expressed concern that the potential for duplicative reporting could overstate trading volumes in the security-based swap market, which would not advance the G20’s goal of improving transparency for derivatives. Two commenters argued that foreign regulators would have a greater interest than the Commission in establishing transparency requirements for security-based swaps involving non-U.S. counterparties.

The Commission acknowledges that some ANE transactions of foreign dealing entities could be subject to reporting and/or public dissemination requirements in other jurisdictions. Substituted compliance could mitigate the concerns of these commenters if the Commission issues a substituted compliance order for regulatory reporting and public dissemination of security-based swaps with respect to a particular foreign jurisdiction. In such case, a cross-border transaction involving that jurisdiction would not be subject to any direct reporting and public dissemination requirements under Regulation SBSR. A substituted compliance order would eliminate duplication with the comparable reporting and public dissemination requirements of the other jurisdiction, and concerns regarding overstated trading volumes and distortions of the market would thus not arise.

A person relying on substituted compliance in this manner would remain subject to the applicable Exchange Act requirements but would be complying with those requirements in an alternative fashion.

The Commission recognizes that, in practice, there will be limits to the availability of substituted compliance. For example, if the Commission were unable to make a favorable comparability determination with respect to one or more foreign jurisdiction’s security-based swap reporting and dissemination requirements because they do not achieve a comparable regulatory outcome, or because the foreign trade repository or foreign authority that receives and maintains transaction reports is not subject to requirements comparable to those imposed on SDRs, the Commission would not issue a substituted compliance order with respect to that jurisdiction. The availability of substituted compliance also will depend upon the availability of supervisory and enforcement arrangements among the Commission and relevant foreign financial regulatory authorities. Although comparability assessments will focus on regulatory outcomes rather than rule-by-rule comparisons, the assessments will require inquiry regarding whether foreign regulatory requirements adequately reflect the interests and protections associated with the particular Title VII requirement. Further, only transactions in which at least one of the direct counterparties to the security-based swap is a non-U.S. person or a foreign branch are eligible for substituted compliance.

Finally, one commenter asserted that, “[w]ith respect to Non-U.S. SBS cleared outside the United States, foreign regulators have a relatively greater interest than the Commission in establishing applicable transparency requirements.” The Commission acknowledges that foreign regulatory authorities have a regulatory interest in security-based swaps that are cleared in their jurisdictions. However, for the reasons discussed above, the Commission also has a regulatory interest when a transaction involves ANE activity conducted by U.S. personnel of one or both sides of the transaction—even if the transaction is subsequently cleared outside the United States. Public dissemination of all ANE transactions should increase transparency and facilitate price discovery and price competition in the U.S. security-based swap market; regulatory reporting of all ANE transactions will enhance the Commission’s ability to oversee the U.S. security-based swap market and the activities of U.S. personnel who are involved in arranging, negotiating, or executing such transactions. The Commission believes, therefore, that it has a compelling interest in establishing regulatory reporting and public dissemination requirements for all ANE transactions.

D. Extending Regulation SBSR to All Transactions Executed on a U.S. Platform Effective By or Through a Registered Broker-Dealer

In the U.S. Activity Proposal, the Commission proposed to add paragraph (a)(1)(iv) to Rule 908(a)(1) that would have subjected any security-based swap transaction that is executed on a platform having its principal place of business in the United States to regulatory reporting and public dissemination. The Commission also proposed a new paragraph (a)(1)(iv) to Rule 908(a)(1) that would subject any security-based swap transaction that is effected by or through a registered broker-dealer (including a registered SB SEF) to regulatory reporting and public dissemination. The Commission notes that many types of security-based swap transactions that are executed on a platform or effected by or through a registered broker-dealer are already subject to Regulation SBSR—for example, if either side includes a U.S. person or a registered person, or if the transaction is accepted for clearing at a clearing agency having its principal place of business in the United States. Thus, proposed Rules 908(a)(1)(iii) and (iv) would have had the effect of extending regulatory reporting and public dissemination requirements to transactions occurring on a platform having its principal place of business in the United States or executed by or through a registered broker-dealer only when the counterparties consist exclusively of registered non-U.S. persons. In addition, proposed Rules 908(a)(1)(iii) and (iv) would have extended the public dissemination requirement to transactions involving a registered foreign security-based swap dealer that are executed on a platform or through a registered broker-dealer and not otherwise subject to public dissemination requirements applied to the transaction pursuant only to Regulation SBSR.

443 See SIFMA/FSR Letter at 12; SIFMA–AMG I at 6. 444 See id. 445 See SIFMA–AMG I at 2, 6. The commenter also stated that reporting the same transaction to trade repositories in the United States and the European Union undermines the quality of publicly disseminated information because of errors caused by reporting the same transaction in multiple jurisdictions. See id. at 6. 446 See IIIB Letter at 15; SIFMA/FSR Letter at 12. 447 The Commission further notes that, to the extent that ANE transactions involving foreign dealing entities are subject to comparable requirements for reporting and public dissemination in another foreign jurisdiction—a necessary but not sufficient condition for the Commission to issue a substituted compliance order—a foreign dealing entity would not have an incentive to avoid Regulation SBSR’s public dissemination requirements by, for example, relocating its personnel, because the transaction would in any case be subject to the public dissemination requirements of the other jurisdiction. Relocating personnel or curtailing the activities of personnel who remain in the United States would be effective in avoiding public dissemination only if public dissemination requirements applied to the transaction pursuant only to Regulation SBSR. 448 See IIIB Letter at 15.
dissemination (e.g., because there is a U.S. person on the other side).

Two commenters generally opposed these amendments. One of these commenters stated that transactions between non-U.S. persons that have no U.S.-person guarantor—which would include transactions covered by proposed Rules 908(a)(1)(iii), (iv), and (v)—should not be subject to regulatory reporting or public dissemination in the United States because they lack the requisite nexus to the United States. The other commenter expressed the view that these requirements should not apply to the security-based swaps of non-U.S. persons unless they involve a registered security-based swap dealer. The commenter added that proposed Rule 908(a)(1)(iv) could provide incentives for non-U.S. counterparties to avoid transacting through registered broker-dealers, resulting in market fragmentation that would lead to adverse effects on risk management, market liquidity, and U.S. jobs.

The Commission continues to believe that any transaction executed on a platform that has its principal place of business in the United States should be subject to regulatory reporting and public dissemination, even when the transaction involves two non-U.S. persons that are not engaged in dealing activity in connection with the transaction. Transactions executed on a platform having its principal place of business in the United States are consummated within the United States and therefore exist, at least in part, in the United States. Requiring these security-based swaps to be reported will permit the Commission and other relevant authorities to observe, in a registered SDR, all transactions executed on U.S. platforms and to carry out oversight of such transactions. With respect to public dissemination of platform-executed security-based swaps, the Commission notes that it would be inconsistent if a subset of the transactions executed on U.S. platforms—those involving unregistered non-U.S. counterparties—were not subject to public dissemination, while all other transactions executed on U.S. platforms were subject to public dissemination. Furthermore, the Commission understands that platforms typically engage in the practice of disseminating information about completed transactions to their own participants. Accordingly, the Commission believes that it would be anomalous for a platform to broadcast information about a transaction involving two non-U.S. counterparties to its participants if such transaction were not also included within Regulation SBSR’s public dissemination requirements.

As the Commission previously noted in the U.S. Activity Proposal, registered broker-dealers play a key role as intermediaries in the U.S. financial markets. To improve the integrity and transparency of those markets, the Commission believes that the Commission and other relevant authorities should have ready access to detailed information about the security-based swap transactions that such persons intermediate. Furthermore, the Commission believes that public dissemination of security-based swap transactions intermediated by a registered broker-dealer will provide useful information about prevailing market prices in the U.S. security-based swap market, and that regulatory reporting of such transactions will assist the Commission and other relevant authorities in overseeing the U.S. security-based swap market. Such reporting also will assist the Commission in overseeing the activities of market intermediaries that it registers.

The Commission agrees that there is some possibility that requiring the regulatory reporting and public dissemination of security-based swaps between unregistered non-U.S. persons that are intermediated by registered broker-dealers could create an incentive for those non-U.S. persons to avoid transacting through a registered broker-dealer. However, a rule that failed to capture these transactions could provide unregistered non-U.S. persons a competitive advantage over unregistered U.S. persons. The security-based swap transactions of U.S. persons effected by or through a registered broker-dealer are subject to Regulation SBSR, while the transactions between unregistered non-U.S. persons effected by or through a registered broker-dealer would not be subject to Regulation SBSR. Absent Rules 908(a)(1)(iii) and (iv), a registered broker-dealer (or platform) might be able to offer its services at a lower price to non-U.S. persons than to U.S. persons, because the platform or registered broker-dealer would not have to embed the potential costs of regulatory reporting and public dissemination when pricing services offered to non-U.S. persons. By contrast, the price offered by the platform or registered broker-dealer to U.S. persons would likely reflect these additional costs. The Commission does not see a basis for permitting non-U.S. persons to enjoy this competitive advantage over U.S. persons when engaging in security-based swap transactions that, due to the involvement of a U.S. platform or registered broker-dealer, exist at least in part within the United States.

Accordingly, the Commission declines to adopt the commenters’ recommendation that the Commission exclude from Regulation SBSR the transactions of unregistered non-U.S. persons that are effected by or through a registered broker-dealer.

E. Public Dissemination of Covered Cross-Border Transactions

Existing Rule 908(a)(1)(i) requires regulatory reporting and public dissemination 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. This would include, for example, a security-based swap having, on one side, a direct counterparty who is not a U.S. person but has a U.S. guarantor, and on the other side includes no counterparty that is a U.S. person, registered security-based swap dealer, or registered major security-based swap participant (a “covered cross-border transaction”). As discussed in the U.S. Activity Proposal, this treatment of covered cross-border transactions represented a departure from the re-proposed approach described in the Cross-Border Proposing Release, which would have excepted covered cross-border transactions from the public dissemination requirement.

The Commission noted, however, that it had determined to continue considering whether to except covered cross-border transactions from the public dissemination requirement and that it would solicit additional comment.
regarding whether such an exception would be appropriate.\(^{462}\)

In the U.S. Activity Proposal, the Commission expressed its preliminary view that—in light of its determination to require all security-based swap transactions of U.S. persons, including all transactions conducted through a foreign branch, to be publicly disseminated—it did not think that it would be appropriate to exempt covered cross-border transactions from the public dissemination requirement.\(^{463}\) As the Commission had previously noted in the Regulation SBSR Adopting Release,\(^{464}\) a security-based swap transaction involving a U.S. person that guarantees a non-U.S. person exists, at least in part, within the United States, and the economic reality of these transactions is substantially identical to transactions entered into directly by a U.S. person (including through a foreign branch). Subjecting transactions through a foreign branch to public dissemination but excluding transactions involving a U.S.-person guarantor would treat these economically substantially identical transactions differently, and could create competitive disparities among U.S. persons, depending on how they structured their businesses. Thus, a U.S. person that engages in security-based swap transactions through a guaranteed foreign subsidiary could carry out an unlimited volume of covered cross-border transactions without being subject to the public dissemination requirement, while another U.S. person that engaged in similar transactions through a U.S. branch would be subject to the public dissemination requirement.\(^{465}\)

Two commenters disagreed with the Commission’s proposed treatment of covered cross-border transactions.\(^{466}\) One of these commenters argued that the financial risks of such transactions lie outside the United States, and that the presence of a U.S.-person guarantor would not make the pricing information relating to the transaction relevant to the U.S. market.\(^{467}\) The other commenter argued not only that covered cross-border transactions should be exempt from public dissemination, but that the Commission should expand this exemption to include transactions in which both sides include a U.S.-person guarantor but neither side includes a registered security-based swap dealer or major security-based swap participant, or a U.S. person as a direct counterparty.\(^{468}\) The commenter argued that, because these transactions take place outside the United States and are between two unregistered non-U.S. persons, “there is insufficient U.S. jurisdictional nexus to justify the public dissemination of the security-based swap data in the United States.”\(^{469}\)

The Commission disagrees with the commenter’s assertions that the financial risks of covered cross-border transactions lie outside the United States and that there is insufficient U.S. jurisdictional nexus to justify the public dissemination of these transactions in the United States. As the Commission noted in the Regulation SBSR Adopting Release, a security-based swap having an indirect counterparty that is a U.S. person 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.\(^{470}\) 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.\(^{471}\) The financial resources of the U.S. guarantor could be called upon to satisfy the contract if the direct counterparty fails to meet its obligations; thus, the extension of a guarantee is economically equivalent to a transaction entered into directly by the U.S. guarantor.\(^{472}\) Because a U.S. guarantor might be obligated to perform under the guarantee, the Commission disagrees with the commenter’s assertion that the financial risks of covered cross-border transactions lie outside the United States.

With respect to the commenter’s view that covered cross-border transactions lack sufficient jurisdictional nexus to justify their public dissemination in the United States, the Commission takes the position that, under the territorial approach to Title VII described in the Regulation SBSR Adopting Release, 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 requirement for public dissemination.\(^{473}\) In the Regulation SBSR Adopting Release, the Commission noted that 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.\(^{474}\) In addition, the economic reality of covered cross-border transactions is substantially identical to transactions entered into directly by a U.S. person (including through a foreign branch).\(^{475}\) Excluding covered cross-border transactions from public dissemination would treat these economically similar transactions differently, potentially creating competitive disparities among U.S. persons, depending on how they have structured their businesses.\(^{476}\) To avoid such competitive disparities and to further the transparency goals of Title VII, the Commission believes that it is necessary and appropriate to require the public dissemination of covered cross-border transactions.

\(^{462}\) See U.S. Activity Proposal, 80 FR at 27485.

\(^{463}\) See id.

\(^{464}\) See Regulation SBSR Adopting Release, 80 FR at 14653.

\(^{465}\) See U.S. Activity Proposal, 80 FR at 27485. The Commission notes that, if the transactions of the U.S. guarantor and its foreign subsidiary are subject to regulatory reporting and public dissemination requirements in a foreign jurisdiction, such transactions could be eligible for substituted compliance if the Commission determines that the foreign requirements are comparable to those imposed by Regulation SBSR and other necessary conditions are met. See Rule 908(c).

\(^{466}\) See ISDA I at 13–14; SIFMA/FSR Letter at 14.

\(^{467}\) See ISDA I at 14.

\(^{468}\) See id.

\(^{469}\) Id. However, the commenter did not object to subjecting these transactions to regulatory reporting to a registered SDR. See id.

\(^{470}\) See 80 FR at 14653.

\(^{471}\) See id. (citing Cross-Border Adopting Release, 79 FR at 47289).

\(^{472}\) See id.

\(^{473}\) See 80 FR at 14649–50.

\(^{474}\) See id. at 14653. See also Cross-Border Adopting Release, 79 FR at 47289–90 (“the economic reality of the non-U.S. person’s dealing activity, where the resulting transactions are guaranteed by a U.S. person, is identical, in relevant respects, to a transaction entered into directly by the U.S. guarantor”).

\(^{475}\) See 80 FR at 14651.

\(^{476}\) See U.S. Activity Proposal, 80 FR at 27485.

\(^{477}\) See id. However, if the transactions of a guaranteed non-U.S. person are subject to regulatory reporting and public dissemination requirements in a foreign jurisdiction and the Commission finds that the foreign requirements are comparable to those imposed by Regulation SBSR and other conditions set forth in Rule 908(c) are met, such transactions could be eligible for substituted compliance.
SBRS. Rule 908(b) was designed to reduce regulatory assessment costs and provide greater legal certainty to counterparties engaging in cross-border security-based swaps.

1. Expanding Rule 908(b) To Include All Platforms and Registered Clearing Agencies

In the Regulation SBRS Proposed Amendments Release, the Commission expressed the preliminary view that all platforms and registered clearing agencies should incur the reporting duties specified in the proposed amendments to Rule 901(a), even if they are not U.S. persons. Consistent with this view, the Commission proposed to expand Rule 908(b) to include any platform or registered clearing agency as among the persons that may incur duties under Regulation SBRS. To the extent that a platform or registered clearing agency is a U.S. person, such entity falls within existing Rule 908(b)(1). Thus, the effect of this proposed amendment to Rule 908(b) would be to include within the rule any platform or registered clearing agency that is not a U.S. person.

Three commenters generally supported expanding Rule 908(b) to include all platforms and registered clearing agencies. The Commission is adopting the amendments to Rule 908(b) as proposed. For the reasons explained above, the Commission continues to believe that all platforms and registered clearing agencies should incur the duties specified in the amendments to Rule 901(a), even if they are not U.S. persons. Without this amendment, U.S.-person platforms and registered clearing agencies would be subject to regulatory obligations from which non-U.S.-person platforms and registered clearing agencies would be free.

2. Expanding Rule 908(b) To Include Non-U.S. Persons Engaging in ANE Transactions

In the U.S. Activity Proposal, the Commission proposed to add a new paragraph (b)(5) to Rule 908(b) to include any non-U.S. person that, in connection with such person’s security-based swap dealing activity, arranges, negotiates, or executes a security-based swap using its personnel located in a U.S. branch or office, or using personnel of its agent located in a U.S. branch or office. Consistent with the proposed amendments to Rule 901(a)(2)(ii)(E) that would bring foreign dealing entities engaging in ANE transactions into the reporting hierarchy, the Commission also proposed to add all non-U.S. persons engaging in ANE transactions into Rule 908(b). Because existing Rule 908(b)(2) already covers a non-U.S. person that is registered as a security-based swap dealer, the effect of proposed Rule 908(b)(5) would be to cover a non-U.S. person that engages in dealing activity in the United States but that does not meet the de minimis threshold and thus would not be required to register as a security-based swap dealer.

To the extent that a platform or registered clearing agency is a U.S. person, such entity falls within existing Rule 908(b)(1). Thus, the effect of this proposed amendment to Rule 908(b) would be to include within the rule any platform or registered clearing agency that is not a U.S. person.

Three commenters generally supported expanding Rule 908(b) to include all platforms and registered clearing agencies. The Commission adopted the amendments to Rule 908(b) as proposed. For the reasons explained above, the Commission continues to believe that all platforms and registered clearing agencies should incur the duties specified in the amendments to Rule 901(a), even if they are not U.S. persons. Without this amendment, U.S.-person platforms and registered clearing agencies would be subject to regulatory obligations from which non-U.S.-person platforms and registered clearing agencies would be free.

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The Commission received no comments that specifically addressed this proposed amendment and, for the reasons discussed in the U.S. Activity Proposal, is adopting Rule 908(b)(5) as proposed. Accordingly, Rule 908(b)(5) provides that a non-U.S. person that, in connection with such person’s security-based swap dealing activity, arranged, negotiated, or executed the security-based swap using its personnel located in a U.S. branch or office, or personnel of an agent located in a U.S. branch or office, may incur reporting duties under Regulation SBRS.

G. Reporting Duties of Unregistered Persons

1. Description of Proposed Rules

Existing Rule 901(a)(2)(ii) sets forth a reporting hierarchy that specifies the

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Also under proposed Rule 901(a)(2)(ii)(E)(2), if both sides are unregistered non-U.S. persons and both are engaging in ANE activity, the sides would be required to select the reporting side.

Proposed Rule 901(a)(2)(ii)(E)(3) was designed to address the scenario where one side is subject to Rule 908(b) and the other side is not—i.e., one side includes only unregistered non-U.S. persons and that side does not engage in any ANE activity. When the other side includes an unregistered U.S. person or an unregistered non-U.S. person that is engaging in ANE activity, the side with the unregistered U.S. person or the unregistered non-U.S. person engaging in ANE activity would be the reporting side. The Commission preliminarily believed that the U.S. person or the non-U.S. person engaged in ANE activity generally would be more likely than the other side to have the ability to report the transaction given that it has operations in the United States.489 The Commission also noted that, in a transaction where neither side includes a registered person, placing the duty on the side that has a presence in the United States should better enable the Commission to monitor and enforce compliance with the reporting requirement.490

Proposed Rule 901(a)(2)(ii)(E)(4) was designed to address the scenario where neither side includes a counterparty that falls within Rule 908(b)—i.e., neither side includes a registered person, a U.S. person, or a non-U.S. person engaging in ANE activity—but the transaction is effectuated by or through a registered broker-dealer (including a registered SB SEF). In such case, the proposed rule would require the registered broker-dealer to report the transaction. The Commission preliminarily believed that the registered broker-dealer generally would be more likely than the unregistered non-U.S. counterparties (none of which are engaging in ANE activity with respect to that particular transaction) to have the ability to report the transaction given its presence in the United States and its familiarity with the Commission’s regulatory requirements.491

2. Discussion of Comments and Final Rules
a. Transactions Where One or Both Sides Consist Only of Unregistered Persons

After careful consideration of all the comments, to which the Commission responds below, the Commission is adopting Rules 901(a)(2)(ii)(E)(2) and (3) as proposed. Rule 901(a)(2)(ii)(E)(2) contemplates that both sides of a security-based swap include only unregistered persons yet both sides include a person who is subject to Rule 908(b). In such case, the sides generally will have equal capacity to carry out the reporting duty; therefore, the Commission believes that it is appropriate to require them to select the reporting side. Rule 901(a)(2)(ii)(E)(3) contemplates that both sides include only unregistered persons and only one side includes a person who is subject to Rule 908(b). In such case, Rule 901(a)(2)(ii)(E)(3) assigns the reporting duty to the side that includes the person who is subject to Rule 908(b). The Commission believes that this result will help to ensure compliance with the reporting requirements of Regulation SBSR.

Two commenters expressed concerns about the expense and difficulty of determining which of these two rules to apply when one side is an unregistered foreign dealing entity who might or might not be utilizing U.S. personnel in a particular transaction.492 These commenters warned that the burdens associated with determining whether a transaction was arranged, negotiated, or executed using U.S. personnel would unduly fall on unregistered entities that are not well-equipped to carry out a reporting obligation.493 In raising these concerns, the commenters assumed that the Commission would require compliance with Regulation SBSR before security-based swap dealers register as such with the Commission. Requiring compliance with Regulation SBSR prior to security-based swap dealer registration would have resulted in a large number of foreign dealing entities becoming subject to reporting requirements with respect to individual transactions in which they are engaging in ANE activity before security-based swap dealer registration was required. Because these foreign dealing entities would not yet have been required to be registered as security-based swap dealers, S. non-dealing entities could have been required to assume greater duties in reporting such transactions and to assess on a transaction-by-transaction basis whether the other side was engaging in ANE activity.494

489 See supra Section II(A)(5), where the Commission notes that ISDA-recognized dealers (both U.S. and foreign) are involved in 74% of North American corporate single-name CDS transactions. The Commission believes that all ISDA-recognized dealers will be registered as security-based swap dealers.
side. An unregistered foreign dealing entity would be subject to Rule 901(a)(2)(ii)(E)(3) if it transacts with any unregistered foreign entity (including a foreign non-dealing entity or a foreign dealing entity that is not engaging in ANE activity with respect to that transaction). This approach places the duty to report directly on the only side that includes a person that is subject to Rule 908(b). The Commission estimates that only four foreign dealing entities will incur reporting obligations under new Rules 901(a)(2)(ii)(E)(2) and (3).496 Requiring additional ANE transactions of these foreign dealing entities to be reported—and requiring the foreign dealing entity and the other side to select the reporting side in a tie situation under Rule 901(a)(2)(ii)(E)(2) or requiring the foreign dealing entity to become the reporting side directly when it falls under Rule 901(a)(2)(ii)(E)(3)—will enhance the Commission’s ability to oversee security-based swap dealing activity occurring with the United States and to monitor for compliance with specific Title VII requirements, including the requirement that a person register with the Commission as a security-based swap dealer if it exceeds the de minimis threshold. The Commission recognizes that unregistered foreign dealing entities (and other unregistered persons when they transact with unregistered foreign dealing entities) may incur costs in assessing whether these rules apply to their transactions.497 However, requiring these ANE transactions to be publicly disseminated will further enhance the level of transparency in the U.S. security-based swap market, potentially promoting greater price efficiency by reducing implicit transaction costs.

One commenter recommended that, in a transaction between an unregistered U.S. person and an unregistered non-U.S. person engaged in ANE activity, the Commission should not require the sides to select the reporting side, but should instead place the reporting obligation on the non-U.S. person, because it is engaging in dealing activity.498 The side engaged in dealing activity would, in the commenter’s view, have a greater capacity to fulfill the reporting obligation and would likely face minimal incremental costs, because many dealing entities already have in place arrangements to report derivatives transactions.499 The commenter expressed concern that U.S. funds “may not have the economic leverage to require their non-U.S. dealers to report” and, if an unregistered non-U.S. person did have to report, it would incur “considerable expense.”500

The Commission does not believe that it is appropriate to modify Rule 901(a)(2)(ii)(E)(2) to assign the reporting duty for this transaction pair to the unregistered non-U.S. person who is engaging in ANE activity. While the Commission acknowledges the commenter’s concern about the potential expense that an unregistered U.S. person could incur if it were required to report a security-based swap transaction with an unregistered foreign dealing entity, the Commission believes that it is unlikely that U.S. non-dealing entities will incur costs associated with reporting transactions themselves or costs of assessing whether an unregistered foreign dealing entity is utilizing U.S. personnel to engage in ANE activity. The foreign dealing entity’s willingness to clearly indicate whether it is using U.S. personnel and to assume the reporting obligation should be a factor that a U.S. non-dealing entity likely would consider when selecting a non-U.S. person with whom to transact. If an unregistered foreign dealing entity were unable or unwilling to be selected as the reporting side (or to agree to be the reporting side only at a cost that is prohibitive to the U.S. person), the U.S. person could elect to trade with one of several registered security-based swap dealers, both U.S. and foreign, for whom reporting obligations would attach by operation of Rule 901(a)(2)(ii)(B),501 and negotiation about which side would incur the reporting duty would not be necessary.

b. Transactions Involving a Registered Broker-Dealer

Two commenters disagreed with proposed Rule 901(a)(2)(ii)(E)(4),502 which would require a registered broker-dealer (including a registered SB SEF) to report a security-based swap that it effects between two unregistered non-U.S. persons who are not engaged in ANE activity. One commenter stated that the rule would require registered broker-dealers to implement costly and robust data capturing mechanisms and requirements regarding the status of direct and indirect counterparties or the use of U.S. personnel to determine whether one side of a security-based swap is obligated to report the transaction, or whether the registered broker-dealer would have the reporting obligation.503 Another commenter stated that the proposed rule would create a disproportionate burden on registered broker-dealers relative to the small percentage of the market represented by the transactions between non-U.S. persons that would be covered by the proposed rule.504 Both commenters asserted that the registered broker-dealer that reports the transaction would be unable to report life cycle events for the transaction.505

Thus, in the view of one commenter, the Commission would be unable to rely on the reported information as current and accurate.506

The Commission continues to believe that, to improve the integrity and transparency of the U.S. financial markets, the Commission and other relevant authorities should have ready access to transaction reports of security-based swap transactions that registered broker-dealers intermediate.507 The Commission further believes that public dissemination of these transactions will have value to participants in the U.S. security-based swap market, who are likely to trade the same or similar products.508 The Commission acknowledges that registered broker-dealers are required to implement policies and procedures to comply with the reporting obligation under Rule 901(a)(2)(ii)(E)(4), including procedures for determining the status of direct and indirect counterparties and the use of U.S. personnel to arrange, negotiate, or execute a transaction.509 However, the Commission is not mandating specific policies and procedures, and registered broker-dealers will have flexibility in developing the appropriate processes.

The Commission further acknowledges that life cycle events for the transactions covered by Rule 901(a)(2)(ii)(E)(4) will not be reported. Under Rule 901(e), the reporting side for a security-based swap transaction is obligated to report life cycle event information for the transaction. Security-based swaps covered by Rule 901(a)(2)(ii)(E)(4) must be reported by a registered broker-dealer (including a

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496 See infra Section XII(B).
497 See U.S. Activity Adopting Release, 81 FR at 8626–29 (estimating assessment costs of foreign dealing entities to count transactions toward the de minimis thresholds under Exchange Act Rules 3a71–3(b)(1)(iii)(C) and 3a71–5(c), even if some of them do not cross the thresholds and thus are not required to register as security-based swap dealers).
498 See ICI Global Letter at 7.
499 See id.
500 Id.
501 Rule 901(a)(2)(ii)(B) provides that, if only one side of a security-based swap includes a registered security-based swap dealer, that side shall be the reporting side.
502 See ISDA I at 14; SIFMA/FSR Letter at 14.
503 See ISDA I at 14.
504 See SIFMA/FSR Letter at 14.
505 See ISDA I at 14; SIFMA/FSR Letter at 14.
506 See ISDA I at 14.
507 See U.S. Activity Proposal, 80 FR at 27485.
508 See id.
509 See Rule 906(c).
registered SB SEF), not one of the sides. Thus, security-based swaps covered by Rule 901(a)(2)(ii)(E)(4) do not have a reporting side, and neither side will have an obligation to report life cycle event information for the transaction. The Commission believes, however, that the reports of these transactions, even without subsequent life cycle event reporting, will provide important information to the Commission and to market participants at the time of execution. In any event, the Commission expects that relatively few transactions will fall within Rule 901(a)(2)(ii)(E)(4).

Finally, the Commission is modifying Rule 901(a)(2)(ii)(E)(4) so that the reporting requirement for a registered broker-dealer under Rule 901(a)(2)(ii)(E)(4) parallels the reporting requirement for a platform under final Rule 901(a)(1). The Commission believes that this change is appropriate because a registered broker-dealer, like a platform, is unlikely to know and could not without undue difficulty obtain reference to the data elements contemplated by Rule 901(d).

Furthermore, in many cases, a registered broker-dealer that falls within Rule 901(a)(2)(ii)(E)(4) also will be an SB SEF. Rule 901(a)(2)(ii)(E)(4), as proposed, would have required a registered broker-dealer (including a registered SB SEF) to report the information required under Rules 901(c) and (d). In contrast, final Rule 901(a)(2)(ii)(E)(4) requires a registered broker-dealer (including a registered SB SEF) to report only the information set forth in Rule 908(b)(5) (except that, with respect to Rule 901(c)(5), the registered broker-dealer (including a registered SB SEF) will be required to indicate only if both direct counterparties are registered security-based swap dealers), 901(d)(9), and 901(d)(10)—in other words, the same information that a platform is required to report when it incurs a reporting duty under new Rule 901(a)(1). By eliminating the need for a registered broker-dealer to report certain data elements under Rule 901(d) that the registered broker-dealer is unlikely to know and could not learn without undue difficulty, the Commission believes that the revision will help to avoid placing undue reporting burdens on registered broker-dealers (including registered SB SEFs) that incur duties as a result of new Rule 901(a)(2)(ii)(E)(4).

H. Conforming Amendments

1. Expanding Definition of “Participant” Rule 900(u), as adopted in the Regulation SBSR Adopting Release, defined a “participant” of a registered SDR as “a counterparty that meets the criteria of [Rule 908(b) of Regulation SBSR], of a security-based swap that is reported to that [registered SDR] to satisfy an obligation under [Rule 901(a) of Regulation SBSR].” In the Regulation SBSR Proposed Amendments Release, the Commission proposed an amendment to expand the definition of “participant” to include registered clearing agencies and platforms and, as described above, has adopted that amendment as proposed. In the U.S. Activity Proposal, the Commission proposed to further amend the definition of “participant” to include a registered broker-dealer that is required by Rule 901(a) to report a security-based swap if it affects a transaction between non-U.S. persons under regulation SBSR, as contemplated by Rule 901(d)(4).

The Commission received no comments regarding the proposed amendment to Rule 900(u) to include these registered broker-dealers and is adopting this amendment as proposed. The Commission continues to believe, as it stated in the U.S. Activity Proposal, that these registered broker-dealers should be participants of any registered SDR to which they are required to report security-based swap transaction information because, as SDR participants, they become subject to the requirement in Rule 901(h) to report security-based swap transaction information to a registered SDR in a format required by the registered SDR.

2. Rule 901(d)(9)

Existing Rule 901(d)(9) requires the reporting, if applicable, of the platform ID of the platform on which a security-based swap is executed. In the Regulation SBSR Adopting Release, the Commission recognized the importance of identifying the venue on which a security-based swap is executed because this information should enhance the ability of relevant authorities to conduct surveillance in the security-based swap market and understand developments in the security-based swap market generally.

In the U.S. Activity Proposal, the Commission proposed to amend Rule 901(d)(9) also to require the reporting, if applicable, of the broker ID of a registered broker-dealer (including a registered SB SEF) that is required by Rule 901(a)(2)(ii)(E)(4) to report a security-based swap effected by or through the registered broker-dealer.

The Commission received no comments regarding the proposed amendment to Rule 901(d)(9) and is adopting this amendment as proposed. The Commission continues to believe, as discussed in the U.S. Activity Proposal, that being able to identify the registered broker-dealer that effects a security-based swap transaction in the manner described in Rule 901(d)(9) will enhance the Commission’s understanding of the security-based swap market and improve the ability of the Commission and other relevant authorities to conduct surveillance of security-based swap market activities.

3. Limitation of Duty To Report Ultimate Parent and Affiliate Information

As discussed above, Rule 900(u), as amended herein, expands the definition of “participant” to include a registered broker-dealer that incurs the reporting obligation if it effects a transaction between two non-U.S. persons that do not fall within Rule 901(a)(2)(ii)(E)(4).

In the U.S. Activity Proposal, the Commission proposed to except platforms and registered clearing agencies from Rule 900(u) and, as described above, is adopting that amendment today.

In the U.S. Activity Proposal, the Commission proposed to further amend Rule 900(u) to except from the duty to provide ultimate parent and affiliate information a registered broker-dealer that becomes a participant solely as a result of making
a report to satisfy an obligation under Rule 901(g)(2)(ii)(E)(4).

The Commission received no comments regarding the amendment to Rule 906(b) proposed in the U.S. Activity Proposal and is adopting this amendment as proposed. The Commission continues to believe, as it stated in the U.S. Activity Proposal, 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 applying the requirement to a registered broker-dealer that incurs reporting obligations solely because it effects a transaction between two unregistered non-U.S. persons that do not fall within Rule 908(b)(5). A registered broker-dealer acting solely as a broker with respect to a security-based swap is not taking a principal position in the security-based swap. To the extent that such a registered broker-dealer has an affiliate that transacts in security-based swaps, such positions could be derived from other transaction reports indicating that affiliate as a counterparty.

The Commission proposed to make a conforming amendment to Rule 907(a)(6). In the Regulation SBSR Proposed Amendments Release, the Commission proposed, and today is adopting, an amendment to Rule 907(a)(6) that will require a 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, ID, and counterparty IDs.” In the U.S. Activity Proposal, the Commission proposed to further amend Rule 907(a)(6) to exempt a registered broker-dealer that incurs reporting obligations solely because it effects a transaction between two unregistered non-U.S. persons that do not fall within Rule 908(b)(5). The Commission received no comments regarding the proposed amendment to Rule 907(a)(6) and is adopting the amendment as proposed. Because such a broker-dealer has no duty under Rule 906(b), as amended, to provide such information to a registered SDR, no purpose would be served by requiring the registered SDR to have policies and procedures for obtaining this information from the broker-dealer.

1. Availability of Substituted Compliance

Existing Rule 908(c)(1) describes the possibility of substituted compliance with respect to regulatory reporting and public dissemination of security-based swap transactions. Substituted compliance could be available for transactions that will become subject to Regulation SBSR because of the amendments to Rule 908(b) being adopted today. Under Rule 908(c)(1), 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. As discussed in the U.S. Activity Proposal, existing Rule 908(c) does not condition substituted compliance eligibility on where a particular transaction was arranged, negotiated, or executed.

Thus, Rule 908(c) 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 utilizing U.S.-located personnel) potentially to be eligible for substituted compliance, if the transaction is also subject to the rules of a foreign jurisdiction that is the subject of a Commission substituted compliance order.

The rules adopted today, among other things, subject to regulatory reporting and public dissemination both ANE transactions and security-based swaps executed on a U.S. platform or effected by a registered broker-dealer. The Commission did not propose, and is not adopting, any amendment to Rule 908(c) that would limit the availability of substituted compliance for such transactions based on the location of the relevant activity. Thus, a transaction that is required to be reported and publicly disseminated because it is an ANE transaction, or because it is executed on a U.S. platform or effected by or through a registered broker-dealer, could be eligible for substituted compliance if the Commission issues a substituted compliance order with respect to regulatory reporting and public dissemination of security-based swaps applying to that jurisdiction. This approach is consistent with the Commission’s decision when adopting Rule 908(c) that certain transactions involving U.S.-person counterparties could be eligible for substituted compliance (i.e., when the transaction is through the foreign branch of the U.S. person) even if the non-U.S.-person counterparty has engaged in dealing activity in connection with the transaction in the United States. One commenter who generally opposed the regulatory reporting and public dissemination requirements proposed in the U.S. Activity Proposal specifically supported the Commission’s approach to substituted compliance.

Finally, several commenters expressed the view that reporting pursuant to Regulation SBSR should not begin until the Commission has made substituted compliance determinations. As discussed in Section X(C)(5), infra, the Commission does not believe that it is necessary or appropriate to defer compliance with Regulation SBSR until after the Commission makes one or more substituted compliance determinations.

X. Compliance Schedule for Regulation SBSR

In the Regulation SBSR Adopting Release, the Commission established a compliance date only for Rules 900, 907, and 909 of Regulation SBSR. In the Regulation SBSR Proposed Amendments Release, the Commission proposed a new compliance schedule for Rules 901, 902, 903, 904, 905, 906, and 908 of Regulation SBSR. The

524 See III Letter at 15, 17.
525 See ISDA 1st at 15 (stating that the reporting of security-based swap transactions of non-U.S. registered persons with other non-U.S. persons should not be required unless time-limited exemption analysis has been understand and substituted compliance determinations have been made); ISDA/SIFMA Letter at 19 (stating that the security-based swap transactions of non-U.S. registered security-based swap dealers should not be required until the Commission has analyzed reporting regimes in other jurisdictions and made relevant substituted compliance determinations, consistent with the CFTC’s determination to provide time-limited exemptive relief for swaps between non-U.S. swap dealers and non-U.S. persons while the CFTC analyzes the cross-border implications of reporting); SIFMA/FSR Letter at 15 (asking the Commission to defer compliance with Regulation SBSR “until [the Commission] has the opportunity to make comparability determinations for key non-U.S. jurisdictions, including Australia, Canada, the European Union, Japan and Switzerland,” and stating that “Requiring the changes to systems, personnel and trade flows necessary to comply with [the U.S. Activity Proposal] only to later be granted substituted compliance would impose significant and unnecessary burdens for negligible short-term benefit”.
526 See also infra Section XII(A)(7).
527 See 80 FR at 14564. The compliance date for Rules 900, 907, and 909 was also the effective date of Regulation SBSR.
528 See 80 FR at 14762–70.
Commission believed that proposing a new compliance schedule was necessary in light of the fact that industry infrastructure and capabilities had changed since the initial proposal, particularly because the CFTC regime for swap data reporting and dissemination had become operational. The Commission received 13 comments that discuss the proposed compliance schedule. After careful consideration of these comments, the Commission is adopting a revised compliance schedule, as described in detail below.

A. Proposed Compliance Schedule

The Commission proposed the following phased-in compliance schedule for Rules 901, 902, 903, 904, 905, 906, and 908 of Regulation SBSR.

First, the Commission proposed a Compliance Date 1 to be the date six months after the first registered SDR that can accept reports of security-based swaps in a particular asset class commences operations as a registered SDR. On proposed Compliance Date 1, persons with a duty to report security-based swaps under Regulation SBSR would have been required to report all newly executed security-based swaps in that asset class to a registered SDR. After proposed 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. In addition, under the proposed compliance schedule, transitional and pre-enactment security-based swaps would also have been reported, to the extent information was available, to a registered SDR that accepts reports of security-based swap transactions in the relevant asset class by proposed Compliance Date 1.

The Commission also proposed a Compliance Date 2, which would have been nine months after the first registered SDR that can accept security-based swaps in a particular asset class commences operations as a registered SDR (i.e., three months after proposed Compliance Date 1). On proposed Compliance Date 2, each registered SDR in that asset class would have had 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.

The proposed compliance schedule with respect to security-based swaps in a particular asset class was tied to the commencement of operations of a registered SDR that can accept reports of security-based swaps in that asset class. In the Regulation SBSR Proposed Amendments Release, the Commission noted that both registered SDRs and persons with a duty to report would need time to make preparations related to the reporting of security-based swaps. The proposed compliance schedule was not, however, linked to security-based swap dealer registration.

B. General Summary of Comments Received

Commenters expressed a variety of concerns with the proposed compliance schedule. Most of the comments that addressed the proposed compliance schedule urged the Commission to delay implementation of Regulation SBSR until after security-based swap dealers are registered as such with the Commission. Commenters generally expressed concerns with the costs and burdens of implementing Regulation SBSR ahead of the SBS entities registration compliance date, particularly the costs for buy-side U.S. persons. Commenters also expressed concerns that allowing the SBS entities registration compliance date to follow the implementation of Regulation SBSR would complicate reporting in the interim period between the two dates. Many of these commenters also expressed concerns that the reporting of historical security-based swaps would be significantly more difficult if compliance for reporting were required before the SBS entities registration compliance date.

Some commenters expressed concerns about basing the compliance schedule for an asset class on the registration of the first SDR that can accept security-based swaps in that asset class, which, they argued, could confer an unfair “first mover” advantage. One of these commenters recommended that the Commission consider a compliance schedule that would base the first compliance date on the registration of a “critical mass” of SDRs.

Other commenters expressed concern about how the reporting requirements contained in Regulation SBSR could be implemented before the Commission finalizes its rules regarding SB SEFs. Some commenters urged the Commission to defer compliance with Regulation SBSR until the Commission makes one or more substituted compliance determinations with respect to regulatory reporting and public dissemination of security-based swap transactions in foreign jurisdictions. Still others suggested that the Commission defer compliance with the requirement to report certain UICs until international standards for UICs are developed. Several commenters expressed concerns that differences between Regulation SBSR and the parallel CFTC rules would present significant implementation challenges for SDRs and market participants that seek to operate in both the swap and security-based swap markets. Various commenters generally urged the Commission to provide adequate time for the development and implementation of the required compliance systems and procedures.

Some commenters expressed concerns about the reporting requirements contained in Regulation SBSR could be implemented before the Commission finalizes its rules regarding SB SEFs. Some commenters urged the Commission to defer compliance with Regulation SBSR until the Commission makes one or more substituted compliance determinations with respect to regulatory reporting and public dissemination of security-based swap transactions in foreign jurisdictions. Still others suggested that the Commission defer compliance with the requirement to report certain UICs until international standards for UICs are developed. Several commenters expressed concerns that differences between Regulation SBSR and the parallel CFTC rules would present significant implementation challenges for SDRs and market participants that seek to operate in both the swap and security-based swap markets. Various commenters generally urged the Commission to provide adequate time for the development and implementation of the required compliance systems and procedures.
These comments and the Commission’s responses thereto are discussed in more detail below. The Commission is adopting the primary features of the proposed compliance schedule but is making several revisions in response to comments. Most notably, as described below, the Commission had decided to align the compliance dates for Regulation SBSR with the SBS entities registration compliance date.

C. Compliance Date 1

Under the compliance schedule adopted today, with respect to newly executed security-based swaps in a particular asset class, Compliance Date 1 for Rule 901 of Regulation SBSR is the first Monday that is the later of: (1) Six months after the date on which the first SDR that can accept transaction reports in that asset class registers with the Commission; or (2) one month after the SBS entities registration compliance date. Every security-based swap in that asset class that is executed on or after Compliance Date 1 must be reported in accordance with Rule 901.\(^{543}\)

Furthermore, Rule 901—which imposes reporting duties on specified persons beginning on Compliance Date 1—must be read in connection with Rules 908(a) and 908(b) on Compliance Date 1. Thus, for example, a non-U.S. person that falls within one of the categories set forth in Rule 908(b) could, under Rule 901(a), be required on Compliance Date 1 to report a cross-border security-based swap if the security-based swap falls within one of the categories set forth in Rule 908(a).

Also, when persons with reporting duties begin mandatory reporting on Compliance Date 1, they must do so in a manner consistent with Rule 903, which addresses the use of coded information in the reporting of security-based swaps.

Beginning on Compliance Date 1, registered SDRs must comply with Rule 904, which addresses the operating hours of registered SDRs, except for Rule 904(d).\(^{544}\)

Also beginning on Compliance Date 1, counterparties and registered SDRs must comply with Rule 905 regarding the correction of errors in previously reported information about security-based swaps in that asset class, except that the registered SDR will not yet be subject to the requirement in Rule 905(b)(2) to publicly disseminate any corrected transaction reports (because it will not yet be required to publicly disseminate a report of the initial transaction). Furthermore, beginning on Compliance Date 1, each registered SDR must comply with the requirement in Rule 906(a) to provide to each participant of that SDR a report of any missing UICs, and any participant receiving such a report must comply with the requirement in Rule 906(a) to provide the missing UICs to the registered SDR. By Compliance Date 1, participants enumerated in Rule 906(c) must establish the policies and procedures required by Rule 906(c).

1. Compliance With Regulation SBSR Follows Security-Based Swap Dealer Registration

Several commenters strongly urged the Commission to defer Compliance Date 1 until security-based swap dealers must register with the Commission.\(^{545}\) These commenters correctly observed that, during any interim period beginning on the date that the Commission requires reporting of newly executed security-based swaps in a particular asset class but before the SBS entities registration compliance date (the “Interim Period”), there would be no registered security-based swap dealers or registered major security-based swap participants to occupy the highest rungs of the reporting hierarchy in Rule 901(a)(2)(ii). Therefore, during any such Interim Period, any security-based swap covered by the reporting hierarchy would either be a “tie”—because both sides are unregistered persons who fall within Rule 908(b)—or one side would become the reporting side because only that side includes a person that falls within Rule 908(b).\(^{546}\)

The commenters argued generally that the absence of registered security-based swap dealers at the top of the reporting hierarchy during the Interim Period would create a number of difficulties in negotiating and carrying out reporting duties.\(^{547}\) Commenters pointed out particular difficulties with ascertaining reporting duties for cross-border transactions under Rule 901(a)(2)(ii) during the Interim Period and emphasized that buy-side U.S. persons that transact with foreign dealing entities during the Interim Period would find it particularly difficult to make assessments of whether their non-U.S. counterparties were engaged in ANE activity. Furthermore, according to the commenters, attempts to address difficulties arising during the Interim Period would be costly, complicated, and inefficient and such interim solutions would not be useful for the period after the SBS entities registration compliance date.\(^{548}\)

The Commission acknowledges the commenters’ concerns that requiring compliance with Regulation SBSR before the SBS entities registration compliance date would have raised numerous challenges, and that addressing these challenges would have necessitated time and investment to create interim solutions that might not be useful after the SBS entities registration compliance date. As noted above, the second prong of Compliance Date 1 is one month after the SBS entities registration compliance date, while stressing that its first choice was for the Commission to delay Compliance Date 1 until after the SBS entities registration compliance date. See ISDA III at 3–5, 9–10.

\(^{543}\) Every security-based swap in that asset class that is executed on or after July 21, 2010, and up to and including to the day immediately before Compliance Date 1 is a transitional security-based swap. As discussed in Section X(E), infra, the Commission’s final compliance schedule establishes a separate Compliance Date 3 for pre-enactment and transitional security-based swaps.

\(^{544}\) Rule 904(d) addresses how a registered SDR must publicly disseminate information about security-based swap transaction reports that were submitted during its closing hours. As discussed in Section X(D), infra, public dissemination will commence on Compliance Date 2.

\(^{545}\) One commenter submitted several comments regarding this issue. See ISDA II at 4, 11–13; ISDA III at 1–3. See also SIFMA/SIFMA Letter at 6–7. Other commenters raised similar issues. See IIIB Letter at 17; SIFMA–AMG II at 6–7; SIFMA/FSR Letter at 15.

\(^{546}\) If one side of a security-based swap includes a person that falls within Rule 908(b), that side does not incur any reporting duties under Regulation SBSR.

\(^{547}\) See, e.g., ISDA I at 11–13; ISDA II at 1–12; ISDA III at 1–2; ISDA/SIFMA at 6–7.

\(^{548}\) See ISDA II at 1–10; ISDA III at 2–11; SIFMA/FSR Letter at 13–14; SIFMA–AMG II at 6–7. One commenter expressed the general view that costs to buy-side U.S. persons of negotiating with counterparties regarding reporting responsibilities, constructing reporting mechanisms, or engaging third parties to aid in their reporting are substantial and outweigh the benefits of beginning reporting prior to the SBS entities registration compliance date. See ISDA II at 4.

\(^{549}\) One commenter, for example, presented a complex set of possible options for facilitating industry compliance with Regulation SBSR during the Interim Period. See ISDA III, passim. These suggestions included the Commission adopting an “interim reporting side hierarchy” as well as “a publicly available industry declaration for entities willing to assume the role of a SBS dealing entity in such hierarchy,” regardless of whether or not they were engaging in ANE activity in a particular transaction. See id. at 9–10. The commenter also provided a detailed discussion of potential costs associated with these suggested interim solutions. See id. at 6–9.
registration compliance date. This one-month period is designed to allow all security-based swap market participants to become familiar with which firms have registered as security-based swap dealers, and for registered security-based swap dealers to ensure that they have the systems, policies, and procedures in place to commence their primary reporting duties under Regulation SBSR. Without providing an additional period between the SBS entities registration compliance date and Compliance Date 1, unnecessary confusion could result if market participants were forced to readjust their reporting hierarchies within a very short period, particularly if several firms were to register only days before or actually on the SBS entities registration compliance date.

One commenter who urged that the Commission defer compliance with Regulation SBSR until after security-based swap dealers register also recommended that, “[i]f the Commission decides to require regulatory reporting of ANE transactions despite [comments] to the contrary, reporting should be required only with respect to those ANE transactions that are relevant for SBSD registration (i.e., executed from the later of (a) February 21, 2017 or (ii) two months before the SBS registration compliance date).”

In light of the Commission’s final Compliance Date 1 schedule, this comment is now moot because dealing entities will not be required to report any security-based swap transactions before the SBS entities registration compliance date.

2. At Least Six Months Between First SDR To Register and Compliance Date 1

Final Compliance Date 1 retains a prong that generally follows the principle in proposed Compliance Date 1 of allowing six months between the registration of the first SDR that can accept transaction reports of security-based swaps in an asset class. The Commission continues to believe that it is appropriate to give market participants at least six months after the registration of the first SDR that can accept transaction reports of security-based swaps in an asset class before they are required to report transactions in that asset class. This period will enable market participants to prepare their systems for reporting to that SDR and to fully familiarize themselves with the SDR’s policies and procedures. However, as discussed below, final Compliance Date 1 eliminates the proposed reference to the date on which such SDR “commences operations” as a registered SDR.

One commenter expressed the view that the proposed compliance timeline would give reporting sides and SDRs adequate time to implement Regulation SBSR. A second commenter, however, argued that Compliance Date 1 should be extended to 12 months after the registration of the first SDR in an asset class. A third commenter recommended that Compliance Date 1 be nine months after the later of (1) the date by which security-based swap dealers and major security-based swap participants are required to register with the Commission; and (2) the date on which the Commission announces SDR readiness in an asset class.

The Commission believes that six months is an appropriate minimum period between registration of the first SDR in an asset class and Compliance Date 1 with respect to that asset class, particularly in view of the Commission’s decision not to require compliance with Regulation SBSR until after the SBS entities registration compliance date. The Commission further notes that, before the Commission grants registration to any SDR, the application would be published for comment. The minimum six-month period between the Commission’s grant of an SDR’s registration and Compliance Date 1 should allow prospective participants sufficient time to analyze the final form of the SDR’s policies and procedures under Regulation SBSR, make inquiries to the SDR about technological and procedural matters for connecting to the SDR to report the necessary data, build or adapt existing connections as necessary, and conduct systems testing. The Commission staff intends to monitor participant readiness during the period between the granting of the first SDR registration and Compliance Date 1.

Certain commenters suggested establishing dates certain for compliance with Regulation SBSR. While the Commission appreciates commenters’ desire to have certainty about when their duties under Regulation SBSR will commence, the Commission notes that there are not yet any registered SDRs and the Commission cannot predict when one or more SDRs will be granted registration. Furthermore, the SBS entities registration compliance date is contingent on the completion of several other rulemakings. The Commission believes, therefore, that the more practical approach is to base Compliance Date 1 on the later of these two events, rather than to establish dates certain.

Finally, two commenters noted that, although proposed Compliance Date 1 would have been tied to the commencement of operations of a registered SDR in an asset class, “commencement of operations” is not defined and it was not clear to the commenters how this date would be determined or how market participants would be made aware of that date. The Commission has determined to eliminate the “commencement of operations” as one of the triggering events in Compliance Date 1. The Commission acknowledges that this change from “commencement of operations” to the date of SDR registration in this prong could reduce the number of days between the issuance of this release and Compliance Date 1, if there is in fact a lag between registration and the “commencement of operations” for that registered SDR.

However, the Commission believes that market participants will benefit from eliminating uncertainty about precisely when an SDR “commences operations” and how the fact of such commencement would be conveyed.

Finally, the Commission notes that it is setting Compliance Date 1 as the first Monday following the later of the two stipulated events. Beginning mandatory transaction reporting on a Monday will give registered SDRs and their participants at least one final weekend to conduct any final systems changes or testing.

3. There May Be Separate Compliance Dates for Separate Asset Classes

The Commission is adopting the proposed approach that the compliance dates are specific to a security-based swap asset class. One commenter expressed concern that the potential for varying compliance dates for different asset classes “would inject unnecessary complexity into the implementation process and potentially cause confusion..."
among market participants.” The Commission notes, however, that there is no requirement that a person that seeks registration as an SDR must accept security-based swaps in both the credit and equity asset classes. Thus, a person might submit an application to register as an SDR only with respect to a single asset class. If the Commission were to grant registration of an SDR applicant that could receive transactions in only a single asset class and assuming that the other prong of Compliance Date 1 were met, it would be impossible for market participants to report transactions in other asset classes to that SDR. Delaying Compliance Date 1 until an SDR has been registered in all security-based swap asset classes would prevent reporting from beginning in the asset class or classes that the first registered SDR is ready to accept. Therefore, the Commission believes that it is appropriate to make the compliance dates specific to each asset class.

4. “First-Mover” Concerns

Several commenters expressed concerns about triggering compliance based on the first SDR in an asset class to register with the Commission. One commenter recommended that, to minimize these concerns, the Commission should “coordinate its processing of SDR applications received within a reasonable window and time its announcement of SDR registration and readiness to include all SDRs for an asset class that will be approved ahead of Compliance Date 1.” Likewise, a second commenter urged the Commission “to uniformly review and approve SDR applicants that are acting in good faith to complete the application process in order to minimize ‘first mover’ advantages.”

With respect to commenters’ concerns about multiple SDR applications for registration, the Commission previously stated in the SDR Adopting Release that it “intends to process such applications . . . within the same period of time so as to address competition concerns that could arise if such SDRs were granted registration at different times.” However, if an SDR application meets the criteria of Rule 13n–1(c)(3) under the Exchange Act, the Commission does not believe that it should be necessary to delay granting the registration because of the status of other pending applications. As the Commission also noted in the SDR Adopting Release: “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 of Rule 13n–1(c), may interfere with the Commission’s ability to process initial applications for registration within the same period of time.”

The Commission acknowledges that, by requiring compliance based on the first SDR in an asset class to register with the Commission, a participant might not be able to report security-based swaps to its preferred SDR. However, this situation implies that the participant’s preferred SDR for reporting security-based swap transactions has not yet met the criteria for registration under Rule 13n–1(c)(3). The Commission believes that commencing reporting with only a single registered SDR in an asset class, should this prove necessary, would be preferable to any alternative. When the Commission grants the first SDR registration, delaying compliance with Regulation SBSR until additional registrations are granted would not further the objectives of Title VII. The opposite approach, whereby the Commission would not require compliance with Regulation SBSR until two or more SDRs had applications, and “make best efforts to approve SDR applicants at the same time.” Id.

5. No Delay for Substituted Compliance Determinations

Three commenters urged the Commission to defer compliance with Regulation SBSR until the Commission has made substituted compliance determinations with respect to regulatory reporting and public dissemination of security-based swap transactions for certain foreign jurisdictions. In the view of one of these commenters, this approach would “save reporting sides the effort and cost of building to the SBSR requirements if their current builds will suffice.” Another commenter stated that “[r]equiring the changes to systems, personnel and trade flows necessary to comply with the Commission’s Proposal only to later be granted substituted compliance would impose significant and unnecessary burdens for negligible short-term benefits.”

The Commission declines to accept this suggestion and does not believe that compliance with Title VII’s regulatory reporting and public dissemination requirements, as implemented by Regulation SBSR, should be delayed until the Commission has made any substituted compliance determinations. The Commission has not yet received any substituted compliance applications.


See ISDA/SIFMA Letter at 19–20; SIFMA/FSR Letter at 12–13. 15 (recommending deferring compliance until the Commission makes comparability determinations for “key” foreign jurisdictions including Australia, Canada, the European Union, Japan, and Switzerland); IIB Letter at 19.

ISDA/SIFMA Letter at 20.

SIFMA/FSR Letter at 15.
and, therefore, does not yet have sufficient information regarding any foreign jurisdiction to make the findings necessary to issue a substituted compliance order. In addition, because many other jurisdictions are, like the Commission, still in the process of establishing and implementing their regulatory requirements, the Commission cannot predict when—or even if—any jurisdictions ultimately will have regulatory systems that are comparable to Regulation SBSR. If the Commission were to accept the commenters’ suggestion, the Commission might have to defer compliance for a lengthy period, which would unnecessarily delay the implementation of the reporting and public dissemination regime.

6. No Delay for Adoption of SB SEF Rules

Two commenters urged the Commission to delay Compliance Date 1 until the Commission adopts final rules relating to SB SEFs and provides sufficient time for entities to register with the Commission as SB SEFs. One of these commenters argued, for example, that “the Commission should prepare alternative compliance regimes in the chance that all of the SB swap trading rules are not in place (and, as a result, market participants cannot meet the reporting obligations of Rule 901) by Compliance Date 1.”

The Commission declines to act on the commenters’ suggestion. Delaying compliance with Regulation SBSR until final rules relating to SB SEFs are adopted would result in the Commission and other relevant authorities continuing to lack complete records of all security-based swap transactions, which will facilitate market and systemic risk oversight. The Commission believes that Regulation SBSR can be successfully implemented even before the adoption of final SB SEF rules and the registration of SB SEFs with the Commission. The Commission understands that, currently, many security-based swaps trade off-platform and it is likely that a sizeable portion of the security-based swap market will continue to trade off-platform, even after SB SEFs have the opportunity to register with the Commission. The Commission believes that delaying Compliance Date 1 until SB SEFs have registered would unnecessarily delay the reporting of security-based swaps that trade off-platform.

The Commission understands that there are a small number of existing entities that likely meet the definition of “security-based swap execution facility” at present but are not yet registered with the Commission as such. However, Rule 901(n)(1) applies to all platforms, including unregistered SB SEF. Moreover, the Commission does not believe that the finalization of its SB SEF rules would affect their capability to report such transactions to a registered SDR because the Commission understands that such entities are likely to be swap execution facilities that already have incurred swap reporting duties under CFTC rules. Thus, these entities already have substantial reporting infrastructure that can likely be used to support security-based swap reporting duties. For transactions that occur on exempt SB SEFs, the Commission considered an alternative of requiring each transaction effected on the SB SEF that will be submitted to clearing until SB SEFs have an opportunity to register with the Commission. However, this alternative is unworkable because platform transactions that will be submitted to clearing may be anonymous, and the sides cannot be expected to ascertain the reporting side or report the necessary counterparty information if they are anonymous to each other.

7. Compliance With UIC Requirements

Several commenters urged the Commission to defer compliance with Regulation SBSR’s UIC requirements until international standards for these UICs are developed and can be used across multiple SDRs and multiple jurisdictions. Two of these commenters expressed concern that requiring each registered SDR to establish its own UIC system ahead of an internationally recognized standard would generate significant complexities and costs and would frustrate data aggregation efforts. One commenter argued that the Commission generally should “consider a separate compliance schedule for UIC fields to allow sufficient time for SB SDRs to work collaboratively with market participants, including prospective UIC issuers, to develop an industry standard or, at minimum, an SB SDR-specific methodology.”

After carefully considering the issues raised by commenters, the Commission believes, for the reasons described below, that use of the various UICs must commence on Compliance Date 1:

a. UICs for Legal Entities

For any UIC that can be represented with a Legal Entity Identifier (“LEI”), compliance is required on Compliance Date 1. In the Regulation SBSR Adopting Release, the Commission recognized the Global Legal Entity Identifier System (“GLEIS”) as an internationally recognized standards-setting system (“IRSS”) that satisfies the requirements of Rule 903. Under Rule 903(a), if an IRSS recognized by the Commission has assigned a UIC to a person, unit of a person, or product, each registered SDR must employ that UIC for reporting purposes under Regulation SBSR, and SDR participants must obtain such UICs for use under Regulation SBSR. Counterparties, ultimate parents, brokers, execution agents, platforms, registered clearing agencies, and registered broker-dealers typically are legal entities and typically already have or will be able to obtain an LEI. Accordingly, compliance with the LEI requirements under Regulation SBSR is required on Compliance Date 1.

b. Branch ID, Trading Desk ID, and Trader ID

Regulation SBSR also requires UICs for three types of “sub-legal entities”: Branches, trading desks, and individual traders. As commenters note, neither the GLEIS nor any other potential IRSS assigns identifiers to any sub-legal entities at this time. Although the GLEIS has begun exploring the possibility of assigning identifiers to branches and certain natural persons, it is unclear when any final decision to do so might be taken. Given the

577 See WMBAAA Letter at 5–6; ISDA/SIFMA Letter at 5.
578 WMBAAA Letter at 6.
576 See supra Section IV(H).
575 See supra Section IV(B).
574 DTCC Letter at 2–3; ISDA/SIFMA Letter at 3, 12; DTCC/ICE/CME Letter at 3–4; Financial InterGroup Letter at 4.
573 DTCC Letter at 10; DTCC/ICE/CME Letter at 3.
uncertainty about when or even if an IRSS will eventually be able to issue identifiers for all branches, trading desks, and traders, the Commission does not believe that it would be appropriate to delay compliance with these UIC requirements until an IRSS can provide them.

The Commission recognizes that this approach raises the possibility that different SDRs could, in theory, assign different UICs to the same person, unit of a person, or product. If this were to occur, the Commission could have to map out UICs assigned by one registered SDR to the corresponding UICs assigned by one or more other SDRs to maintain a complete picture of the market activity pertaining to a particular person or sublegal entity. The Commission specifically addressed this issue in the Regulation SBSR Adopting Release.584 However, the Commission previously noted a mechanism whereby a participant could use the same UICs at multiple SDRs.585 Regulation SBSR does not prohibit a participant from making suggestions to a registered SDR regarding the UICs that the SDR is required to assign, particularly for sublegal entities.586 Through this mechanism for assignment, a person who is a participant of two or more registered SDRs could—with the concurrence of these SDRs—utilize the same UICs across multiple SDRs.587

c. Transaction ID

Also beginning on Compliance Date 1, each registered SDR must comply with Rule 901(g), which requires the SDR to assign a transaction ID to each security-based swap, and endorse a methodology for transaction IDs to be assigned by third parties. Because of the potential importance of identifying individual transactions for systemic risk and market oversight purposes, the Commission believes that it is essential for registered SDRs to comply with Rule 901(g) from the moment that they begin receiving mandatory transaction reports.588

One commenter expressed the belief that SDRs will be to assign transaction IDs to pre-enactment and transitional security-based swaps by the date that the Commission had proposed in the Regulation SBSR Proposed Amendments Release.589 Since the proposed compliance schedule would have required historical security-based swaps to be reported by or before proposed Compliance Date 1, the comment implies that registered SDRs also should be able to assign transaction IDs to newly executed transactions beginning on Compliance Date 1. A second commenter urged the Commission to “recognize the ‘first touch principle’ as an acceptable standard for SB SDRs to meet their 901(g) obligations.”590 The commenter explained that, under the existing CFTC swap data reporting rules, an SDR is not required to issue a transaction ID and can rely on the reporting side to submit its internal transaction ID.591 As provided in existing Rule 901(g), a registered SDR may endorse a methodology for third parties to assign a transaction ID to an individual security-based swap. If an SDR wishes the Regulation SBSR Adopting Release, provides that, in the absence of a Commission-recognized IRSS that can supply the UIC, a registered SDR must assign the UIC using its own methodology. Furthermore, in light of the guidance above regarding how a registered SDR may confer with a participant to assign a mutually agreeable set of UICs—and how, through this process, the same UICs could be used for a particular participant across multiple SDRs—the Commission does not believe that it is necessary or appropriate to establish different compliance dates for each type of UIC in the manner recommended by the commenter.

Also beginning on Compliance Date 1, each registered SDR must comply with the companion requirement in Rule 901(g) that a registered SDR time-stamp all incoming transaction reports.592 See ICE Letter at 8. 

DTCC Letter at 20.

See id. The Commission notes, however, that, under CFTC Rule 4.56(c), 17 CFR 45.56(c), a swap data repository must create and transmit a unique swap identifier for an off-facility swap if the reporting counterparty for that swap is a non-swap dealer/major swap participant.

d. Product ID

One commenter argued that, before requiring compliance with the product ID requirement, the Commission should “consult and agree with market participants on a standard to be applied. An agreed upon public standard would provide greater certainty to reporting sides and SB SDRs to build to one uniform standard as opposed to bespoke models for each SDR.”593 After careful consideration of this comment, the Commission has determined not to delay compliance with the product ID requirement. At the present time, it is unclear if or when market participants could agree upon and implement standards for a product ID. Therefore, in the absence of an IRSS that can assign product IDs, registered SDRs must by Compliance Date 1 begin assigning product IDs, and persons with a duty to report transactions must use these SDR-assigned product IDs in their mandatory reports. To enable their participants to report transactions using the appropriate product IDs on Compliance Date 1, registered SDRs must set out in their written policies and procedures how they will assign product IDs (and all other UICs other than those available through an IRSS recognized by the Commission) in a manner consistent with Rule 903. A registered SDR should consider publishing as far in advance of Compliance Date 1 as possible the product IDs of the products most likely to be traded on or shortly after Compliance Date 1. The Commission recognizes, however, that it is not practical for a registered SDR to publish a list of all possible products with their product IDs, as many products have not yet been created (or certain types of contracts have not yet become sufficiently standardized) to be considered products, as that term is defined in Rule 900(aa), and thus require a product ID. Therefore, as a practical matter, the Commission does not believe that a registered SDR could comply with Rule 907(a) unless its policies and procedures include a mechanism or process for the registered SDR to assign a product ID to a new product before or

584 See 80 FR at 14632 (“UICs, even if SDR-specific, will provide a streamlined way of reporting, disseminating, and interpreting security-based swap information. The Commission believes that requiring registered SDRs to develop their own UICs—on which 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 registered SDR to use its own nomenclature conventions, which would subsequently have to be normalized by registered SDRs or by the Commission”).

585 This could also be true for identifying counterparties that do not fall within Rule 908(b) and do not otherwise have an LEI that could be used for the counterparty ID.

586 In connection with its comments regarding how Regulation SBSR’s compliance dates should address UIC issues, one commenter recommended that the Commission “consult and agree with market participants” on how to assign various UICs, including branch ID, trading desk ID, trader ID, and product IDs, See DTCC, Letter at 10–11. The commenter then recommended compliance dates of different lengths after a standard for each type of UIC had been agreed upon. See id. The Commission already has established a mechanism for how these UICs must be assigned: Rule 903(a), as adopted in

587 [53607 Federal Register Vol. 81, No. 156 / Friday, August 12, 2016 / Rules and Regulations

588 Rule 907(a)(5) requires a registered SDR to establish and maintain written policies and procedures for assigning UICs, including but not limited to transaction IDs, in a manner consistent with Rule 903.

589 DTCC Letter at 10.
simultaneously with the initial transaction in that product, and to make available the product ID so that reports of transactions in that new product can include the correct product ID.

8. Switching of Reporting Side Designation

One commenter’s analysis of the problems that could result from a Commission determination to require reporting compliance ahead of the SBS entities registration compliance date was premised on the assumption that a U.S. non-dealing entity that was the reporting side for a security-based swap executed during the Interim Period would remain the reporting side for the life of the security-based swap." The commenter argued that Regulation SBSR should not permit the reporting side designation to “switch” from one side to the other over life of a security-based swap contract. The Commission disagrees with this comment.

Rule 906(b)(2)(ii) sets forth a reporting hierarchy that has two possible outcomes for any transaction pair: (1) One side occupies a higher rung in the hierarchy than the other side, in which case the side that occupies the higher rung “shall be the reporting side”; or (2) the outcome is a tie, and “the sides shall select the reporting side.” Sides in a tie situation, after having made an initial selection of the reporting side, can select a new reporting side later in the life of the contract.

Over the life of a security-based swap, a registered SDR needs to know the reporting side of a security-based swap so that it knows whether it is receiving a report of a life cycle event or an error report from the entity that is obligated to report that information. A registered SDR should consider incorporating into its policies and procedures how it would accommodate any change to the reporting side designation. A registered SDR may, for example, seek to obtain, in the case of an elective switch, information from only one or both sides that confirms the switch.

D. Compliance Date 2

Compliance Date 2 is the date on which all registered SDRs that can accept security-based swaps in a particular asset class must begin public dissemination, pursuant to Rule 902, of transactions in that asset class. On Compliance Date 2, each such SDR will be required to comply with Rules 902 (regarding public dissemination generally), 904(d) (requiring dissemination of transaction reports held in queue during normal or special closing hours), and 903(b)(2) (with respect to public dissemination of corrected transaction reports) for all security-based swaps in that asset class, except as provided by Rule 902(c) as discussed further below. Compliance Date 2 is the first Monday that is three months after Compliance Date 1. One commenter expressed the view that commencing the requirement for public dissemination nine months after SDR registration would be sufficient, provided that other compliance issues arising earlier in the compliance schedule are resolved. Likewise, a second commenter believed that Compliance Date 2 should be three months after Compliance Date 1, but only after stating its belief that Compliance Date 1 should be 12 months rather than six months after the first registered SDR commences operations. A third commenter believed that three months after Compliance Date 1 was not sufficient time for SDRs to comply with the data dissemination requirements in Regulation SBSR and recommended six months instead. A fourth commenter recommended that Compliance Date 2 be three months after the later of Compliance Date 1 and the date on which the Commission has determined appropriate exceptions, delays, and/or optional capacity to preserve the identity, business transactions, and market positions of any person. The fourth commenter asserted that the longer time was necessary for Compliance Date 2 because “concerns regarding the compromise of market anonymity for illiquid and large notional trades have not adequately been addressed during the interim period.”

The Commission has revised its proposed approach to Compliance Date 2 as it relates to the handling of covered cross-border transactions. In the Regulation SBSR Proposed Amendments Release, the Commission proposed that the public dissemination requirements associated with Compliance Date 2 would not have applied to covered cross-border transactions. However, as discussed in Section IX(E), supra, the Commission in the U.S. Activity Proposal sought additional comment on whether public dissemination of covered cross-border transactions should be made effective and, in this release, the Commission has determined that all transactions described in Rule 908(a)(1), including covered cross-border transactions, shall be subject to public dissemination, except as otherwise provided by Rule 902(c). Therefore, compliance with the public dissemination requirements shall commence on Compliance Date 2 for covered cross-border transactions along with other security-based swaps, and there is no longer any reason to consider an effective or compliance date for covered cross-border transactions separate from other transactions that are subject to public dissemination. The Commission proposed and is now adopting a three-month period between Compliance Date 1 and Compliance Date 2. This three-month period is designed to give registered SDRs and persons having a duty to report an opportunity to identify and resolve any issues related to trade-by-trade reporting by participants and further test their data dissemination systems. The Commission staff intends to monitor the implementation of Regulation SBSR between Compliance Dates 1 and 2. Also, similar to the approach taken for Compliance Date 1, the Commission believes that it will be helpful to the industry to begin public dissemination on a Monday, which ensures that registered SDRs have at least the immediately preceding weekend to conduct any final systems changes or testing before public dissemination begins. Therefore, Compliance Date 2 is the first Monday that is three months after Compliance Date 1. Finally, Compliance Date 2 is the date by which participants of registered SDRs that are subject to Rule 906(b) must comply with that rule. This

594 See ISDA I at 13; ISDA II at 7.
595 See ISDA I at 8(a)(2)(ii). Switching the reporting side during the term of a trade is in every respect an enormous challenge . . . [and] likely have a significant impact on the completeness, integrity and correctness of reported SBS data.
596 See ICE Letter at 8.
597 See ISDA/SIFMA Letter at 17.
598 ISDA/SIFMA Letter at 3.
599 See DTCC Letter at 21.
600 See LCH.ClearNet Letter at 12.
601 See ICE Letter at 8.
602 See supra note 460 (explaining that term). One commenter supported excluding covered cross-border transactions from public dissemination on Compliance Date 2, as well as the Commission’s decision to seek public comment before determining if and when to include them in the scope of transactions subject to public dissemination. See ISDA/SIFMA Letter at 18. The Commission addressed this comment in Section IX(E), supra.
603 See 80 FR at 27485.
604 Rule 906(b) requires each participant of a registered SDR to provide to the SDR information sufficient to identify the participant’s ultimate parent(s) and any affiliate(s) of the participant that also are participants of that registered SDR. Rule 906(b)(2) further provides that a participant must “promptly” notify the registered SDR of any
represents a change from the proposed compliance schedule, under which covered participants would have been required to comply with Rule 906(b) on Compliance Date 1. A person does not become subject to Rule 906(b) until it becomes a participant of a registered SDR. A counterparty to a security-based swap becomes a participant of a registered SDR only when a security-based swap to which it is a counterparty is reported to that SDR on a mandatory basis. Thus, a security-based swap counterparty cannot become a participant until Compliance Date 1 at the earliest, because transactions will not be reported to a registered SDR on a mandatory basis until Compliance Date 1. A large number of security-based swap counterparties will become participants on Compliance Date 1 or the first days and weeks following Compliance Date 1. This could, in the Commission’s view, cause unnecessary difficulties for registered SDRs and their new participants if participants were required to comply with Rule 906(b) on Compliance Date 1.

In light of this concern, the Commission now believes that it is appropriate to delay compliance with Rule 906(b) for an additional three months to avoid triggering a large number of new filings and amendments that likely would have been required if the Commission had required compliance with Rule 906(b) on Compliance Date 1. Accordingly, the Commission is not requiring compliance with Rule 906(b) until Compliance Date 2. This will allow for a number of security-based swaps to be reported over the three-month period between Compliance Dates 1 and 2 that will create a critical mass of participants, thereby permitting the filing of initial reports under Rule 906(b) that are less likely to require repeated updating because of the addition of new participants that are affiliated with existing participants.

E. New Compliance Date 3 for Historical Security-Based Swaps

In the Regulation SBSR Proposed Amendments Release, the Commission proposed that persons with a duty to report historical security-based swaps in the relevant asset class would have been required to report these transactions to a registered SDR that accepts transactions in that asset class, in accordance with Rule 901(i), by Compliance Date 1. As discussed further below, the Commission is adopting a new Compliance Date 3 for the reporting of historical security-based swaps. Compliance Date 3 is two months after Compliance Date 2.

One commenter expressed the view that requiring reporting of historical security-based swaps in advance of the SBS entities registration compliance date would place the bulk of the reporting burden on U.S. persons, including buy-side U.S. persons, because U.S. persons would be the reporting side for all historical security-based swaps entered into with a foreign dealing entity that did not involve ANE activity. Furthermore, this commenter expressed concern that it could not be reliably determined whether U.S. persons were required to engage in ANE activity for historical security-based swaps because parties were not required to capture or exchange such information at the time the transactions were executed.

The commenter concluded that it would be significantly easier to ascertain the reporting side for historical transactions after the SBS entities registration compliance date, because most would involve a counterparty that will register as a security-based swap dealer. This commenter, in a joint letter with another association, also expressed the view that the volume of non-live historic security-based swaps “will be enormous” and that “reporting over five years of security-based swap transaction data will require tremendous effort and coordination between reporting sides and their SDR.” These comments recommended an extended period for reporting non-live historical security-based swaps after the SBS entities registration compliance date, and argued that the commencement of reporting under Regulation SBSR would be more effective if the reporting of non-live historic security-based swaps were done separately and after security-based swap dealer registration.

These comments also argued that “[d]ealer registration will greatly expand the scope of SBS subject to reporting at a later date, essentially creating additional individual compliance dates for registrants and their counterparties to report additional SBS activity and historic SBS,” which “will also trigger the question as to who has the reporting obligation for...”

See ISDA II at 10; ISDA III at 2, 4.
See id.
See id.
ISDA/SIFMA Letter at 16.
See id. at 16–17.
historical SBS.” 614 This comment is premised on the correct observation that a historical security-based swap between two unregistered non-U.S. persons, neither of whom engaged in ANE activity, would fall within Rule 908(a) only after one side or the other registers with the Commission as a security-based swap dealer. One of these commentators also expressed the view that “existing TIW functionality cannot be leveraged to accomplish reporting [of historical security-based swaps] in advance of registration.” 615 Therefore, in the commenter’s view, to satisfy obligations to report historical transactions before the SBS entities registration compliance date, market participants would need to expend “significant effort and cost to develop appropriate new industry agreements, conduct significant outreach to U.S. Persons and build interim reporting logic.” 616

In light of these considerations, the Commission is adopting a new Compliance Date 3, which is designed to minimize the concerns raised by the commenters. Persons with a duty to report historical security-based swaps in an asset class must do so by the date that is two months after Compliance Date 2. To the extent that historical transactions involve a non-U.S. counterparty that is likely to register as a security-based swap dealer, deferring compliance with the requirement to report historical transactions until security-based swap dealers are registered will significantly reduce undue burdens on non-dealing persons who are their counterparties. After the SBS entities registration compliance date, registered security-based swap dealers will be clearly identifiable as such and will bear the responsibility for reporting any historical transactions with unregistered persons to the extent that information about such transactions is available. The two-month gap between Compliance Date 2 and Compliance Date 3 is designed to avoid problems that could arise if registered SDRs and their participants had been required to achieve major compliance milestones on the same day or in close proximity.

The Commission notes that the relevant transactions need not be reported on Compliance Date 3, but rather by Compliance Date 3. The Commission encourages reporting sides to report historical security-based swaps as far in advance of Compliance Date 3 as possible, to avoid difficulties that might arise if reporting sides attempt to report a large number of historical transactions in the last few days or hours before Compliance Date 3.

The Commission believes that a new Compliance Date 3, occurring after the SBS entities registration compliance date, for reporting of historical transactions represents an appropriate consideration of the benefits of mandatory reporting in light of the likely costs. Before security-based swap dealers register as such with the Commission, the only way a foreign dealing entity could incur any duty under Regulation SBSR is if it were engaging in ANE activity with respect to a particular transaction. The Commission is persuaded by commenters who argued that it could be difficult or impossible to ascertain whether historical transactions of foreign dealing entities involved ANE activity, as information about the involvement of U.S. personnel in particular transactions might not exist or might be difficult to reconstruct for transactions that were executed, in some cases, many years ago. 617 Because the Commission anticipates that foreign dealing entities that account for the vast majority of cross-border transactions will register as security-based swap dealers, the issues associated with identifying whether a foreign dealing entity has engaged in ANE activity will not arise for the vast majority of historical cross-border transactions.

After the SBS entities registration compliance date, the reporting hierarchy can easily be applied because at least one side will likely include a registered security-based swap dealer. This approach will minimize instances where unregistered U.S. persons could become the reporting side when they are counterparties with foreign dealing entities.

A registered SDR that accepts reports of transactions in the relevant asset class may allow persons with a duty to report historical transactions in that asset class on a rolling basis at any time after Compliance Date 1. When it begins accepting reports of historical security-based swaps submitted on a mandatory basis, a registered SDR must 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 must comply with Rule 901(g) with respect to transaction IDs for each historical security-based swap that it receives. Participants begin reporting historical security-based swaps to a registered SDR, participants and registered SDRs also must comply with Rules 901(e) and 905 regarding any historical security-based swaps that are so reported. A report of a life cycle event of a historical transaction that relates to information required by Rule 901(c) would trigger public dissemination of the life cycle event if the report is submitted on or after Compliance Date 2. 618

The Commission notes that registered SDRs and their participants need not comply with Rule 906(a) with respect to historical security-based swaps. Rule 906(a) requires a registered SDR to identify security-based swaps for which the SDR lacks counterparty ID and (if applicable) broker ID, branch ID, execution agent ID, trading desk ID, and trader ID. Regulation SBSR requires reporting of historical security-based swaps only “to the extent that information about such transactions is available”—including information pertaining to the remaining UICs. Because broker IDs, branch IDs, execution agent IDs, trading desk IDs, and trader IDs will not be assigned by registered SDRs until they become operational, these UICs likely will not have existed or been recorded in connection with any historical security-based swaps. Therefore, because these UICs are not applicable to historical security-based swaps, a registered SDR is not required by Rule 906(a) to query non-reporting sides for those UICs with respect to any historical transactions, and non-reporting sides are not required by Rule 906(a) to provide any UICs with respect to historical transactions.

F. No Separate Compliance Dates for Cross-Border Transactions

Compliance Dates 1, 2, and 3 apply equally to all security-based swaps that fall within Rule 908(a), as amended herein, and all security-based swap counterparties that fall within Rule 908(b), as amended herein. Compliance Dates 1, 2, and 3 apply to all transactions contemplated by the reporting hierarchy in Rule 901(a)(2), as amended herein, including the cross-border provisions of new Rule 901(a)(2)(ii)(E). Thus, U.S.-to-U.S. transactions do not have different compliance dates than the cross-border transactions that fall within Rule 908(a).

614 See ISDA II at 7.
615 See ISDA II at 11.
616 See Regulation SBSR Adopting Release, 80 FR at 14609 (“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”). However, an error correction of a historical security-based swap involving Rule 901(c) information would not trigger public dissemination, even after Compliance Date 2. See id.
One commenter, responding to the proposed compliance schedule in the Regulation SBSR Proposed Amendments Release, warned that, if the Commission required regulatory reporting before security-based swap (SBS) dealer registration, U.S. non-dealing entities would incur the reporting duty when they traded against large foreign dealing entities and that U.S.-to-U.S. transactions would be subject to public dissemination before U.S.-to-non-U.S. transactions. As a result, the commenter argued, “U.S. person end-users may avoid trading with other U.S. persons until after dealer registration to avoid their data being publicly disseminated.” The commenter concluded that U.S. non-dealing entities’ avoidance of other U.S. counterparts would disadvantage U.S. dealing entities and result in less liquidity for U.S. non-dealing entities. The commenter also cautioned that “[w]ith a limited list of counterparties and an even narrower list of dealers to such transactions, public dissemination of this smaller segment of SBS data bears the risk that counterparty identity could be disclosed to the public.”

As noted in Section IX, supra, the Commission is adopting amendments to Rules 901(a) and 908 substantially as proposed to cover additional types of cross-border transactions, and Compliance Dates 1, 2, and 3 will apply equally to all counterparties that fall within Rule 908(b) and all security-based swaps that fall within Rule 908(a). Thus, because Regulation SBSR’s compliance dates for U.S.-to-U.S. transactions are the same as for U.S.-to-non-U.S. transactions, there is no incentive for U.S. counterparties to trade only with non-U.S. persons to avoid any Regulation SBSR requirements.

G. Exemptions Related to the Compliance Schedule

In June 2011, the Commission 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 the Section 29(b) of the Exchange Act, 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.

The Commission confirms that the existing exemption from Section 29(b) set forth in the Effective Date Release applies only to security-based swaps entered into on or after July 16, 2011, and Section 3C(e)(1) applies only to pre-enactment security-based swaps. As a result, an extension of the Section 29(b) exemption in connection with Section 3C(e)(1) would have no effect. Therefore, there is no need for the Commission to revise or extend the exemption from Section 29(b) in connection with Section 3C(e)(1).
H. Substituted Compliance Requests

Rule 908(c) permits a person that potentially would become subject to Regulation SBSR or a foreign financial regulatory authority to submit a substituted compliance request with respect to the rules of a foreign jurisdiction pertaining to regulatory reporting and public dissemination of security-based swap transactions. The submission of a substituted compliance request is elective; therefore, the Commission is not establishing a “compliance date” for Rule 908(c). Nevertheless, such persons may begin submitting substituted compliance requests pursuant to the requirements of Rule 908(c) upon the effective date of this release.

XI. Paperwork Reduction Act

Certain amendments to Regulation SBSR that the Commission is adopting today contain “collection of information requirements” within the meaning of the Paperwork Reduction Act of 1995 (“PRA”). The Commission published notices requesting comment on the collection of information requirements relating to Regulation SBSR in the Regulation SBSR Proposed Amendments Release and the U.S. Activity Proposal. However, as noted above, the Commission received 25 comment letters on the Regulation SBSR Proposed Amendments Release and the U.S. Activity Proposal that specifically address Regulation SBSR. Any comments related to the collection of information burdens potentially arising from the proposed amendments are addressed below.

A. Definitions—Rule 900

Rule 900 sets forth definitions of various terms used in Regulation SBSR. In this release, the Commission is adopting certain amendments to Rule 900, including amendments to the definition of “participant” in existing Rule 900(u) and a new defined term “widely accessible” in Rule 900(t).

These changes, in themselves, will not result in any new “collection of information” requirements within the meaning of the PRA. Changes in definitions that might impact a collection of information requirement are considered with the respective rule that imposes the requirement.

PRA assessments have been revised to reflect the amendments to Regulation SBSR being adopted today, as well as additional information and data now available to the Commission. The revised paperwork burdens estimated by the Commission herein are consistent with those made in the Regulation SBSR Proposed Amendments Release and the U.S. Activity Proposal. However, as described in more detail below, certain estimates have been modified, as necessary, to reflect the most recent data available to the Commission.

The Commission requested comment on the collection of information requirements associated with the amendments to Regulation SBSR proposed in the Regulation SBSR Proposed Amendments Release and the U.S. Activity Proposal. As noted above, the Commission received 25 comment letters on the Regulation SBSR Proposed Amendments Release and the U.S. Activity Proposal that specifically address Regulation SBSR. Any comments related to the collection of information burdens potentially arising from the proposed amendments are addressed below.
B. Reporting Obligations—Rule 901

1. Existing Rule 901

Existing Rule 901 specifies, with respect to initial security-based swap transactions and life cycle events (and adjustments due to life cycle events), who is required to report, what data must be reported, when it must be reported, and how it must be reported. Existing Rule 901(a) sets forth a “reporting hierarchy” that specifies the side that has the duty to report a security-based swap. Existing Rule 901(b) states that 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. Existing Rule 901(c) sets forth the primary trade information and Rule 901(d) sets forth the secondary trade information that must be reported. Existing Rule 901(e) requires the reporting of life cycle events and adjustments due to life cycle events. Existing Rule 901(f) requires a registered SDR to timestamp, to the second, any information submitted to it pursuant to Rule 901, and existing 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. Existing Rule 901(h) requires reporting sides to electronically transmit the information required by Rule 901 in a format required by the registered SDR. Existing 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. Existing Rule 901(j) generally provides the person with the duty to report 24 hours from the time of execution to report the required information.

For Reporting Sides. In the Regulation SBSR Adopting Release, the Commission estimated that the first-year burden of 418,200 hours for all reporting sides. The Commission further estimated that existing Rule 901 will impose ongoing annualized aggregate burdens of approximately 697 hours per reporting side for a total aggregate annualized cost of $201,000 per reporting side, for total aggregate initial and ongoing annualized dollar cost burdens of $60,300,000. For Registered SDRs. In the Regulation SBSR Adopting Release, the Commission estimated that the first-year burden of 418,200 hours for all reporting sides. The Commission further estimated that existing Rule 901 will impose ongoing annualized aggregate burdens of approximately 687 hours per reporting side for a total aggregate annualized cost of $201,000 per reporting side, for total aggregate initial and ongoing annualized dollar cost burdens of $60,300,000.

2. Rule 901—Amendment

The amendments to Rule 901, as adopted herein, establish certain additional requirements relating to the reporting of security-based swap transactions. These amendments contain additional “collection of information requirements” within the meaning of the PRA. The amendments to Rule 901 are contained in three collections: (a) “Rule 901—Reporting Obligations—For New Broker-Dealer Respondents”; (b) “Rule 901—Reporting Obligations—For Platforms”; and (c) “Rule 901—Reporting Obligations—For Registered Clearing Agencies.” The following discussion sets forth the additional burdens resulting from the amendments to Rule 901 adopted in this release.

a. Rule 901—Reporting Obligations Resulting From Amendments to Rule 901(a)(2)(ii)(E)

i. Summary of Collection of Information

In the U.S. Activity Proposal, the Commission proposed certain amendments to Rule 901 to assign the duty to report security-based swaps in certain cross-border situations. In this release, the Commission is adopting those amendments as proposed. Under new Rule 901(a)(2)(ii)(E)(2), in a transaction between an unregistered U.S. person and an unregistered non-U.S. person who is engaging in ANE activity, the sides are required to select the reporting side. In addition, if both sides are unregistered non-U.S. persons and both are engaging in ANE activity, the sides are required to select the reporting side. New Rule 901(a)(2)(ii)(E)(3) addresses the scenario where one side is subject to Rule 908(b) and the other side is not—i.e., one side includes only unregistered non-U.S. persons and that side does not engage in any ANE activity, and the other side includes an unregistered U.S. person or an unregistered non-U.S. person that is engaging in ANE activity. Under Rule 901(a)(2)(ii)(E)(3), the side with the unregistered U.S. person or the unregistered non-U.S. person engaging in ANE activity is the reporting side. New Rule 901(a)(2)(ii)(E)(4) addresses the scenario where neither side includes a counterparty that falls within Rule 908(b)—i.e., neither side includes a registered person, a U.S. person, or a non-U.S. person engaging in ANE activity—but the transaction is effected by or through a registered broker-dealer (including a registered SB SEF). Under Rule 901(a)(2)(ii)(E)(4), the registered broker-dealer is required to report the transaction.

ii. Respondents

In the Regulation SBSR Proposed Amendments Release, the Commission estimated that there will be 300 reporting side respondents and that, among the 300 reporting sides,
approximately 50 will likely have to register with the Commission as security-based swap dealers and approximately five will likely have to register as major security-based swap participants, restating an estimate contained in the Regulation SBSR Adopting Release.654 The Commission noted that these 55 reporting sides likely will account for the vast majority of security-based swap transactions and transaction reports, and that only a limited number of security-based swap transactions would not include at least one of these larger counterparties on either side.655

One commenter to the U.S. Activity Proposal recommended that the Commission collect a more complete set of data to more precisely estimate the number of non-U.S. persons that would be affected by the proposed rules.656 In the U.S. Activity Adopting Release, the Commission stated that, in the absence of comprehensive reporting requirements for security-based swap transactions, and the fact that the location of personnel that arrange, negotiate, or execute a security-based swap transaction is not currently recorded by participants, a more precise estimate of the number of non-U.S. persons affected by the rule is not currently feasible. However, because the Commission assumes that all transactions by foreign dealing entities with other non-U.S. persons on U.S. reference entities are arranged, negotiated, or executed by personnel located in the United States, the analysis contained in the U.S. Activity Adopting Release results in an estimate of the upper bound of the number of firms that would likely assess the location of their dealing activity. The results of such an assessment, already accounted for in the U.S. Activity Adopting Release, determines the number of new respondents impacted by the amendments to Rule 901.

The Commission believes that the amendments to Rule 901(a)(2)(ii)(E), as adopted herein, will result in an additional 20 respondents that will be required to report transactions under the amendments to Regulation SBSR.657 The Commission estimates that these 20 new respondents will consist solely of registered broker-dealers that are required to report one or more security-based swaps by new Rule 901(a)(2)(ii)(E)(4). The Commission acknowledges that amendments to Rule 901(a)(2)(ii)(E) adopted in this release place reporting obligations, in certain circumstances, on unregistered foreign dealing entities, as explained in Section IX(G), supra, which may suggest that a larger number of additional respondents is appropriate. However, the Commission notes that, based on observed transaction data in TIW that provided the basis for its estimate of the number of respondents used in the Cross-Border Adopting Release and Regulation SBSR Adopting Release, unregistered foreign dealing entities were already included in the subset of 245 unregistered person respondents that will not be registered security-based swap dealers or major security-based swap participants.658

iii. Total Initial and Annual Reporting Burdens

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), and (f) of Rule 901 set forth the parameters that govern how covered transactions are reported. These reporting requirements impose initial and ongoing burdens on respondents. 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.

Respondents 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 20 additional respondents will incur the duty to report under Regulation SBSR. This estimate includes all persons that will incur a reporting duty under the amendments to Regulation SBSR that are not already subject to burdens under existing Rule 901, as adopted in the Regulation SBSR Adopting Release.

In the Regulation SBSR Adopting Release, the Commission estimated that there will likely be approximately 3 million reportable events per year under Rule 901.665 The Commission further estimated that approximately 2 million of these reportable events will consist of uncleared transactions. The Commission estimated that 2 million of the 3 million total reportable events will consist of the initial reporting of security-based swaps as well as the reporting of any life cycle events. The Commission also estimated that of the 2 million reportable events, approximately 900,000 will involve the reporting of new security-based swap transactions, and approximately 1,100,000 will involve the reporting of life cycle events under Rule 901(e).666

Based on the Commission’s assessment of the effect of the amendments to Rule 901(a)(2)(ii)(E) adopted herein, the Commission believes that there will be approximately 2,700 additional reportable events per year under Rule 901.667 Using a similar approach to the Regulation SBSR Adopting Release,668 while also accounting for security-based swaps that will be reported by a registered broker-dealer, the Commission estimates that, of the 2,700 new reportable events, 1,512 will involve the reporting of new security-based swap transactions, and approximately 1,188 will involve the reporting of any life cycle events.

654 See Regulation SBSR Proposed Amendments Release, 80 FR at 14788.
655 See id.
656 See ISDA I at 7. See also id. at 3 (arguing that “the SEC currently lacks the data necessary to precisely estimate . . . the number of registered broker-dealers that intermediate SBS transactions; and the number of additional non-U.S. persons that might incur reporting obligations under the Proposal”).
657 The Commission is unable to determine, at this time, how many of the non-U.S. persons performing the assessments discussed in the U.S. Activity Adopting Release will result in those entities being required to report transactions under Regulation SBSR. The Commission is therefore basing these burdens on the assumption that all entities performing the assessment will be required to report under Regulation SBSR. Further, the 20 respondents here reflect the 30 registered-broker dealers discussed in the U.S. Activity Proposal reduced by ten to account for registered broker-dealers that are likely also to register as SEF’s.658 The 245 respondents that are unregistered persons are estimated as follows: 300 reporting sides — 50 registered security-based swap dealers — 5 registered major security-based swap participants = 245 unregistered persons that are reporting sides.
659 See Regulation SBSR Adopting Release, 80 FR at 14675.
660 See U.S. Activity Proposals, 80 FR at 27504.
661 See 80 FR at 14676. The Commission notes that, while the approach for determining the burdens is similar to that used in the Regulation SBSR Adopting Release, the aggregate burden hours for all aspects of Rule 901 differ slightly as a result of these new respondents having to report a different number of reportable events.
reporting of life cycle events under Rule 901(e).663

Based on these estimates, the Commission believes that Rule 901(a) will result in the additional new respondents resulting from amendments to Rule 901(a)(2)(ii)(E), having a total burden of 7.6 hours attributable to the initial reporting of security-based swaps by registered SDRs under Rules 901(c) and 901(d) over the course of a year.664 Therefore, the Commission believes that the amendments to Rule 901(a)(2)(ii)(E), as adopted herein, will result in a total reporting burden for respondents under Rules 901(c) and (d) along with the reporting of life cycle events under Rule 901(e) of 14 burden hours per year. The Commission believes 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 believes that the bulk of the burden hours will be attributable to manually reported transactions.665 Thus, respondents that capture and report transactions electronically will likely incur fewer burden hours than those respondents that capture and report transactions manually.

Based on the foregoing and applying the same calculation methods used in the Regulation SBSR Adopting Release, the Commission estimates that the amendments to Rule 901 proposed in the U.S. Activity Proposal and adopted herein will impose an estimated total first-year burden of approximately 1,362 hours per respondent667 for a total first-year burden of 27,240 hours for all additional respondents that will incur the duty to report under the adopted amendments to Rule 901(a)(2)(ii)(E)(1)–(4).668 The Commission estimates that the amendments to Rule 901 will impose ongoing annualized aggregate burdens of approximately 655 hours669 per respondent for a total aggregate annualized burden of 13,100 hours for those respondents.670 The Commission further estimates that the amendments to Rule 901 will impose initial and ongoing annualized dollar cost burdens of $201,000 per respondent, for total aggregate initial and ongoing annualized dollar cost burdens of $4,020,000.671

b. Rule 901—Reporting Obligations for Platforms and Clearing Agencies Resulting From Amendments to Rules 901(a)(1) and (2) and Platforms and Reporting Sides Resulting From Amendments to Rule 901(a)(3)

i. Summary of Collection of Information

In addition to amendments to Rule 901 to assign the duty to report security-based swaps in certain cross-border situations proposed in the U.S. Activity Proposal, in this release the Commission also is assigning the duty to report security-based swaps that are clearing transactions or are executed on a platform and will be submitted to clearing. To facilitate such reporting, the Commission is adopting amendments to Rules 901(a)(1), (a)(2)(i), and (a)(3).

Specifically, under new Rule 901(a)(1), 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. New Rule 901(a)(2)(i) assigns the reporting duty for a clearing transaction to the registered clearing agency that is a counterparty to the security-based swap. New Rule 901(a)(3) requires 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.

ii. Respondents

The amendments to Rules 901(a)(1) and (a)(2)(i) adopted herein 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 estimates that these amendments to Rule 901(a) will result in 14 additional respondents incurring the duty to report under Regulation SBSR: Ten platforms and four registered clearing agencies.672 Amended Rule 901(a)(3) will 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-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. The Commission believes that new Rule 901(a)(3), as amended, will place

664 The Commission derived its estimate from the following: (355 hours (one-time hourly burden for establishing an 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 U.S. Activity Proposal, 80 FR at 27505, n. 454 (436 hours (annual ongoing hourly burden for internal order management) + 0.68 hours (revised annual ongoing hourly burden for security-based swap reporting mechanisms as a result of reduced estimate of number of respondents) + 218 hours (annual ongoing hourly burden for compliance and ongoing support) = 654.7 hours (one-time total hourly burden). See U.S. Activity Proposal, 80 FR at 27505, n. 454 (revised to take into account reduced estimate of number of respondents) (707 one-time hourly burden + 654.7 revised annual ongoing hourly burden = 1,362 total first-year hour burden).

665 The Commission calculated the following: [(1,152 × 0.005)/(20 respondents)] = 0.38 burden hours per respondent or 7.6 total burden hours attributable to the initial reporting of security-based swaps. See U.S. Activity Proposal, 80 FR at 27505 (adjunct to reflect revised number of respondents).

666 The Commission calculated the following: 

[(1,188 × 0.005)/(20 respondents)] = 0.30 burden hours per reporting side or 5.9 total burden hours attributable to the reporting of life cycle events under Rule 901(e).

667 The Commission derived its estimate from the following: (355 hours (one-time hourly burden for establishing an 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 U.S. Activity Proposal, 80 FR at 27505, n. 453 (436 hours (annual ongoing hourly burden for internal order management) + 0.68 hours (revised annual ongoing hourly burden for security-based swap reporting mechanisms as a result of reduced estimate of number of respondents) + 218 hours (annual ongoing hourly burden for compliance and ongoing support) = 654.7 hours (one-time total hourly burden). See U.S. Activity Proposal, 80 FR at 27505, n. 454 (revised to take into account reduced estimate of number of respondents) (707 one-time hourly burden + 654.7 revised annual ongoing hourly burden = 1,362 total first-year hourly burden).

668 The Commission derived its estimate from the following: (1,362 hours per respondent × 20 respondents) = 27,240 hours.

669 The Commission made the same preliminary estimate of the number of respondents resulting from these proposed amendments in the Regulation SBSR Proposed Amendments Release. See 80 FR at 14788.

670 See supra note 667.

671 The Commission derived its estimate from the following: ($201,000 per respondent × 20 respondents) = $4,020,000. See U.S. Activity Proposal, 80 FR at 27505 (providing preliminary estimates based on a higher number of respondents). See also Regulation SBSR Adopting Release, 80 FR at 14676, nn. 1066 and 1078.
reporting obligations on 300 reporting sides 673 and ten platforms.674

iii. Total Initial and Annual Reporting Burdens
(a) 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 have the duty to report, initial and ongoing burdens will be placed on these entities. The Commission continues to believe 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 will face three categories of burdens to comply with Rule 901.675 The Commission believes that platforms and registered clearing agencies will face the same categories of burdens as those estimated in the Regulation SBSR Adopting Release for other types of respondents. First, each platform and registered clearing agency will likely have to develop the ability to capture the relevant transaction information.676 Second, each platform and registered clearing agency will have to implement a reporting mechanism. Third, each platform and registered clearing agency will 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 continues to believe that platforms and registered clearing agencies will 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 continues to believe 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.677 The Commission continues to believe that all of the reportable events, for which platforms and registered clearing agencies will be responsible for reporting, will be reported through electronic means.678 In the Regulation SBSR Adopting Release, the Commission estimated that the total burden placed upon reporting sides as a result of existing Rule 901 will be approximately 1.361 million hours.679

673 As stated above, the Commission has estimated that there would be 300 reporting sides plus 40 broker-dealer respondents discussed in Section XII(B)(2)(a), supra. See also supra note 657.

674 Although new Rule 901(a)(2)(ii)(E)(4) requires a registered broker-dealer to report security-based swaps in some circumstances, the Commission believes that registered broker-dealers will not incur duties under Rule 901(a)(3). A registered broker-dealer would incur the reporting duty only if it effects a transaction for unregistered non-U.S. counterparties, neither of which is engaging in ANE activity. If the unregistered non-U.S. direct counterparties have guarantors that would clear the transaction on their behalf, it is likely that one or both of these guarantors would occupy a higher rung on the reporting hierarchy such that the duty would fall upon the registered broker-dealer under Rule 901(a)(2)(ii)(E)(4). Therefore, it is unlikely that a broker-dealer that effects such a transaction would incur the duty under Rule 901(a)(3) to provide the transaction ID and the identity of the alpha SDR to the registered clearing agency.

675 See Regulation SBSR Adopting Release, 80 FR at 14675–77.

676 In the Regulation SBSR Adopting Release, the Commission discussed the development, by reporting sides, of an internal order and trade management system. See 80 FR at 14675–76. The Commission continues to believe that the costs of developing an order and trade 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 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.

677 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—will impose an annual aggregate cost of approximately $5,400,000. See 80 FR at 14675–77.

678 As a result of the amendment to Rule 901(h) adopted herein, which replaces “reporting side” with “person having the duty to report,” all persons who have a duty to report under Regulation SBSR must electronically transmit the information required by Rule 901 in a format required by the registered SDR. The Commission believes that the infrastructure build described above will necessarily include the ability to electronically transmit to a registered SDR the information required by Rule 901, such that any burdens resulting from the amendment to Rule 901(h) are included within the Rule 901 burdens for persons with the duty to report that are not reporting sides.

679 The Commission derived its estimate from the following: (355 hours (one-time hourly burden for establishing an 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 (annual aggregate hourly burden). See Regulation SBSR Proposed Amendments Release, 80 FR at 14789, n. 298 (436 hours (annual ongoing hourly burden for internal order management) + 218 hours (annual ongoing hourly burden for per reporting side during the first year,680 before taking into account the reporting of individual reportable events. The Commission believes that the per-entity cost will be comparable for platforms and registered clearing agencies, resulting in a total first-year burden of 1,361 hours and an annual burden of 654 hours for each platform and registered clearing agency, before taking into account the reporting of individual reportable events, under new Rules 901(a)(1) and (a)(2)(l), as adopted herein.

In the Regulation SBSR Adopting Release, the Commission estimated that there will be approximately 3 million reportable events per year under Rule 901, of which approximately 2 million will consist of uncleared transactions (i.e., those transactions that will be reported by a reporting side).681 In the Regulation SBSR Adopting Release, the Commission did not assign reporting duties for the remaining 1 million annual reportable events, which consist of platform-executed alphas, clearing transactions, and any life cycle events pertaining to these two types of transactions. In this release, the Commission is adopting amendments to Rule 901 that assign the reporting duty for these 1 million reportable events to platforms and registered clearing agencies. The Commission estimates that, of the 1 million reportable events, approximately 370,000 will be new security-based swap transactions.682 Of these 370,000 new transactions, the Commission estimates that platforms will be responsible for reporting approximately one-third, or 120,000, of them.683 The Commission estimates that the amendments to Rule 901 will result in platforms having a total burden of 600 hours attributable to the reporting of security-based swaps under Rule 901 over the course of a year, or 60 hours per platform.684

680 See Regulation SBSR Adopting Release, 80 FR at 14675–77.
681 See id.
682 See Regulation SBSR Amendments Proposing Release, 80 FR at 14777, n. 235.
683 Since only platform-executed security-based swaps that will be submitted to a registered clearing agency for clearing are subject to total reporting, platforms are not responsible for any life cycle event reporting under Rule 901(e). See Regulation SBSR Amendments Proposing Release, 80 FR at 14677.
684 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. See Regulation SBSR Proposed
The Commission believes that all reportable events that will be reported by platforms and registered clearing agencies pursuant to these amendments will be reported through electronic means.

The Commission estimates that the amendments to Rule 901 will impose ongoing aggregated aggregate burdens of approximately 714 hours per platform for a total annual burden of 1,421 burden hours for all platforms.

The Commission further estimates that the amendments to Rule 901 will impose initial and ongoing annualized dollar cost burdens of $2,010,000 per platform for a total aggregate initial and ongoing annualized dollar cost burden of $4,020,000.

The Commission recognizes that some entities that will 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 amendments to Rule 901.

(b) Rule 901(a)(3) Burdens

Rule 901(a)(3), as adopted herein, requires a person who has the duty to report an alpha security-based swap to promptly provide the registered clearing agency to which the alpha has been submitted 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 platform-executed security-based swap that will be submitted to clearing.

As discussed above, the Commission believes that platforms will incur a burden of 654 hours per year before taking into account individual transaction reporting plus a transaction reporting burden of 60 hours per year resulting in a total annual burden per platform of 7,140 hours.

As discussed above, the Commission believes that platforms will incur a burden of 707 hours plus an annual burden of 714 hours for a total burden of 1,421 burden hours per platform.

The Commission further estimates that the amendments to Rule 901 will impose initial and ongoing annualized dollar cost burdens of $401,000 per platform for a total aggregate initial and ongoing annualized dollar cost burden of $802,000.

See Regulation SBSR Proposed Amendments Release, 80 FR at 14778-90 (reduced to account only for registered clearing agencies). The Commission estimates that the first year burden on registered clearing agencies will be 2,461 burden hours per registered clearing agency for a total first year burden of 9,844 burden hours for all registered clearing agencies.

The Commission further believes that the first year burden on platforms will be 1,421 burden hours per platform for a total first year burden of 12,568 burden hours.

The Commission believes that all reportable events that will be reported by platforms and registered clearing agencies pursuant to these amendments will be reported through electronic means.

The Commission further estimates that the amendments to Rule 901 will impose initial and ongoing annualized dollar cost burdens of $401,000 per registered clearing agency.

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The Commission provided guidance regarding how Regulation SBSR applies to uncleared bunched order executions and the security-based swaps that result from their allocation. In Section VI, supra, the Commission provides guidance regarding how Regulation SBSR applies to bunched order executions 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.

This guidance does not increase the number of respondents under Regulation SBSR or increase the burdens for any respondent. The estimates of the number of reportable events provided by the Commission in the Regulation SBSR Adopting Release included bunched order executions and the security-based swaps that result from their allocation. Thus, there are no burdens associated with this guidance that the Commission has not already taken into account.

(d) Prime Brokerage Transactions

In the Regulation SBSR Proposed Amendments Release, the Commission set forth the application of Regulation SBSR to a prime brokerage transaction involving three security-based swap legs. In Section VII(B)(2), supra, the Commission supplements its views to account for cases where the documentation among the relevant market participants provides for a two-legged structure rather than a three-legged structure. Since the Commission’s initial estimates of the number of reportable events provided for the reporting of all legs of a prime brokerage transaction and, therefore, those estimates assumed that prime brokerage transactions involved a three-legged structure. In light of the possibility that some prime brokerage transactions may involve only two legs, the Commission may have overestimated the total number of reportable events arising from prime brokerage transactions. However, because prime brokerage transactions are unlikely to represent a significant percentage of reportable events, the Commission continues to believe that its previous estimate of reportable events is reasonable.

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 contained in the Regulation SBSR Adopting Release and as amended in this release.

a. For Platforms

As discussed in Section XI(B)(2)(b)(iii)(a), supra, the Commission estimates that the hourly burden resulting from the amendments to Rule 901(a)(1) on platforms would be 1,421 hours in the first year and 714 hours annually thereafter, per platform. The Commission further estimates that the annual dollar cost of the amendments will be $201,000. The Commission also estimates that the hourly burden resulting from the amendments to Rule 901(a)(3) on platforms will be 28 hours in the first year and 12 hours annually thereafter, per platform. In aggregate, the Commission estimates that the amendments to Rule 901 will result in a first year burden 1,449 hours per platform for a total first year hourly burden of 14,490 hours. The Commission further estimates that the annual aggregate burden resulting from the amendments to Rule 901 will be 726 hours per platform, for a total annual hourly burden of 7,260 hours. Finally, the Commission estimates that the annual dollar cost of the amendments will be $201,000 per platform, for a total annual dollar cost of $2,010,000.

b. For Registered Clearing Agencies

As discussed in Section XI(B)(2)(b)(iii)(a), supra, the Commission estimates that the hourly burden resulting from the amendments to Rule 901(a)(2) on registered clearing agencies will be 2,461 hours in the first year and 1,754 hours annually thereafter, per registered clearing agency. The Commission estimates that the total hourly burden on all registered clearing agencies will be 9,844 in the first year and 7,016 annually thereafter. The Commission further estimates that the annual dollar cost of the amendments will be $401,000 per registered clearing agency, or $1,604,000 for all registered clearing agencies.

approximately 3 million reportable events per year under Rules 901 and 905. Two million of those reportable events were required to be reported pursuant to provisions adopted in the Regulation SBSR Adopting Release, and 1 million are required to be reported by amendments adopted herein. See supra Section XI(B)(2)(a)(iv).
c. For New Broker-Dealer Respondents

The Commission believes that, as a result of amendments to Rule 901(a)(2)(ii)(E) adopted herein, there will be 20 new broker-dealer respondents who will incur reporting responsibilities, and that they will incur first-year burdens of 1,362 hours. The Commission further believes that these new respondents will incur annual burdens of 655 hours each year thereafter. In addition, the Commission believes that these new respondents will incur annual costs of $201,000.

d. For Reporting Sides

In the Regulation SBSR Adopting Release, the Commission estimated that reporting sides will incur a first-year burden of 1,394 hours per reporting side and an hourly burden of 687 hours annually thereafter. As a result of the amendments to Rule 901(a)(3) adopted herein, the Commission believes that these burdens will increase. The Commission believes that reporting sides will have a new first-year burden of 1,422 hours per reporting side,708 or 426,600 hours for all reporting sides.709 The Commission further estimates that reporting sides will have a new annual burden after the first year of 699 hours per reporting side,710 or 209,700 hours for all reporting sides.711 The Commission also believes that the annual dollar cost of Rule 901 to reporting sides will remain unchanged at $201,000 per reporting side, or $60,300,000 for all reporting sides.

C. Correction of Errors in Security-Based Swap Information—Rule 905

1. Existing Rule 905

Existing Rule 905 sets out a process for correcting errors in reported and disseminated security-based swap information. Under Rule 905(a)(1), where a counterparty that was not on the reporting side for a security-based swap transaction discovers an error in the information reported with respect to a security-based swap, that counterparty must promptly notify the reporting side of the error. Under existing 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. An amended report must be submitted to a registered SDR in a manner consistent with the policies and procedures of the registered SDR required pursuant to Rule 907(a)(3).

Existing 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, the registered SDR must 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, with an indication that the report relates to a previously disseminated transaction.

In the Regulation SBSR Adopting Release, the Commission estimated that Rule 905(a) would 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 transactions to a registered SDR. The Commission further estimated that Rule 905(a) would impose an initial (first-year) aggregate burden of 15,015 hours, which is 50.0 burden hours per reporting side,712 and an ongoing aggregate annualized burden of 7,035 hours, which is 23.5 burden hours per reporting side. With regard to non-reporting-side participants, the Commission estimated in the Regulation SBSR Adopting Release that Rule 905(a) will impose an initial and ongoing burden associated with promptly notifying the reporting side after discovery of an error as required under Rule 905(a)(1).714 The Commission estimated that the annual burden will be 998,640 hours, which corresponds to 208.05 burden hours per non-reporting-side participant.715

Existing Rule 905(b) requires a registered SDR to develop protocols regarding the reporting and correction of erroneous information. In the Regulation SBSR Adopting Release, the Commission noted that the rules adopted in the SDR Adopting Release generally require a registered SDR to have the ability to collect and maintain security-based swap transaction reports and update relevant records and, in light of these broader duties, that the burdens imposed by Rule 905(b) on a registered SDR will represent only a minor extension of these main duties.716 The Commission also stated that a registered SDR must have the capacity to disseminate additional, corrected security-based swap transaction reports pursuant to Rule 902. The Commission concluded that the burdens on registered SDRs associated with Rule 905—including systems development, support, and maintenance—are addressed in the Commission’s analysis of those other rules and, thus, that Rule 905(b) imposes only an incremental additional burden on registered SDRs.717

The Commission estimated in the Regulation SBSR Adopting Release 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.718 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.719

714 See id.

715 This figure was based on the Commission’s estimate of (1) 4,800 non-reporting-side participants; and (2) one transaction per day per non-reporting-side participant. The Commission noted that 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. See id.

716 See id.

717 The Commission estimated that developing and publicly providing the necessary procedures will impose on each registered SDR an initial one-time burden of approximately 730 burden hours, and that to review and update such procedures on an ongoing basis will impose an annual burden on each registered SDR of approximately 1,460 burden hours. See id.

718 See id. at 14682, n. 1130–32.

719 See id., nn. 1131, 1133.
2. Amendments to Rule 905

In this release, the Commission is adopting amendments to Rule 905 that broaden the scope and increase the number of respondents that will incur duties under the rule. These amendments will not increase the number of registered SDRs that are respondents to the rule or increase the burdens on SDRs.

Certain provisions of Rule 905 of Regulation SBSR contain “collection of information requirements” within the meaning of the PRA. The title of these collections are: (a) “Rule 905—Correction of Errors in Security-Based Swap Information—For New Broker-Dealer Respondents”; (b) “Rule 901—Correction of Errors in Security-Based Swap Information—For Platforms”; and (c) “Rule 901—Correction of Errors in Security-Based Swap Information—For Registered Clearing Agencies.”

a. Summary of Collection of Information

Rule 905, as adopted in the Regulation SBSR Adopting Release, imposes duties on: (1) Non-reporting sides, to inform the reporting side if the non-reporting side discovers an error; (2) reporting sides, to correct the original transaction report if the reporting side discovers an error or is notified of an error by the non-reporting side; and (3) registered SDRs, upon discovery of an error or receipt of a notice of an error, to verify the accuracy of the terms of the security-based swap and, following such verification, correcting the record and, if necessary, publicly disseminating a corrected transaction report. The amendments to Rule 905, as adopted herein, do not alter the basic duties under Rule 905 but instead are designed to account for the fact that a person other than a side might, under other amendments adopted herein, have the duty to report the initial transaction. Thus, Rule 905, as amended herein, requires non-reporting sides to notify “the person having the duty to report the security-based swap” of the error (not “the reporting side”), and “the person having the duty to report the security-based swap” (not “the reporting side”) must correct the original transaction report if such person discovers an error or is notified of an error by a non-reporting side.

The amendments to Rule 905 adopted herein do not alter the nature of the duties incurred by registered SDRs. However, amendments to other parts of Regulation SBSR adopted herein will increase the number of security-based swap transactions that must be reported to a registered SDR. Because the Commission assumes that some number of those transactions will be reported with errors and will have to be corrected pursuant to Rule 905, these other amendments will indirectly increase the burdens imposed on registered SDRs by Rule 905(b), because registered SDRs will have to correct the records for more transactions (and, in appropriate cases, disseminate more corrected transaction reports). These amendments also will increase the number of non-reporting sides and “persons having the duty to report the security-based swap” who will incur duties under Rule 905(a).

b. Respondents

The Commission previously estimated that Rule 905, as adopted in the Regulation SBSR Adopting Release, will have the following respondents: 300 reporting sides that incur the duty to report security-based swap transactions pursuant to existing Rule 901 and thus might incur duties to submit error corrections to registered SDRs under Rule 905(a)(2); up to 4,800 participants of one or more SDRs (or non-reporting sides) that might incur duties under Rule 905(a)(1); and ten registered SDRs that might incur duties under Rule 905(b). As a result of various amendments being adopted today, the Commission estimates that ten platforms, four registered clearing agencies, and 20 new broker-dealer respondents (exclusive of SB SEFs) also will incur duties under Rule 905(a)(2), because these entities will incur the duty to report initial transactions and thus will likely have to report some error corrections. The Commission’s estimates of the number of reporting sides (300), non-reporting sides (4,800), and registered SDRs (10) that will be respondents of Rule 905 remain unchanged. However, the Commission now believes that four registered clearing agencies, ten platforms, and 20 new broker-dealer respondents will also have to report some error corrections.

c. Total Initial and Annual Reporting Burdens

i. New Broker-Dealer Respondents

In the U.S. Activity Proposal, the Commission preliminarily estimated that the incremental burden imposed on registered broker-dealers to comply with the error reporting requirements of Rule 905 would be equal to 5% of the one-time and annual burdens associated with designing and building the reporting infrastructure necessary for reporting transactions under 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. The Commission preliminarily estimated that the new broker-dealer respondents would incur, as a result of Rule 905(a), an initial (first-year) burden of 48.4 burden hours per respondent, and an ongoing annual burden of 21.8 burden hours. Based on additional information available to the Commission, the Commission now estimates that, as a result of amendments to Rule 901(a)(2)(ii)(E), there will be only 20 new broker-dealer respondents who will be required to report transactions and other reportable events. These new broker-dealer respondents will have error correction duties similar to reporting sides; the Commission believes, therefore, that respondent broker-dealers will incur burdens similar to reporting sides under Rule 905(a). The Commission estimates that these 20 new broker-dealer respondents will each incur an initial (first-year) 48.4 burden hours per respondent, and an annualized burden of 21.8 burden hours per respondent, which remain unchanged from the Commission’s preliminary estimates in the Regulation SBSR Proposed Amendments Release.

ii. For Platforms and Registered Clearing Agencies

The Commission is applying the same methodology for calculating the burdens of error reporting by reporting sides to calculating the burdens of error reporting by platforms, under the amendments to Rule 905(a). However, the Commission believes that, on average, a platform will be reporting a greater number of reportable events than, on average, a reporting side. As a result, the Commission believes that a platform will likely be required to report more error corrections than an average reporting side, so the burdens imposed

721 See 80 FR at 27506.
722 This figure is calculated as follows: [((172 burden hours for one-time development of reporting system) × (0.05)) + ((218 burden hours annual maintenance of reporting system) × (0.05)) + ((1180 burden hours one-time compliance program development) × (0.1)) + ((218 burden hours annual support of compliance program) × (0.11)) × (20 respondents)] = 48.4 burden hours per new broker-dealer respondent. See supra nn. 667 and 668 for the discussion of estimates of the burden hours for annual maintenance of the reporting system for these new broker-dealer respondents.
723 This figure is calculated as follows: [((0.68 burden hours annual maintenance of reporting system) × (0.05)) + ((218 burden hours annual support of compliance program) × (0.11)) = 21.8 burden hours per new broker-dealer respondent. See supra nn. 667 and 668 for the discussion of estimates of the burden hours for annual maintenance of the reporting system for these new broker-dealer respondents.

720 See 80 FR at 14681.
by Rule 905(a) on a platform will likely be greater than the average burden imposed by Rule 905(a) on a reporting side. Thus, for platforms, the Commission estimates that the amendments to Rule 905(a) will impose an initial (first-year) burden of 51.4 hours per platform,724 and an ongoing annualized burden of 24.8 hours per platform. 725

The Commission also believes that this methodology is applicable to the error reporting that will be done by registered clearing agencies as a result of the amendments to Rule 905(a).726 However, because registered clearing agencies will be responsible for a large number of reportable events, they will likely be required to report more error corrections. As a result, the burdens imposed by Rule 905(a) on registered clearing agencies will be greater. Thus, for registered clearing agencies, the Commission estimates that the amendments to Rule 905(a) will impose an initial (first-year) burden of 153.4 hours per registered clearing agency,727 and an ongoing annualized burden of 76.8 hours per registered clearing agency.728

iii. For Non-Reporting Sides

For non-reporting sides, the Commission estimated in the Regulation SBSR Adopting Release that the annual burden (first-year and each subsequent year) will be 998,640 hours, which corresponds to 208.05 burden hours per non-reporting-side participant.729 As a result of the amendments adopted herein, there will be more transactions reported to registered SDRs (i.e., clearing transactions and platform-executed transactions that will be submitted to clearing) and thus more transactions that in theory could have errors. If a non-reporting side were to discover any such error, it would incur an obligation under Rule 905(a)(1) to notify the person with the initial duty to report (i.e., the platform or registered clearing agency) of the error. The Commission believes, however, that the expansion of Regulation SBSR to include clearing transactions and platform-executed transactions that will be submitted to clearing will not impact non-reporting sides under Rule 905(a)(1). Such transactions will likely be in standardized security-based swap products that occur electronically pursuant to the rules of such entities. Errors, when they occur, will mostly likely be observed and corrected by the platforms or registered clearing agencies themselves. Therefore, the Commission believes that the amendments adopted herein will not increase the burdens per non-reporting side or change the number of non-reporting sides that are required to comply with Rule 905(a)(1). Consequently, the Commission continues to estimate that the annual burden on non-reporting sides pursuant to Rule 905(a)(1) will be 998,640 hours, which corresponds to 208.05 burden hours per non-reporting-side participant.730

iv. For Registered SDRs

Rule 905(b) requires a registered SDR to undertake certain actions if it discovers or receives notice of an error in a transaction report. The Commission stated in the Regulation SBSR Adopting Release that it believes that this duty will represent only a minor extension of other duties of registered SDRs for which the Commission is estimating burdens.731 A registered SDR is 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.732 Likewise, a registered SDR must have the capacity to disseminate additional, corrected security-based swap transaction reports under Rule 902, the burdens for which were calculated in the Regulation SBSR Adopting Release.733 Thus, the burdens associated with Rule 905—including systems development, support, and maintenance—are addressed in the Commission’s analysis of those other rules.

As discussed above, the Commission estimated in the Regulation SBSR Adopting Release 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.734 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

724 See Regulation SBSR Proposed Amendments Release, 80 FR at 14794. This figure is calculated as follows: [(172 burden hours for one-time development of reporting system) × (0.05)] + [(60 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) × (0.05)] = 76.8 hours per platform. See supra note 679 for the discussion of estimates of the burden hours for annual maintenance of the reporting system for platforms. The Commission notes that the Regulation SBSR Proposed Amendments Release inadvertently used 33 burden hours to represent annual maintenance of the reporting system for registered clearing agencies. Therefore, the burdens imposed by Rule 905(a) on registered clearing agencies will be greater. Thus, for registered clearing agencies, the Commission estimates that the amendments to Rule 905(a) will impose an initial (first-year) burden of 153.4 hours per registered clearing agency, and an ongoing annualized burden of 76.8 hours per registered clearing agency.

725 See Regulation SBSR Proposed Amendments Release, 80 FR at 14794. This figure is calculated as follows: [(172 burden hours for one-time development of reporting system) × (0.05)] + [(60 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) × (0.05)] × (365 days/year) = 24.8 hours per platform. See supra note 679 for the discussion of estimates of the burden hours for annual maintenance of the reporting system for platforms. The Commission notes that the Regulation SBSR Proposed Amendments Release inadvertently used 33 burden hours to represent annual maintenance of the reporting system for registered clearing agencies. Therefore, the burdens imposed by Rule 905(a) on registered clearing agencies will be greater. Thus, for registered clearing agencies, the Commission estimates that the amendments to Rule 905(a) will impose an initial (first-year) burden of 153.4 hours per registered clearing agency, and an ongoing annualized burden of 76.8 hours per registered clearing agency.

726 This figure is calculated as follows: [(172 burden hours for one-time development of reporting system) × (0.05)] + [(1100 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) × (0.05)] = 208.05 burden hours per platform. See supra note 684 (calculating the annual reporting burden used to determine the annual maintenance burden of the reporting system).727 This figure is based on the following: [(1 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. See Regulation SBSR Adopting Release, 80 FR at 14681–83.

727 This figure is calculated as follows: [(1100 burden hours annual maintenance of reporting system) × (0.05)] + [(218 burden hours annual support of compliance program) × (0.05)] + [(180 burden hours one-time compliance program development) × (0.1)] + [(218 burden hours annual support of compliance program) × (0.05)] = 153.4 burden hours per registered clearing agency. See also Regulation SBSR Adopting Release, 80 FR at 14681–83 (describing the manner in which similar burdens were calculated for reporting sides). See supra note 679 (discussing estimates of the burden hours for annual maintenance of the reporting system for registered clearing agencies). This figure is calculated as follows: [(1100 burden hours annual maintenance of reporting system) × (0.05)] + [(218 burden hours annual support of compliance program) × (0.05)] × (365 days/year) = 24.8 hours per platform. See supra note 679 for the discussion of estimates of the burden hours for annual maintenance of the reporting system for platforms. The Commission notes that the Regulation SBSR Proposed Amendments Release inadvertently used 33 burden hours to represent annual maintenance of the reporting system for registered clearing agencies. Therefore, the burdens imposed by Rule 905(a) on registered clearing agencies will be greater. Thus, for registered clearing agencies, the Commission estimates that the amendments to Rule 905(a) will impose an initial (first-year) burden of 153.4 hours per registered clearing agency, and an ongoing annualized burden of 76.8 hours per registered clearing agency.

728 See Regulation SBSR Proposed Amendments Release, 80 FR at 14794. This figure is calculated as follows: [(172 burden hours for one-time development of reporting system) × (0.05)] + [(60 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) × (0.05)] = 76.8 hours per platform. See supra note 679 for the discussion of estimates of the burden hours for annual maintenance of the reporting system for platforms. The Commission notes that the Regulation SBSR Proposed Amendments Release inadvertently used 33 burden hours to represent annual maintenance of the reporting system for registered clearing agencies. Therefore, the burdens imposed by Rule 905(a) on registered clearing agencies will be greater. Thus, for registered clearing agencies, the Commission estimates that the amendments to Rule 905(a) will impose an initial (first-year) burden of 153.4 hours per registered clearing agency, and an ongoing annualized burden of 76.8 hours per registered clearing agency.

729 This figure is calculated as follows: [(1100 burden hours annual maintenance of reporting system) × (0.05)] + [(218 burden hours annual support of compliance program) × (0.05)] × (365 days/year) = 24.8 hours per platform. See supra note 679 for the discussion of estimates of the burden hours for annual maintenance of the reporting system for platforms. The Commission notes that the Regulation SBSR Proposed Amendments Release inadvertently used 33 burden hours to represent annual maintenance of the reporting system for registered clearing agencies. Therefore, the burdens imposed by Rule 905(a) on registered clearing agencies will be greater. Thus, for registered clearing agencies, the Commission estimates that the amendments to Rule 905(a) will impose an initial (first-year) burden of 153.4 hours per registered clearing agency, and an ongoing annualized burden of 76.8 hours per registered clearing agency.

730 See Rule 905(b) adopted by the Commission in the Regulation SBSR Adopting Release, 80 FR at 14681–83. See also id. at 14682.

each registered SDR.735 With respect to Rule 905(a)(2), the Commission stated that the submission of amended transaction reports required under Rule 905(a)(2) likely 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 were addressed in the Commission’s analysis of Rule 901.736

The amendments adopted herein do not increase the number of registered SDRs that are respondents to Rule 905(b), but they do increase the number of error reports that will have to be processed by each registered SDR. The Commission notes, however, consistent with its analysis in the Regulation SBSR Adopting Release, that any burdens associated with Rule 905 for registered SDRs are a result of systems development, support, and maintenance and are not dependent on the number of error reports received or processed. Consequently, for registered SDRs, the Commission estimates that the initial (first-year) aggregate annualized burden on registered SDRs under Rule 905, as previously adopted and as amended herein, will be 23,000 burden hours, which corresponds to 2,190 burden hours for each registered SDR.737 The Commission further estimates that the ongoing aggregate annualized burden on registered SDRs under Rule 905, as previously adopted and as amended herein, will be 14,600 burden hours, which corresponds to 1,460 burden hours for each registered SDR.738

v. Aggregate Reporting Burdens Under Rule 905

As discussed above, the Commission estimates that Rule 905(a) will impose an initial (first-year) burden on each reporting side of 50 hours for a total aggregate first-year burden on all reporting sides of 15,000 hours739 and an ongoing annualized burden on each reporting side of 23.5 hours, for a total aggregate annual burden on all reporting sides of 7,050 hours.740 The Commission estimates that the 20 new broker-dealer respondents will each incur an initial (first-year) burden of 48.4 burden hours per respondent, for a total aggregate first-year burden on all new broker-dealer respondents of 968 hours,741 and an ongoing annualized burden of 21.8 burden hours per respondent, for a total aggregate annual burden on all new broker-dealer respondents of 436 hours.742

Furthermore, for platforms, the Commission estimates that the amendments to Rule 905(a) will impose an initial (first-year) burden of 51.4 burden hours per platform for a total aggregate first-year burden on all platforms of 514 hours,743 and an ongoing annualized burden of 22.1 burden hours per platform for a total aggregate annual burden on all platforms of 221 hours.744 The Commission estimates that the amendments to Rule 905(a) will impose an initial (first-year) burden of 153.4 hours per registered clearing agency for a total aggregate first-year burden of 612.6 hours,745 and an ongoing annualized burden of 76.8 hours per registered clearing agency for a total aggregate annual burden of 307.2 hours.746

The Commission estimates that the annual burden on non-reporting sides will remain unchanged at 208.1 burden hours per non-reporting-side participant, for a total aggregate annual burden (first-year and each subsequent year) of 998,640 hours for all non-reporting-side participants.747

The Commission estimates that the initial (first-year) aggregate annualized burden on registered SDRs will be 2,190 burden hours for each registered SDR, for a total aggregate first-year burden of 21,900 hours on all registered SDRs.748 The Commission estimates that the ongoing aggregate annualized burden on registered SDRs will be 1,460 burden hours for each registered SDR, which equals a total aggregate annual burden of 14,600 burden hours for all registered SDRs.749

In summary, the Commission estimates that the aggregate first-year burden of Rule 905 for all entities will be 1,037,635 hours.750 The Commission estimates that the annual burden (after the first year) of Rule 905 for all entities will be 1,021,254 hours.751

D. Other Duties of Participants—Rule 906

1. Existing Rule 906

Existing 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 necessarily 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 direct 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. Finally, Rule 906(a) requires a participant that receives such a report to provide the missing ID information to the registered SDR within 24 hours. Existing 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...
affiliates of the participant that also are participants of the registered SDR.

Existing 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). 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 UIC information supplied by participants in response to the daily reports.

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. The Commission estimated 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.

For Participants. Existing 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. All SDR participants will likely be the non-reporting side for at least some transactions to which they are counterparties; therefore, 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. Existing Rule 906(b) requires every participant of a registered SDR to provide that SDR an initial ultimate parent/affiliate report and updates 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 Rule 906(b) reports each year. 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.

Existing 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 applicable security-based swap reporting obligations, and to review and update 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 create these written policies and procedures will be approximately 216 burden hours. The Commission also estimated the burden of maintaining such policies and procedures, including a full review at least annually, will be approximately 120 burden hours for each covered participant. Accordingly, the Commission estimated the initial aggregate annualized burden associated with Rule 906(c) to be 18,480 burden hours, which corresponds to 336 burden hours per covered participant. The Commission estimated the ongoing aggregate annualized burden associated with Rule 906(c) to be 6,600 burden hours, which corresponds to 120 burden hours per covered participant.

In sum, the Commission in the Regulation SBSR Adopting Release estimated that the total initial aggregate annualized burden associated with Rule 906 will be 230,370 burden hours, and that the total ongoing aggregate annualized burden will be 217,370 burden hours for all participants.

2. Amendments to Rule 906

a. Rule 906(a)

In this release, the Commission is making only a minor amendment to Rule 906(a) which does not affect the estimated number of respondents or the estimated burdens for existing respondents to the rule.

However, because of the amendments to Rule 901(a) adopted herein, the scope of transactions covered by Regulation SBSR is increasing. As a result, a registered SDR will have to review a larger number of transactions to assess whether there is missing UIC information. The Commission believes that the process whereby a registered SDR reviews transactions and generates the associated reports will be automated, and that the costs of performing this automated review will be approximately the same even if the review covers a larger set of transactions. Furthermore, although Rule 906(a) notices sent by a registered SDR could in some cases be longer because they cover more transactions, the amendments to Rule 901(a) will not increase the number of participants (4,800) to which the registered SDR will likely have to send such notices. Therefore, the Commission does not believe that the larger number of transactions will result in any burdens on registered SDRs under Rule 906(a) that were not already accounted for in the Regulation SBSR Adopting Release. Thus, the Commission

ongoing training, maintaining internal controls systems, and performing necessary testing. See id.

765 The Commission estimated that a registered SDR will incur an initial, one-time burden of 112 hours to create a report template and develop the necessary systems and processes to produce a daily report required by Rule 906(a). The Commission

Continued
believes that its original burden estimates for registered SDRs to comply with Rule 906(a) remain appropriate.

With respect to the 4,800 participants that will likely be required to provide missing UIC information to a registered SDR for at least some transactions, the Commission is revising its original estimate of the burdens imposed by Rule 906(a) because participants will have to provide missing UIC information for a larger number of transactions. Although a registered SDR’s process for generating a Rule 906(a) information request might be automated, at least some participants might rely on manual procedures to reply. 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.\(^{767}\)

The Commission continues to believe that there will be approximately one million additional reportable events under Regulation SBSR.\(^{768}\) Of these one million reportable events, the Commission estimates that approximately 120,000 platform-executed alphas reflected in estimates in the Regulation SBSR Adopting Release could have missing UIC information. Both sides of a platform-executed alpha might have to report missing UIC information since neither side is the reporting side and thus both sides are non-reporting sides. Therefore, the Commission believes that each participant, on average, will now be required to provide missing UIC information for 1.27 transactions each day.\(^{769}\) As a result, the Commission also estimated that a registered SDR will incur an ongoing annualized burden of 308 hours 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. See Regulation SBSR Adopting Release, 80 FR at 14684.\(^{770}\)

This figure is based on the Commission’s estimates of (1) 4,800 participants; and (2) approximately 1.14 transactions per day per participant. See id.\(^{768}\)

The Commission originally estimated that participants could have to provide missing UIC information for up to two million security-based swap transactions annually. This results in each participant, on average, having to provide missing information for 1.14 transactions each day. As a result, the Commission originally estimated the total burden to be 199,728 hours, or 41.6 hours annually for each participant. See 80 FR at 14684. The Commission now believes that these same participants will be responsible for providing missing UIC information for a greater number of security-based swap transactions. The Commission estimates: \(((2,000,000 original estimate of annual security-based swap transactions for which mission UIC information would need to be provided to the SDR) × (\{120,000 additional security-based swap transactions for which UIC information is required\}) × (2 since both sides could be required to provide missing UIC information)) / (365 days/year) = 1.27 average security-based swap transactions per day for each participant who will need to provide missing UIC information.\(^{770}\)

The Commission estimates that the total burden for all participants will be 222,504 calculated as follows: \((1,27 missing information reports per day) × (365 days/year) × (Compliance Clerk at 0.1 hours/report) × (4,800 participants) = 222,504 hours/year or 46.4 hours for each participant.\(^{770}\)

The Commission now believes that these same transactions for which UIC information is required would need to be provided to the SDR every 1.27 days/year, for a total burden of 222,504 hours for all participants.

b. Rule 906(b)—Amendments

Existing Rule 906(b) 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. In this release, the Commission is adopting amendments to Rule 906(b) to exclude from this reporting requirement participants that are platforms, registered clearing agencies, externally managed investment vehicles, and registered broker-dealers (including SB SEFs) that become participants of a registered SDR solely as a result of making a report to satisfy an obligation under Rule 901(a)(2)(iii)(E)(4). Therefore, this amendment does not create any new respondents that have burdens under the rule or increase burdens for any existing respondents.

Platforms and registered clearing agencies were not covered respondents to Rule 906(b) when the Commission estimated the burdens of Rule 906(b), as adopted in the Regulation SBSR Adopting Release. Therefore, the amendment to Rule 906(b) adopted today that specifically excludes them does not affect the Commission’s estimate in the Regulation SBSR Adopting Release of the burdens associated with Rule 906(b). However, externally managed investment vehicles were considered respondents of Rule 906(b), as adopted in the Regulation SBSR Adopting Release, and the estimated burdens on all participant respondents in that adopting release included burdens imposed on externally managed investment vehicles.\(^{771}\) Therefore, the amendment to Rule 906(b) adopted herein that excludes externally managed investment vehicles has the effect of reducing the number of respondents and the associated burdens of Rule 906(b) that the Commission estimated in the Regulation SBSR Adopting Release. Based on an analysis of TIW transaction data, the Commission believes that, of the 4,800 estimated participants, approximately 1,920 are externally managed investment vehicles.\(^{772}\)

Therefore, the Commission now estimates that there are only 2,880 participant respondents to Rule 906(b), as amended herein. In the Regulation SBSR Adopting Release, the Commission further estimated that each respondent to Rule 906(b) will submit two reports per year and that each report will result in one burden hour.\(^{773}\) The Commission continues to believe that each respondent will incur two burden hours per year in connection with Rule 906(b), but is reducing its estimate of total burden hours for all participants from 9,600 (estimated in the Regulation SBSR Adopting Release) to 5,760 (2,880 respondents × 2 hours/ respondent = 5,760 hours). c. Rule 906(c)—Amendments

i. Summary of Collection of Information

Persons that are subject to Rule 906(c) must establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with applicable security-based swap transaction reporting obligations. Respondents also must review and update their policies and procedures at least annually.

ii. Respondents

The amendments to Rule 906(c) adopted today will extend the requirements of existing Rule 906(c) to registered clearing agencies, platforms, and registered broker-dealers that incur duties to report security-based swaps pursuant to Rule 901(a)(2)(iii)(E)(4). The Commission estimates that there will be 4 registered clearing agencies, 10 platforms, and 29 registered broker-dealers that will become subject to Rule 906(c).

iii. Total Initial and Annual Reporting and Recordkeeping Burdens

For Registered Clearing Agencies and Platforms.

In the Regulation SBSR Proposed Amendments Release, the Commission preliminarily estimated that the one-time, initial burden for each registered clearing agency or platform to adopt written policies and procedures as required under the amendment to Rule 906(c) would be similar to the Rule 906(c) burdens for other covered entities.\(^{774}\)

\(^{767}\text{See id.}\)

\(^{768}\text{See Regulation SBSR Adopting Release, 80 FR at 14675–76.}\)

\(^{769}\text{The Commission originally estimated that participants could have to provide missing UIC information for up to two million security-based swap transactions annually. This results in each participant, on average, having to provide missing information for 1.14 transactions each day. As a result, the Commission originally estimated the total burden to be 199,728 hours, or 41.6 hours annually for each participant. See 80 FR at 14684. The Commission now believes that these same participants will be responsible for providing missing UIC information for a greater number of security-based swap transactions. The Commission estimates: \(((2,000,000 original estimate of annual security-based swap transactions for which mission UIC information would need to be provided to the SDR) × (\{120,000 additional security-based swap transactions for which UIC information is required\}) × (2 since both sides could be required to provide missing UIC information)) / (365 days/year) = 1.27 average security-based swap transactions per day for each participant who will need to provide missing UIC information.\(^{770}\)}\)

\(^{770}\text{The Commission estimates that the total burden for all participants will be 222,504 calculated as follows: \((1,27 missing information reports per day) × (365 days/year) × (Compliance Clerk at 0.1 hours/report) × (4,800 participants) = 222,504 hours/year or 46.4 hours for each participant.}\)

\(^{771}\text{See 80 FR at 14684.}\)

\(^{772}\text{Roughly 40% of TIW accounts on average have been identified by staff as private funds or registered investment companies. 4,800 × 0.4 = 1,920.}\)

\(^{773}\text{See id.}\)
participants. In the Regulation SBSR Adopting Release, the Commission estimated that Rule 906(c) will impose a burden of approximately 216 hours on each registered security-based swap dealer or registered major security-based swap participant (together, “covered participants”). In addition, the Commission estimated that the burden of maintaining such policies and procedures, including a full review at least annually, will be approximately 120 burden hours for each covered participant. The Commission continues to believe that, by amending Rule 906(c) to apply the policies and procedures requirement to registered clearing agencies and platforms, these entities will face burdens similar to those of the existing covered participants. Accordingly, the Commission estimates that the initial aggregate annualized burden associated with the amendments to Rule 906(c) will be 4,704 burden hours, which corresponds to 336 burden hours per registered clearing agency or platform. The Commission estimates that the ongoing aggregate annualized burden associated with the amendments to Rule 906(c) will be 1,680 burden hours, which corresponds to 120 burden hours per registered clearing agency or platform.

For Registered Broker-Dealers. The amendments to Rule 906(c) will require each registered broker-dealer that becomes a participant solely as a result of incurring a reporting duty under Rule 901(a)(2)(ii)(E) of incurring a reporting duty under Rule 906(c) will be approximately 120 burden hours for each covered participant. The Commission estimates that the initial burden for each respondent broker-dealer to adopt written policies and procedures as required under the amendment to Rule 906(c) would be similar to the Rule 906(c) burdens for existing covered participants. In the Regulation SBSR Adopting Release, the Commission estimated that Rule 906(c) will impose a burden of approximately 216 hours on each covered participant. In addition, the Commission estimated that the burden of maintaining such policies and procedures, including a full review at least annually, will be approximately 120 burden hours for each covered participant. The Commission continues to believe that, by amending Rule 906(c) to impose the policies and procedures requirement on respondent broker-dealers, these entities will face burdens similar to those of other covered participants. Accordingly, the Commission estimates that the initial aggregate annualized burdens on respondent broker-dealers associated with the amendment to Rule 906(c) will be 6,720 burden hours, which corresponds to 336 burden hours per respondent broker-dealer. The Commission estimates that the ongoing aggregate annualized burdens on all respondent broker-dealers associated with the amendments to Rule 906(c) will be 2,400 burden hours, which corresponds to 120 burden hours per respondent broker-dealer.

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. These figures add the burdens and costs estimated in the Regulation SBSR Adopting Release for the existing covered participants with the burdens and costs estimated for the additional covered participants resulting from the amendments to Rule 906(c) adopted 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 the amendments to Rule 906(c) will be similar to the Rule 906(c) burdens discussed in the Regulation SBSR Adopting Release for covered participants, and will be approximately 216 burden hours per registered clearing agency or platform. 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 registered clearing agency or platform. 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, or first year, aggregate annualized burden associated with the amendments to Rule 906(c) will be 4,704 burden hours, which corresponds to 336 burden hours per registered clearing agency or platform. The Commission estimates that the ongoing aggregate annualized burden associated with the amendments to Rule 906(c) will be 1,680 burden hours, which corresponds to 120 burden hours per registered clearing agency or platform.

b. For Registered SDRs

As a result of changes in other rules, registered SDRs will have to identify missing UIC information from a larger number of transactions and send more requests to non-reporting sides seeking such missing UIC information. In the Regulation SBSR Adopting Release, the Commission estimated that there will be a one-time, initial burden of 112 burden hours for each registered SDR to create a report template and develop the necessary systems and processes to produce a daily report.
required by Rule 906(a), or 1.120 burden hours for all SDRs.789 The Commission believes that this estimate continues to be valid, as an SDR’s initial investment in the infrastructure necessary to carry out its duties under Rule 906(a) should be unaffected by the precise number of transactions covered by Regulation SBSR.

In the Regulation SBSR Adopting Release, the Commission estimated that there will be an ongoing annualized burden of 308 burden hours for each registered SDR to generate and issue the daily reports, and to enter into its systems the UIC information supplied by participants in response to the daily reports, or 3,308 burden hours for all SDRs.790 Although the scope of security-based swap transactions covered by Regulation SBSR has increased, the Commission continues to believe 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 UIC information supplied by participants in response to the daily reports.

c. For Participants

The Commission estimates that, as a result of the amendments adopted herein, the initial and ongoing annualized burden under Rule 906(a) for all participants will be 222,504 burden hours, which corresponds to 46.4 burden hours per participant.791 The Commission notes that each participant will, on average, have to provide missing UIC information for more security-based swap transactions than it would have prior to the amendments adopted in this release. The revised estimates account for these additional transactions.

In the Regulation SBSR Adopting Release, 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.792 The amendment to Rule 906(b) does not create any new respondents or impose any new burdens on existing respondents, as the amendment excludes platforms, registered clearing agencies, registered broker-dealers, and externally managed investment vehicles from having to report ultimate parent and affiliate information to registered SDRs of which they are participants. Therefore, the Commission’s estimate of the burdens imposed by Rule 906(b) on individual participants remains unchanged. However, because of the exclusions discussed above, only 2,880 participants will be subject to the requirement of Rule 906(b). As a result, the aggregate annualized burden associated with Rule 906(b) will fall from 9,600 hours (estimated in the Regulation SBSR Adopting Release) to 5,760 hours.

d. For New Broker-Dealer Respondents

In this release, the Commission is adopting an amendment to Rule 906(c) that extends the requirement to establish policies and procedures for carrying out reporting duties under Regulation SBSR to platforms, registered clearing agencies, and registered broker-dealers that incur a duty to report security-based swaps under new Rule 901(a)(2)(ii)(E)(4). The Commission estimates 20 registered broker-dealers will become subject to Rule 906(c). The Commission discussed the burdens placed upon platforms and registered clearing agencies as a result of the amendments to Rule 906(c) in Section XI(D)(3)(a), supra. The Commission believes that the per-respondent costs of establishing and updating the required policies will be the same for new broker-dealer respondents identified in this release as well as the respondents identified in the Regulation SBSR Adopting Release, as discussed in Section XI(D)(1), supra. Therefore, the Commission estimates that the new broker-dealer respondents will incur a one-time, initial burden of 216 burden hours per new broker-dealer respondent, or 6,480 hours for all new broker-dealer respondents, and an ongoing annual burden of 120 hours per new broker-dealer respondents, or 2,400 hours for all new broker-dealer respondents.

e. Aggregate Rule 906 Burdens

In sum, Rule 906(a) will place a total first-year burden on registered SDRs of 1,120 hours.793 Rule 906(c) will place a total annual burden on registered SDRs and covered participants of 269,384 hours.794 Rule 906(b) will place a total annual burden on covered participants of 5,760 hours.795 Rule 906(c) will place a total first-year burden on covered participants of 19,224 hours.796 Rule 906(c) will place a total annual burden on covered participants of 10,680 hours.797 These figures combine the burdens associated with Rule 906 estimated in the Regulation SBSR Adopting Release with the revisions to these burdens associated with the amendments to Rule 906 adopted herein.

E. Policies and Procedures of Registered SDRs—Rule 907

1. Existing Rule 907

Existing Rule 907(a) requires a registered SDR to establish and maintain written policies and procedures with respect to the receipt, reporting, and public dissemination of security-based swap transaction information. Existing Rule 907(c) requires a registered SDR to make its policies and procedures available on its Web site. Existing 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. Existing 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. Rule 907—Amendments

In this release, the Commission is making only one amendment to Rule 907: The Commission is revising Rule 907(a)(6) to carve out platforms, registered clearing agencies, externally managed investment vehicles, and registered broker-dealers (including SB SEFs) that become a participant of a registered SDR solely as a result of making a report to satisfy an obligation under Rule 901(a)(2)(ii)(E)(4) from the requirement in Rule 907(a)(6) that a registered SDR have policies and procedures for obtaining ultimate parent
and affiliate information from its participants, as contemplated by an amendment to Rule 906(b) adopted herein. The amendment to Rule 907(a)(6) has the effect of preventing existing respondent SDRs from incurring additional burdens because they will not have to obtain ultimate parent and affiliate information from additional types of participants.

However, amendments to other rules in Regulation SBSR will have the effect of requiring a registered SDR to expand its policies and procedures to cover additional types of reporting persons and additional types of reporting scenarios. For example, platforms and registered broker-dealers may now incur duties to report certain security-based swaps and are required to become participants of registered SDRs to which they report. In addition, a registered clearing agency also incurs the duty to report to the alpha SDR whether the clearing agency has accepted an alpha for clearing. Registered SDRs that record alpha transactions will have to expand their policies and procedures to be able to link the report of the original alpha transaction (which would be reported either by a reporting side or, if the alpha was platform-executed and will be submitted to clearing, by the platform) to the report of the clearing disposition, which would be submitted by the registered clearing agency.

3. Rule 907—Aggregate Total PRA Burdens and Costs

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 existing 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 its 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 estimated that the total 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.797

The Commission further estimated that the ongoing annualized burden associated with Rule 907 will be approximately 30,000 hours per registered SDR,798 which corresponds to an ongoing annualized aggregate burden of approximately 300,000 hours.799

As a result of amendments made to various provisions of Regulation SBSR in this release, registered SDRs will need to broaden the scope of the written policies and procedures that Rule 907 requires them to have.800 The Commission believes that a registered SDR’s expansion of its policies and procedures in response to the amendments to Regulation SBSR adopted in this release represents an “add-on” to the burdens already calculated with respect to the SDR policies and procedures under existing Rule 907. The Commission estimates the incremental burden to be an additional 10% of the one-time and annual burdens estimated to result from existing Rule 907.

Accordingly, the Commission believes that the one-time, initial burden for a registered SDR to adopt written policies and procedures as required under Rule 907 will be approximately 16,500 hours.801 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 its Web site, and information or reports on non-compliance, as required under Rule 907(e), will be approximately 33,000 hours.802

F. Cross-Border Matters—Rule 908

1. Existing Rule 908

Rule 908(a) defines when certain cross-border security-based swap transactions are subject to regulatory reporting and/or public dissemination. Rule 908(a), as adopted in the Regulation SBSR Adopting Release, covered security-based swaps consisting of only certain counterparty pairs. Existing Rule 908(a)(1)(i) provides that a security-based swap shall be subject to regulatory reporting and public dissemination if “[t]he security-based swap not included within Rule 908(a)(1) 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.’” and existing Rule 908(a)(1)(ii) 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.” Existing Rule 908(a)(2) provides that a security-based swap not included within Rule 908(a)(1) 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.” Rule 908(a), as adopted in the Regulation SBSR Adopting Release, did not otherwise address when an uncleared security-based swap involving only unregistered non-U.S. persons would be subject to regulatory reporting and/or public dissemination.

This figure is calculated as follows: [(33,000 one-time written policies and procedures development × (1.1)] = 33,000.

This figure is based on the following: [(33,000 burden hours per registered SDR) × (10 registered SDRs)] = 330,000 ongoing, annualized aggregate burden hours.
Rule 908(b) defines when a person might incur obligations under Regulation SBSR. Existing 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 in the Regulation SBSR Adopting Release that Rules 908(a) and 908(b) do not impose any collection of information requirements and that, to the extent that a security-based swap transaction or a person is subject to Rule 908(a) or (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).\(^{805}\)

Existing Rule 908(c) sets forth the requirements for a substituted compliance request relating to regulatory reporting and public dissemination of security-based swaps in a particular foreign jurisdiction, and is the only part of Rule 908 to impose paperwork burdens. Rule 908(c) is not being amended by this release. In the Regulation SBSR Adopting Release, the Commission estimated that it will receive approximately ten substituted compliance requests in the first year and two requests each subsequent year.\(^ {806}\)

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 estimated requests.\(^ {807}\)

In the Regulation SBSR Adopting Release, the Commission estimated that it would receive ten requests in the first year resulting in an aggregated burden for the first year of 800 hours, plus $800,000 for the services of outside professionals.\(^ {808}\)

The Commission further estimates that it would receive two requests in each subsequent year resulting in an aggregate annual burden, after the first year, of up to 160 hours of company time and $160,000 for the services of outside professionals.\(^ {809}\)

### 2. Rule 908—Amendments

The Commission today is adopting amendments to Rule 908(a) to subject additional types of security-based swap transactions to regulatory reporting and public dissemination under Regulation SBSR, and amendments to Rule 908(b) to clarify that additional types of persons may incur duties under Regulation SBSR. However, these amendments do not themselves impose any paperwork burdens. Additional paperwork burdens caused by increasing the number of respondents or by increasing the burdens imposed on respondents are considered under the rule that imposes the substantive duties. The Commission is not amending Rule 908(c) herein.

### 3. Rule 908—Aggregate Total Burdens and Costs

Because the only part of Rule 908 that imposes any paperwork burdens is paragraph (c), the Commission’s estimate from the Regulation SBSR Adopting Release of the total paperwork burden associated with Rule 908(c) remains approximately 1,120 hours, plus $1,120,000 for 14 substituted compliance requests.\(^ {810}\)

The Commission continues to believe that the first-year aggregated burden will be 800 hours, plus $800,000 for the services of outside professionals, and that the aggregate burden for each following the first year will be up to 160 hours of company time and $160,000 for the services of outside professionals.\(^ {811}\)

### G. Additional PRA Discussion

#### 1. Use of Information

The security-based swap transaction information that is required by the amendments to Regulation SBSR adopted herein will be used by registered SDRs, market participants, the Commission, and other relevant authorities. The information reported by respondents pursuant to the amendments to Regulation SBSR adopted herein 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 also will 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 and related securities, 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 to examine for and consider whether to take enforcement action against potentially abusive trading behavior, as appropriate.

The policies and procedures required under the amendments to Regulation SBSR 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, through, among other things, examinations and inspections.

### 2. Recordkeeping Requirements

Apart from the duty to report certain transaction information, Regulation SBSR does not impose any recordkeeping requirement on reporting sides.

Security-based swap transaction information received by a registered SDR pursuant to Regulation SBSR is subject to Rule 13n–5(b)(4) under the Exchange Act,\(^ {812}\) which requires an SDR to maintain such information for not less than five years after the applicable security-based swap expires and historical positions for not less than five years. Rule 13n–7(b) under the Exchange Act\(^ {813}\) requires the 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. The Commission does not believe that the amendments to Regulation SBSR adopted herein will have any impact on the PRA burdens of registered SDRs related to recordkeeping as they were already accounted for in the SDR Adopting Release.\(^ {814}\)

The Commission has proposed recordkeeping requirements for registered clearing agencies\(^ {815}\) and SB SEFs.\(^ {816}\) The amendments to Regulation SBSR adopted herein do not impose any recordkeeping requirements on registered clearing agencies or platforms.

\(^ {805}\) See 80 FR at 14686.

\(^ {806}\) See id.

\(^ {807}\) See id. at 14687.

\(^ {808}\) See id.

\(^ {809}\) See id.

\(^ {810}\) See id.

\(^ {811}\) See id.
3. Collection of Information Is Mandatory

Each collection of information discussed above is mandatory.

4. Confidentiality of Responses to Collection of Information

An SDR, pursuant to Section 13(n)(5)(F) 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 transaction information that 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. Furthermore, to the extent that information previously reported and publicly disseminated is corrected, such information also will be widely available. 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. For all security-based swaps, the information collected pursuant to Rule 901(d) is for regulatory purposes and will not generally be available to the public. Although the Commission or Commission staff may make available statistics or aggregated data derived from these transaction reports. 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.

XII. Economic Analysis

The Dodd-Frank Act amended the Exchange Act, among other things, to require regulatory reporting and public dissemination of security-based swap transactions. Regulation SBSR, which the Commission adopted in February 2015, implements this mandate. At the same time that it adopted Regulation SBSR, the Commission proposed additional rules and guidance to address issues that were not resolved in the Regulation SBSR Adopting Release. Later, in April 2015, the Commission issued the U.S. Activity Proposal, which (among other things) proposed further amendments to Regulation SBSR to address the reporting and public dissemination of additional types of cross-border security-based swaps. In this release, the Commission is adopting, with certain revisions, the amendments to Regulation SBSR contained in the Regulation SBSR Proposed Amendments Release and the U.S. Activity Proposal.

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 identifies and considers the benefits and costs that could result from the amendments adopted herein. The Commission also discusses the potential economic effects of certain alternatives to the approach taken by these amendments. To the extent applicable, the views of commenters relevant to the Commission’s analysis of the economic effects, costs, and benefits of these amendments are included in the discussion below.

A. Programmatic Costs of Amendments to Regulation SBSR

In this section, the Commission discusses the programmatic costs and benefits associated with the amendments to Regulation SBSR adopted in this release. This discussion includes a summary of and response to comments relating to the Commission’s initial analysis of the costs and benefits associated with these amendments.

1. Programmatic Costs of Newly Adopted Requirements

New Rule 901(c)(2)(i) provides that the reporting side for a clearing transaction is the registered clearing agency that is a direct counterparty to the clearing transaction, and allows the registered clearing agency to select the SDR. New Rule 901(c)(3) requires 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 amendments to Rule 901 will impose initial and ongoing costs on platforms, registered clearing agencies, and reporting entities. These costs will be a function of the number of additional events reportable as a result of these amendments and the number of data elements required to be submitted for each additional reportable event.

This release considers only the events that must be reported as a result of the amendments to Rule 901 being adopted today. In the Regulation SBSR Adopting Release, the Commission estimated the number of reportable events that will result a. For Platforms and Registered Clearing Agencies

The Commission believes that platforms and registered clearing agencies, when carrying out duties to report security-based swaps, will generally incur the same infrastructure costs that reporting sides face. Like a reporting side, a platform or registered clearing agency must: (1) Develop a transaction processing system; (2) implement a reporting mechanism; and (3) establish an appropriate compliance program and support for the operation of the transaction processing system.

Once platforms and registered clearing agencies have established the infrastructure to report security-based swap transactions, reportable events will be reported through electronic means and the marginal cost of reporting an additional transaction once the infrastructure to support the reporting function has been established should be de minimis. The Commission continues to estimate that there will be ten platforms and four registered clearing agencies that will incur duties to report security-based swap transactions under the amendments to Rule 901 adopted herein.

For platforms, the costs of reporting infrastructure consist of start-up costs in the first year and ongoing costs each year thereafter. For each platform, the estimated start-up costs include: (1) $102,000 for the initial set-up of the reporting infrastructure to carry out duties under Rule 901; (2) $200,000 for establishing connectivity to a registered SDR; (3) $49,000 for developing, testing, and supporting a reporting mechanism for security-based swap transactions; (4) $77,000 for from the rules adopted in that release and the associated costs. See generally 80 FR at 14700–704.

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]) × approximately $102,000 per platform. 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 Proposed Amendments Release, 80 FR at 14775–76.

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 =] $200,000 per platform. See also Regulation SBSR Proposed Amendments Release, 80 FR at 14776.

This figure is calculated as follows: ([Sr. Programmer (80 hours) at $303 per hour] + [Sr. Systems Analyst (80 hours) at $260 per hour]) × approximately $49,000.

This release considers only the events that must be reported as a result of the amendments to Rule 901 being adopted today. In the Regulation SBSR Adopting Release, the Commission estimated the number of reportable events that will result in the reportable event being adopted today. In the Regulation SBSR Adopting Release, the Commission estimated the number of reportable events that will result from the rules adopted in the release and the associated costs. See generally 80 FR at 14700–704.

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]) × approximately $102,000 per platform. 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 Proposed Amendments Release, 80 FR at 14775–76.
order management costs; $2,066,000 for data storage costs; and $3,165,000 for maintaining the compliance and support program. Therefore, the estimated ongoing cost per year for all platforms = 10 platforms × $2,066,000 = $20,660,000.

The Commission estimates that to a registered SDR, the ongoing estimated annual costs consist of: (1) $400,000 for maintaining connectivity to a registered SDR; (2) $77,000 for order management costs; (3) $1,000 for data storage costs; and (4) $38,500 for maintaining its compliance and support program. Therefore, the Commission estimates the ongoing cost per year as $516,500 per registered clearing agency and $2,066,000 for all registered clearing agencies.

The Commission previously estimated, using available transaction data from TiW, that there will be approximately 3 million transaction events per year related to security-based swaps, including the execution of new transactions and various types of life cycle events. The Commission also estimated that Rule 901(a), as adopted in the Regulation SBSR Adopting Release, will require approximately 2 million of those events to be reported under Regulation SBSR. In the Regulation SBSR Proposed Amendments Release, the Commission further estimated that the proposed amendments to Rule 901 would subject another 1 million events to a reporting requirement. This estimate of 1 million reportable events included platform-executed security-based swaps that will be submitted to clearing, all clearing transactions, and all life cycle events associated with such transactions. Specifically, the Commission estimates that platforms will be responsible for the reporting of approximately 120,000 of the 1 million additional reportable events per year. Since a platform must report only the security-based swaps executed on the platform that will be submitted to clearing, the Commission estimates that essentially all 120,000 platform-executed alphas will be terminated. The Commission estimates that there will be approximately 760,000 reportable events per year that are clearing transactions or life cycle events associated with clearing transactions, whether or not the clearing agency has accepted a particular alpha for clearing.

The Commission estimates that a registered clearing agency will have the same reporting infrastructure cost components as a platform, except that the costs to a registered clearing agency will be marginally higher because Rule 901(o)(1)(ii), as adopted herein, imposes a burden on registered clearing agencies that does not apply to platforms. Although a registered clearing agency might not otherwise establish connectivity to an alpha SDR, the registered clearing agency will have to establish connectivity to alpha SDRs to comply with new Rule 901(o)(1)(ii). Accordingly, the Commission estimates that each registered clearing agency will connect to four registered SDRs.

For each registered clearing agency, the estimated start-up costs consist of: (1) $102,000 for the initial setup of the reporting infrastructure to carry out duties under Rule 901; (2) $400,000 for establishing connectivity to a registered SDR; $49,000 for developing, testing, and supporting a reporting mechanism for security-based swap transactions; (4) $77,000 for order management costs; (5) $1,000 for data storage costs; (6) $54,000 for designing and implementing an appropriate compliance and support program; and (7) $38,500 for maintaining its compliance and support program. Therefore, the total estimated start-up cost is $721,500 per registered clearing agency and $2,866,000 in aggregate for all registered clearing agencies.

For each registered clearing agency, the ongoing estimated annual costs consist of: (1) $400,000 for maintaining connectivity to a registered SDR; (2) $77,000 for order management costs; (3) $1,000 for data storage costs; and (4) $38,500 for maintaining its compliance and support program. Therefore, the Commission estimates the ongoing cost per year as $516,500 per registered clearing agency and $2,066,000 for all registered clearing agencies.
The Commission estimates that platforms will be responsible for reporting approximately 120,000 security-based swaps per year, at an annual cost of approximately $45,300 or $4,530 per platform, and that registered clearing agencies will be responsible for reporting approximately 760,000 reportable events at an annual cost of approximately $286,900 or $71,725 per registered clearing agency. The Commission believes that all reportable events that will be reported by platforms and registered clearing agencies pursuant to the amendments to Rule 901(a) will be reported through electronic means.

In the Regulation SBSR Adopting 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. Together, these trends are likely to reduce the number of transactions that necessitate the manual capture of bespoke data elements, which is likely to take more time and be more expensive than electronic capture of standardized transactions. New Rules 901(a)(1) and (a)(2)(i), respectively, assign reporting duties to clearing transactions and platform-executed security-based swaps that will be submitted to clearing. To the extent that registered clearing agencies make standardized security-based swaps available for clearing and platforms make standardized security-based swaps available for trading, the reporting of transactions covered by Rules 901(a)(1) and (a)(2)(i) should be less costly on average than the reporting of bespoke security-based swaps.

One commenter argued that the incremental costs of assigning the reporting obligation to the alpha reporting side would be small compared to the costs associated with registered clearing agencies incurring the reporting duty and having to establish connectivity to alpha SDRs. The Commission estimates that a registered clearing agency will connect to four registered SDRs as a result of Rule 901(e)(1)(ii), but that, in the absence of this rule, a registered clearing agency, like a platform, would connect to only two registered SDRs. Thus, the Commission estimates that a registered clearing agency has to connect to two additional alpha SDRs as a result of new Rule 901(e)(1)(ii). The estimated cost of establishing connectivity to two SDRs is $200,000, and the estimated annual cost of maintaining connectivity to two SDRs is $200,000. The estimated aggregate cost of establishing connectivity to alpha SDRs is $800,000, and the estimated aggregate annual cost of maintaining connectivity to alpha SDRs is $800,000. The Commission estimates that the costs to the alpha reporting side of reporting the initial alpha transaction are an upper bound estimate of the costs of assigning the duty to report clearing dispositions of alphas to the alpha reporting side. To estimate the costs to the alpha reporting side of reporting the initial alpha transaction, the Commission assumes that the total annual number of platform-executed alpha transactions that will be submitted for clearing is 120,000. The Commission estimates the costs to the alpha reporting sides of reporting the initial alpha transactions to be the same as the platforms’ costs of reporting the 120,000 platform-executed alpha transactions. Thus, the aggregate reporting costs are approximately $45,300 per year, which represent an upper bound estimate of the costs of assigning the reporting obligation to the alpha reporting side.

The Commission recognizes that its estimate of the costs that an alpha reporting side would incur to report whether a security-based swap was accepted for clearing are lower than its estimate of the cost that a registered clearing agency would incur in order to establish connectivity to alpha SDRs to meet the same regulatory obligation under Rule 901(e)(1)(ii). Nevertheless, the Commission is adopting Rule 901(e)(1)(ii) as proposed because, as explained above, this approach is likely to efficiently support data quality at registered SDRs. Accordingly, the Commission believes that the approach reflected in newly adopted Rule 901(e)(1)(ii) is appropriate even in light of the costs. The Commission notes that existing Rule 901(c)(6) requires reporting of an indication whether the direct counterparties intend that a security-based swap will be submitted to clearing so that this information will appear in the transaction records of the alpha SDR. The Commission believes that requiring reporting to the alpha SDR of whether or not a registered clearing agency accepts the alpha for clearing will facilitate the Commission’s ability to measure outstanding bilateral exposures, including exposures to registered clearing agencies.

Moreover, the Commission’s determination that the clearing agency to which the security-based swap is submitted for clearing should be required to report the disposition of the alpha rather than the alpha reporting side (or a platform, in the case of a platform-executed alpha) is designed to improve the integrity of information about cleared security-based swaps. The Commission believes that centralizing responsibility for reporting this information in a small number of registered clearing agencies rather than a larger number of alpha reporting sides and platforms minimizes the likelihood of orphan alphas. The adopted approach should facilitate the ability of alpha SDRs to match clearing disposition reports with the original alpha transaction reports and help the Commission to obtain a more accurate view of the exposures of counterparties that intended to clear transactions.

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843 The Commission estimates: ((760,000 × 0.005 hours per transaction)/(10 platforms)) = 38 hours per platform, or 660 total hours. The Commission further estimates the total cost to be: [(Completion Clerk (30 hours) at $64 per hour) + (Sr. Computer Operator (30 hours) at $87 per hour)] × 10 platforms = $45,300, or $4,530 per platform. See also Regulation SBSR Proposed Amendments Release, 80 FR at 14777.

844 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: [(Completion Clerk (30 hours) at $64 per hour) + (Sr. Computer Operator (30 hours) at $87 per hour)] × 10 platforms = $45,300, or $4,530 per platform. See also Regulation SBSR Proposed Amendments Release, 80 FR at 14777, which estimates the time taken to process a transaction at 0.005 hours, the hourly rate of a Completion Clerk at $64 per hour, and the hourly rate of a Sr. Computer Operator at $87 per hour.

845 See id.

846 See supra Section III(G).

847 See supra Section XIII(A)(1)(a).

848 See id.

849 The cost of establishing SDR connectivity is estimated as ($100,000 hardware- and software-related expenses + necessary backup and redundancy, per SDR connection) × (2 SDR connections per registered clearing agency) = $200,000 per registered clearing agency. See also Regulation SBSR Adopting Release, 80 FR at 14701.

850 See supra Section XIII(A)(1)(a).

851 The Commission believes that the approach reflected in newly adopted Rule 901(e)(1)(ii) is appropriate even in light of the costs. The Commission notes that existing Rule 901(c)(6) requires reporting of an indication whether the direct counterparties intend that a security-based swap will be submitted to clearing so that this information will appear in the transaction records of the alpha SDR. The Commission believes that requiring reporting to the alpha SDR of whether or not a registered clearing agency accepts the alpha for clearing will facilitate the Commission’s ability to measure outstanding bilateral exposures, including exposures to registered clearing agencies.

852 See id.
more accurate view of the exposures of counterparties will enable the Commission to conduct robust monitoring of the security-based swap market for potential risks to financial markets and financial market participants.\textsuperscript{535}

Furthermore, Rule 901(e)(1)(iii) is consistent with the Commission’s approach of assigning the reporting obligation for a transaction to the person with the most complete and efficient access to the required information at the point of creation. The registered clearing agency determines whether to accept an alpha for clearing and controls the precise moment when the transaction is cleared; the Commission believes, therefore, that the clearing agency is best placed to report the result of its decision. If the alpha reporting side were required to report whether or not the alpha has been accepted for clearing, it would first need to learn this information from the registered clearing agency.\textsuperscript{544} As the Commission noted in Section III(B), supra, a rule that required reporting by a person who lacks direct access, at the time of creation, to the information that must be reported would increase the risks of data discrepancies, errors, or delays. Accordingly, for the same reasons that the Commission is assigning to registered clearing agencies the duty to report all clearing transactions, the Commission also believes that it is more efficient to require a registered clearing agency to report to the alpha SDR whether or not the clearing agency has accepted the alpha for clearing.

\textbf{b. For Platforms and Reporting Sides of Alphas}

Under new Rule 901(a)(3), a person who has a duty to report an alpha transaction also is required to promptly provide the registered clearing agency with the transaction ID of the alpha transaction and the identity of the registered SDR to which the transaction will be or has been reported.

Reporting sides and platforms are likely already to have in place the infrastructure needed to report security-based swaps to a registered clearing agency, as voluntary clearing of standardized single-name CDS has become a significant feature of the existing security-based swap market in the United States. Furthermore, as additional platforms enter the security-based swap market, it is likely that they also will seek to establish connectivity to one or more registered clearing agencies, as there are market incentives to clear platform-executed security-based swaps and platforms will likely seek to offer their participants the ability to transmit information about platform-executed transactions directly to a clearing agency. Thus, the Commission does not believe that new Rule 901(a)(3) will require additional infrastructure or connectivity that otherwise would not exist.

However, Rule 901(a)(3) will require persons with the duty to report alphas to provide two additional data elements—the transaction ID of the alpha and the name of the alpha SDR—to the registered clearing agency. The Commission believes that persons who submit security-based swap transactions to registered clearing agencies will comply with Rule 901(a)(3) by including these two data elements along with all of the other transaction data submitted to the clearing agency. The Commission estimates that the one-time cost for developing the ability to report these two data elements will be $2,815 per reporting person, and the additional one-time burden related to the implementation of a reporting mechanism for these two data elements will be $1,689 per reporting person.\textsuperscript{553} The Commission believes that the additional ongoing cost related to the development of the ability to capture the relevant transaction information will be $2,815 per reporting person and the additional ongoing burden related to the maintenance of the reporting mechanism will be $563 per reporting person.\textsuperscript{554}

\textbf{c. Total Costs of Platforms, Registered Clearing Agencies, and Reporting Sides Relating to Amendments to Rule 901}

Summing these costs,\textsuperscript{555} the Commission estimates that the initial, first-year costs of complying with the amendments to Rule 901 (including the initial reporting and the reporting of any life cycle events) will be $5,260,300, which corresponds to $526,030 per platform.\textsuperscript{556} The Commission estimates that the ongoing aggregate annual costs, after the first year, of complying with the amendments to Rule 901 (including the initial reporting and the reporting of any life cycle events) will be $3,210,300, which corresponds to $321,030 per platform.\textsuperscript{557} For registered clearing agencies, the Commission estimates that the initial, first-year costs of complying with the amendments to Rule 901 (including the initial reporting and the reporting of any life cycle events) will be $2,352,900, which corresponds to $588,225 per registered clearing agency.\textsuperscript{558} The Commission estimates that the ongoing aggregate annual costs, after the first year, of complying with the amendments to Rule 901 (including the initial reporting and the reporting of any life cycle events) will be $1,396,240, which corresponds to $4,504 per respondent.\textsuperscript{559}

In the Regulation SBSR Proposed Amendments Release, platforms’ initial, first-year costs and ongoing aggregate annual costs included costs incurred under Rule 901(a)(3). In this release, platforms’ initial, first-year costs and ongoing aggregate annual costs do not include costs incurred under Rule 901(a)(3). Instead, platforms’ Rule 901(a)(3) costs have been added to the Rule 901(a)(3) costs of the 300 reporting sides to estimate the initial, first-year and ongoing aggregate annual costs of Rule 901(a)(3) for 300 reporting sides and 10 platforms.

\textsuperscript{555}This estimate is based on the following: $54,000 + $1,000 + $38,500 + $4,530 \times (10 platforms) = $526,030 per platform.

\textsuperscript{556}This estimate is based on the following: $200,000 + $77,000 + $1,000 + $38,500 + $4,530 \times (10 platforms) = $3,210,300, or $321,030 per platform.

\textsuperscript{557}This estimate is based on the following: $102,000 + $200,000 + $49,000 + $77,000 + $34,000 + $1,000 + $38,500 + $4,530 \times (10 platforms) = $5,260,300, or $526,030 per platform.

\textsuperscript{558}This estimate is based on the following: $250,000 + $77,000 + $1,000 + $38,500 + $4,530 \times (10 platforms) = $793,225 per registered clearing agency.

\textsuperscript{559}This estimate is based on the following: $102,000 + $400,000 + $49,000 + $77,000 + $34,000 + $1,000 + $38,500 + $71,725 \times (4 registered clearing agencies) = $3,172,900, which corresponds to $793,225 per registered clearing agency.

\textsuperscript{560}This estimate is based on the following: $102,000 + $400,000 + $49,000 + $77,000 + $34,000 + $1,000 + $38,500 + $71,725 \times (4 registered clearing agencies) = $3,172,900, which corresponds to $793,225 per registered clearing agency.

\textsuperscript{561}This estimate is based on the following: $400,000 + $77,000 + $1,000 + $38,500 + $71,725 \times (4 registered clearing agencies) = $2,352,900, or $588,225 per registered clearing agency.

\textsuperscript{562}This estimate is based on the following: $(2,815 + 1,689) \times 310 (300 reporting sides + 10 platforms) \times 10 platforms = $1,396,240, or $4,504 per respondent.
Commission estimates that the ongoing aggregate annual costs, after the first year, of complying with Rule 901(a)(3) will be $1,047,180, which corresponds to $3,378 per respondent.\textsuperscript{863}
d.

Reporting by Unregistered Persons

As noted in Section IX(G), supra, the amendments to existing Rule 901(a)(2)(ii)(E) that are being adopted today expand the reporting hierarchy to assign the duty to report additional cross-border transactions when there is no registered person on either side. As under existing Rule 901, the reporting side, as determined by the reporting hierarchy, is required to submit the information required by Rule 901.

Under newly adopted Rule 901(a)(2)(ii)(E)(2), in a transaction between an unregistered U.S. person and an unregistered foreign dealing entity that is engaging in ANE activity, the sides are required to select which side will be the reporting side. Also under Rule 901(a)(2)(ii)(E)(2), if both sides are non-registered U.S. persons and both are engaging in ANE activity, the sides would be required to select the reporting side. In both scenarios, both sides would be subject to Rule 908(b) and thus the Commission could impose reporting duties on either side.

Newly adopted Rule 901(a)(2)(ii)(E)(3) addresses the scenario where one side is subject to Rule 908(b) and the other side is not—i.e., one side includes only unregistered non-U.S. persons that do not engage in any ANE activity. When the other side includes an unregistered U.S. person or an unregistered foreign dealer that is engaging in ANE activity, the side with the unregistered U.S. person or the unregistered foreign dealing entity would be the reporting side.\textsuperscript{864}

\textsuperscript{863}This estimate is based on the following: ($2,815 × 300 reporting sides = $844,500) × 1,000 reporting entities = $844,500,000. In the Regulation SBSR Proposed Amendments Release, the estimate only included the one-time cost associated with the development of the ability to capture the relevant transaction information ($2,815). As the estimation has been revised to also include the ongoing cost of implementing a reporting mechanism for the transaction information ($1,689).\textsuperscript{865}

\textsuperscript{864}While Rules 901(a)(2)(ii)(E)(2)–(3) admit the possibility that some of these unregistered persons or U.S. persons, the Commission does not expect unregistered U.S. persons to be responsible for reporting a significant amount of additional transaction under Rules 901(a)(2)(ii)(E)(2)–(3). In current market practice, larger, more sophisticated participants assume reporting duties. As a result, in cases where an unregistered U.S. person and a non-U.S. person engaged in dealing activity in the United States select the reporting side, the reporting duty is likely to be assigned to the non-U.S. person. See supra Section IX(G)(2)(a).\textsuperscript{865}

\textsuperscript{865}The Commission notes that unregistered entities will likely choose the method of compliance that they deem to be most cost efficient. Thus, the Commission assumes that unregistered entities would engage third-party service providers without considering alternatives. Though the Commission does not have specific information on the pricing of third-party reporting services on which to base estimates of the cost of engaging third-parties to provide reporting services, the Commission notes that unregistered entities would use third-party service providers only if they provide services at costs less than the programmatic costs of Rule 901 estimated above.

In the Regulation SBSR Adopting Release, the Commission estimated that 300 respondents will incur reporting duties under Regulation SBSR, of which 50 are likely to register as security-based swap dealers and five are likely to register as major security-based swap market participants. Unregistered persons covered by new Rules 901(a)(2)(ii)(E)(2) and (3) are already included in the remaining subset of 245 respondents that are not likely to register as security-based swap dealers or major security-based swap participants. Because the Commission had already accounted for the programmatic costs of building reporting infrastructure and reporting security-based swap transactions incurred by these 300 respondents in the Regulation SBSR Adopting Release,\textsuperscript{866} Rules 901(a)(2)(ii)(E)(2) and (3) will not result in additional programmatic costs associated with reporting infrastructure or transaction reporting. Two commenters noted that the reporting of ANE transactions would place burdens on unregistered entities that do not have reporting infrastructure in place and would be compelled to engage third-party providers to report transactions.\textsuperscript{867}

\textsuperscript{866}See supra Section IX(G)(2)(a).\textsuperscript{867}See 80 FR at 14674.

The Commission acknowledges that the reporting of ANE transactions will place burdens on unregistered entities, but in only a limited number of cases. The Commission estimates that the initial aggregate annual costs associated with Rule 901 will be approximately $2,096,000, which corresponds to approximately $524,000 per unregistered entity.\textsuperscript{868} The Commission estimates that the ongoing aggregate annual costs associated with Rule 901 will be approximately $1,276,000, which corresponds to approximately $319,000 per unregistered entity.\textsuperscript{869} As discussed earlier, these programmatic costs are part of the programmatic costs associated with Rule 901 that were accounted for in the Regulation SBSR Adopting Release. Unregistered foreign dealing entities could fulfill their reporting obligations by incurring the programmatic costs of building reporting infrastructure and reporting security-based swap transactions. Alternatively, these entities could engage with third-party service providers to carry out any reporting duties incurred under Regulation SBSR.\textsuperscript{870}

Under new Rule 901(a)(2)(ii)(E)(4), a registered broker-dealer would incur the duty to report a security-based swap that is effectuated by or through that broker-dealer only when neither side includes a person that falls within Rule 908(b)(5). The Commission estimates that a maximum of 20 registered broker-dealers, excluding registered SB SEFs, will incur this reporting duty and will report 540 security-based swap transactions per year. Unlike the unregistered counterparties covered by Rules 901(a)(2)(ii)(E)(2) and (3), these 20 registered broker-dealers were not part of the 300 respondents the Commission estimated in the Regulation SBSR Adopting Release. Therefore, by subjecting the 20 registered broker-dealers to Regulation SBSR, new Rule 901(a)(2)(ii)(E)(4) adds new programmatic costs associated with reporting infrastructure.

The Commission estimated the costs of reporting on a per-entity basis in the Regulation SBSR Adopting Release and has no reason to believe that these per-entity costs are substantially different from the programmatic costs associated with Rule 901 that were accounted for in the Regulation SBSR Adopting Release.
Therefore, the Commission is applying these per-entity costs to estimate the Rule 901 programmatic costs for the 20 registered broker-dealers.\textsuperscript{872}

For a registered broker-dealer, the cost of reporting infrastructure consists of start-up cost in the first year and, thereafter, ongoing annual costs. For each registered broker-dealer, the start-up cost is broken down into: (1) $102,000 for the initial set-up of the reporting infrastructure to carry out duties under Rule 901; (2) $200,000 for establishing connectivity to a registered SDR; (3) $49,000 for developing, testing, and supporting a reporting mechanism for security-based swap transactions; (4) $77,000 for order management costs; (5) $1,000 for data storage costs; (6) $54,000 for designing and implementing an appropriate compliance and support program; and (7) $38,500 for maintaining the compliance and support program.\textsuperscript{873} Therefore, the total start-up cost is $521,500 per registered broker-dealer and $10,430,000 in aggregate, across all registered broker-dealers.\textsuperscript{874}

For each registered broker-dealer, the ongoing annual cost consists of: (1) $200,000 for maintaining connectivity to a registered SDR; (2) $77,000 for order management costs; (3) $1,000 for data storage costs; and (4) $38,500 for maintaining its compliance and support program. Therefore, the ongoing cost per year is $316,500 per registered broker-dealer, and $6,330,000 for all registered broker-dealers.\textsuperscript{875}

\textsuperscript{871} See id.

\textsuperscript{872} One commenter argued that Rule 901(a)(2)(ii)(E)(4) “would create a disproportionate burden on broker-dealers relative to the small percentage of the market that these transactions compromise.” SIFMA/FSR Letter at 14. The Commission notes that many registered broker-dealers may already have order management systems 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 broker-dealers 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 here do not take this cost limiting fact into account, they are an upper bound for the estimated costs. See Regulation SBSR Adopting Release, 80 FR at 14701.

\textsuperscript{873} See supra Section XII(A)(1)(a).

\textsuperscript{874} For each registered broker-dealer, the start-up cost is obtained by summing up its components = $102,000 + $200,000 + $49,000 + $77,000 + $1,000 + $54,000 + $38,500 = $521,500. The start-up cost for all registered broker-dealers = 20 registered broker-dealers × $521,500 = $10,430,000.

\textsuperscript{875} See supra Section XII(A)(1)(a).

\textsuperscript{876} For each registered broker-dealer, the on-going cost per year is obtained by summing up its components = $200,000 + $77,000 + $1,000 + $38,500 = $316,500. The on-going cost per year for all registered broker-dealers is estimated to be (20 registered broker-dealers × $316,500) = $6,330,000.

\textsuperscript{877} See Regulation SBSR Adopting Release, 80 FR at 14676.

\textsuperscript{878} See 80 FR at 14714.

\textsuperscript{879} See id.

\textsuperscript{880} See id.

\textsuperscript{881} See 75 FR at 75254.

\textsuperscript{882} See Regulation SBSR Adopting Release, 80 FR at 14701–702.

\textsuperscript{883} See Regulation SBSR Proposing Release, 75 FR at 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)] × 14 reporting entities (10 platforms + 4 registered clearing agencies) = $10,850, which is $3,975 per platform or registered clearing agency.

\textsuperscript{884} See Regulation SBSR Proposing Release, 75 FR at 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)] × 14 reporting entities (10 platforms + 4 registered clearing agencies) = $55,650, which is $3,975 per platform or registered clearing agency.

\textsuperscript{885} See supra Section II(A)(4)(d) for a discussion of how these dealing entities are identified in the TIV data.

\textsuperscript{886} See 80 FR at 14714.
3. Amendments to Rule 906(c)

Existing 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, 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) also requires each such participant to review and update the required policies and procedures at least annually. The amendment to Rule 906(c) adopted herein extends these same requirements to participants of a registered SDR that are platforms, registered clearing agencies, and registered broker-dealers.

The Commission continues to believe that the cost estimation methodology previously applied in the Regulation SBSR Adopting Release is applicable to error reporting by registered broker-dealers.\textsuperscript{887} Thus, for registered broker-dealers, the Commission estimates that the amendment to Rule 905(a) will impose an initial (first-year) aggregate cost of $236,500, or $11,825 per respondent,\textsuperscript{889} and an ongoing aggregate annualized cost of $79,500, or $3,975 per respondent.\textsuperscript{890}

Rule 905(a)(1) as amended herein states that, 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. Clients of registered broker-dealers likely will incur costs because Rule 905(a)(1) requires them to notify registered broker-dealers of errors in transaction reports made by the registered broker-dealers pursuant to Rule 901(a)(2)(iii)(E)(4). As stated in Section XII(A)(1)(d), supra, the Commission estimates that registered broker-dealers will incur the duty to report 540 security-based swap transactions per year under Rule 901(a)(2)(iii)(E)(4). Assuming that each of the 540 transactions is reported in error, the aggregate cost of the annual cost associated with this obligation is approximately $17,280, which corresponds to roughly $576 per respondent.\textsuperscript{891}

\textsuperscript{887} See supra Section XII(A)(1)(d).

\textsuperscript{888} See 80 FR at 14714.

\textsuperscript{889} See Regulation SBSR Proposing Release, 75 FR at 75254–55. This figure is calculated as follows: \[\text{($49,000 for one-time development of reporting system} \times (0.05)) + (\text{$2,500 annual maintenance of reporting system} \times (0.05)) + (\text{$54,000 one-time compliance program development} \times (0.1)) + (\text{$58,000 annual support of compliance program} \times (0.1)) \times 20 \text{registered broker-dealers} = \text{$196,000, or $9,800 per respondent broker-dealer.}\]

\textsuperscript{890} See Regulation SBSR Proposing Release, 75 FR at 75254–55. This figure is calculated as follows: \[\text{($2,500 annual maintenance of reporting system} \times (0.05)) + (\text{$36,500 annual support of compliance program} \times (0.1)) \times 20 \text{registered broker-dealers} = \text{$73,000, which is $3,650 per registered broker-dealer.}\]

\textsuperscript{891} These figures are based on the assumption that approximately 540 additional security-based swap transactions per year will have to be reported by registered broker-dealers pursuant to Rule 901(a)(2)(iii)(E)(4), and that these trades involve 30 entities with reporting duties. Using cost estimated provided in the Regulation SBSR Adopting Release, if each trade is reported in error, then the aggregate annual cost of error notification is $540 errors \times \text{Compliance Clerk at $64 per hour} \times 5.5 hours per report = $17,280, or $576 per participant. See Regulation SBSR Adopting Release, 80 FR at 14714. Salary figures are taken from SIFMA’s Management & Professional Earnings in the Securities Industry 2013, modified to account for a 1,800-hour work-week and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

\textsuperscript{892} See Regulation SBSR Adopting Release, 80 FR at 14716.

\textsuperscript{893} See id. This is the amount that is based on the following: \[\text{($58,000 for one time developing of written policies and procedures} \times (0.1)) + (\text{$34,000 for annual updates to policies and procedures} \times 14 \text{registered clearing agencies and platforms} = 1,840,000, which is $92,000 per registered broker-dealer.\]

\textsuperscript{894} See Regulation SBSR Adopting Release, 80 FR at 14716.

\textsuperscript{895} See Regulation SBSR Adopting Release, 80 FR at 14717.

\textsuperscript{896} New Rule 908(a)(1)(v) provides that any security-based swap transaction connected with a non-U.S. person’s security-based swap dealing activity that is arranged, negotiated, or executed by U.S. personnel is subject to regulatory reporting and public dissemination under Regulation SBSR. Several commenters expressed concern about the complexities and expense of implementing the adopted rules.\textsuperscript{897} One commenter stated there would be significant costs associated with reporting because market participants that have already designed and implemented reporting systems based on the CFTC’s cross-border guidance and the rules of other jurisdictions would need to modify their systems to comply with the Commission’s proposed rules.\textsuperscript{898}

\textsuperscript{897} See III Letter at 16 (stating that regulatory reporting of transactions where neither reporting side includes a U.S. person, guaranteed affiliate, or registered security-based swap dealer would come with significant cost); ISDA I at 11 (stating that expanding the reporting requirements to non-U.S. trades would be burdensome and costly); SIFMA-AMG I at 2 (stating that requiring the reporting of transactions that were arranged, negotiated or executed in the United States would increase the transactional burdens on "an already taxed system"); SIFMA/FSR Letter at 12 (taking the view that monitoring for conduct in the United States would not be informative or could give a distorted view of market prices and would result in data at SRDs that has minimal U.S. nexus).

\textsuperscript{898} See III Letter at 16. The commenter stated that, to modify its systems in connection with the U.S. personnel test, a non-U.S. dealing entity (including one operating below the de minimis threshold) "would need to install or modify a trade capture system capable of tracking, on a dynamic, trade-by-trade basis, the location of front-office personnel. The non-U.S. SBSD would then need to feed that data into its reporting system and re-code any ongoing aggregate annualized cost of $680,000, or $34,000 per respondent broker-dealer.\textsuperscript{899} The Commission does not believe that the amendments to Rule 906(c) will impose any economic costs beyond the paperwork burdens described herein and in Section XII(D)(2)(c), supra.

4. Amendments That Subject Additional Cross-Border Security-Based Swaps to Regulation SBSR

a. ANE Transactions Involving Unregistered Entities

New Rule 906(a)(1)(v) provides that any security-based swap transaction connected with a non-U.S. person’s security-based swap dealing activity that is arranged, negotiated, or executed by U.S. personnel is subject to regulatory reporting and public dissemination under Regulation SBSR. Several commenters expressed concern about the complexities and expense of implementing the adopted rules.\textsuperscript{897} One commenter stated there would be significant costs associated with reporting because market participants that have already designed and implemented reporting systems based on the CFTC’s cross-border guidance and the rules of other jurisdictions would need to modify their systems to comply with the Commission’s proposed rules.\textsuperscript{898}
The Commission agrees that market participants will incur costs to comply with the reporting requirements of Rule 908(a)(1)(v). However, the Commission notes that all ANE transactions where a U.S. person is on one side as either a direct or indirect counterparty are already subject to regulatory reporting under the rules adopted in the Regulation SBSR Adopting Release. Thus, only a small number of ANE transactions—which the Commission estimates will result in at most 1,080 reportable events per year—will be subject to regulatory reporting as a result of new Rule 908(a)(1)(v); accordingly, the attendant costs of complying with Rule 908(a)(1)(v) will also be relatively small. The Commission understands that market participants may have to incur costs to modify their existing reporting systems to comply with the Commission’s rules. However, to the extent that these rules and rules in other jurisdictions require the collection of the same or similar information, the system modification costs will be minimized.

The Commission believes that the reporting and public dissemination of all ANE transactions will provide benefits to the Commission and relevant authorities and to market participants. The Commission also believes that requiring the public dissemination of these transactions could help to increase price competition and price efficiency in the security-based swap market and enable all market participants to have more comprehensive information with which to make trading and valuation determinations. Publicly disseminating these transactions also could reduce implicit transaction costs. In addition, the amendments being adopted today reflect the Commission’s assessment of the impact that the scope of security-based swap transactions subject to regulatory reporting may have on the ability of the Commission and other relevant authorities to detect emerging risks and abusive trading in the security-based swap market.

Regulatory reporting of these transactions to a registered SDR should enhance the Commission’s ability to oversee relevant activity related to security-based swap dealing occurring within the United States as well as to monitor market participants for compliance with specific Title VII requirements (including the requirement that a person register with the Commission as a security-based swap dealer if it exceeds the de minimis threshold). The reporting of these transactions also will enhance the Commission’s ability to monitor manipulative and abusive practices involving security-based swap transactions or transactions in related underlying assets, such as corporate bonds or other securities transactions that result from dealing activity, or other relevant activity, in the U.S. market.

New Rule 908(a)(1)(iii) requires any security-based swap transaction that is executed on a platform having its principal place of business in the United States both to be reported to a registered SDR and to be publicly disseminated pursuant to Regulation SBSR. New Rule 908(a)(1)(iv) requires the reporting and public dissemination of any security-based swap transaction that is effected by or through a registered broker-dealer (including a registered SB SEF). The Commission notes that many security-based swaps that are executed on platforms or by or through a registered broker-dealer are already subject to Regulation SBSR because they meet one or both prongs of existing Rule 908(a)(1)—i.e., there is a direct or indirect counterparty that is a U.S. person on either or both sides of the transaction or the security-based swap is accepted for clearing by a clearing agency having its principal place of business in the United States. Thus, new Rules 908(a)(1)(iii) and (iv) extend regulatory reporting and public dissemination to an additional number of uncleared security-based swaps: Those involving only non-U.S. persons. The costs of reporting these additional cross-border security-based swaps are considered in the Commission’s analysis of the amendments to Rule 901(a)(2)(iii)(E), which assigns the duty to report those cross-border security-based swaps. Thus, new Rules 908(a)(1)(iii) and (iv) do not independently impose any additional reporting costs.

One commenter suggested that new Rule 908(a)(1)(iv) could provide incentives for non-U.S. counterparties to avoid transacting through registered broker-dealers, resulting in market fragmentation that would lead to adverse effects on risk management, market liquidity, and U.S. jobs. The Commission acknowledges that market fragmentation could result if non-U.S. counterparties avoid transacting through registered broker-dealers. However, as discussed above, because of the small number of security-based swaps that are subject to Rule 908(a)(1)(iv), any market fragmentation due to the avoidance of registered broker-dealers by non-U.S. counterparties would be limited. To the extent that adverse effects on risk management, market liquidity, and U.S. jobs flow from market fragmentation, the Commission does not believe these effects should be significant, given the limited fragmentation that will likely arise as a result of the rule.

5. Amendments to Rule 908(b)

Rule 908(b) clarifies the types of persons that can incur duties under Regulation SBSR. In the Regulation SBSR Proposed Amendments Release, the Commission proposed to amend Rule 908(b) by adding platforms and registered clearing agencies to the list of persons that might incur obligations under Regulation SBSR. The Commission has adopted these changes to Rule 908(b), as discussed in Section IX(F)(1), supra.

The Commission also is adopting new Rule 908(b)(5) to include a non-U.S. person that, in connection with such person’s security-based swap dealing activity, arranged, negotiated, or executed a security-based swap using U.S. personnel. Because existing Rule 908(b)(2) covers a non-U.S. person that is registered as a security-based swap dealer, the effect of new Rule 908(b)(5) is to cover a foreign dealing entity that engages in ANE activity but that does not meet the de minimis threshold and thus would not have to register as a security-based swap dealer.

See supra Section XII(A)(1).

See id.

See Rule 908(a)(2) (stating that a security-based swap that is not included within Rule 908(a)(1) 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).

See id. at 27483.

See supra Section III(A)(6).

See supra Section II(A)(6).

See Rule 908(a)(1) and (iv).

See IIB Letter at 16.

See supra Section III(A)(6).

See supra Section III(A)(6).

See supra Section II(A)(6).


See 81 FR at 14759.
The costs incurred by an unregistered non-U.S. person that falls under Rule 908(b)(5) include the costs of setting up reporting infrastructure and compliance systems, which have been discussed in connection with the adoption of new Rules 901(a)(2)(ii)(E)(2) and (3). Once an unregistered non-U.S. person’s reporting infrastructure and compliance systems are in place, the marginal cost of reporting an individual transaction would be minimal when compared to the costs of putting those systems in place and maintaining them over time.

6. Other Conforming Amendments

As discussed in Section V(A), supra, the Commission today is adopting amendments to Rule 900(u) to expand the definition of “participant” to include platforms, registered clearing agencies that are required to report alpha dispositions pursuant to new Rule 901(e)(1)(ii), and registered broker-dealers that incur the duty to report security-based swap transactions pursuant to new Rule 901(a)(2)(ii)(E)(4).

Existing Rule 906(b) generally requires a participant of a registered SDR to provide the identity of its ultimate parent and any affiliates that also are participants of that registered SDR. In the Regulation SBSR Proposed Amendments Release, the Commission proposed to amend Rule 906(b) to except platforms and registered clearing agencies from this requirement. In the U.S. Activity Proposal, the Commission further proposed to amend Rule 906(b) to except from this requirement a registered broker-dealer that becomes a participant solely as a result of making a report to satisfy an obligation under Rule 901(a)(2)(ii)(E)(4). The Commission also proposed similar amendments to existing Rule 907(a)(6), which requires a registered SDR to have policies and procedures 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, to avoid extending these policies and procedures to cover platforms, registered clearing agencies, and registered broker-dealers (assuming that they are not counterparties to security-based swap transactions). For the reasons discussed above, the Commission is adopting these amendments. Accordingly, platforms, registered clearing agencies, and registered broker-dealers (assuming they are not counterparties to security-based swap transactions) will not incur costs to report ultimate parent and affiliate information and, registered SDRs will not incur costs to extend the scope of their policies and procedures.

Existing Rule 906(c) requires certain participants of a registered SDR 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. Rule 906(c) also requires participants covered by the rule to review and update their policies and procedures at least annually. In the Regulation SBSR Proposed Amendments Release, the Commission proposed to amend Rule 906(c) by extending this requirement to platforms and registered clearing agencies. In the U.S. Activity Proposal, the Commission proposed to amend Rule 906(c) by extending this requirement to a registered broker-dealer that incurs reporting obligations solely because it effects transactions between two non-U.S. persons that do not fall within proposed Rule 908(b)(5). In this release, the Commission is adopting the amendments to Rule 906(c) as proposed.

The Commission continues to estimate that the cost associated with establishing such policies and procedures, for each covered participant, will be approximately $38,000 and the cost associated with annual updates will be approximately $34,000.

As discussed above, the Commission has adopted the requirements that the registered broker-dealer effecting the transaction report the transaction.

As discussed in Section XII(A)(1)(d), supra, the Commission estimates that a maximum of 20 registered broker-dealers, excluding registered SEFs, will incur a reporting duty and together will report 340 security-based swaps per year. These 20 registered broker-dealers are subject to the amendment to Rule 901(d)(9) adopted herein. To comply with the amendment, a registered broker-dealer likely will build and maintain its reporting infrastructure to include the functionality to capture and incorporate its broker ID into transaction reports. The Commission believes that the cost of creating this functionality is part of the start-up cost of building the broker-dealer’s reporting infrastructure, while the cost of maintaining this functionality is part of

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908 See supra Section XII(A)(1)(d).
909 See infra Section XII(B)(1) (discussing the costs incurred by unregistered non-U.S. persons to assess whether they engage in ANE transactions and thus could incur reporting duties under Rule 901(a)(2)(ii)(E)(4).
910 See Regulation SBSR Adopting Release, 80 FR at 14702.
911 As discussed above, the Commission has estimated the costs associated with establishing such policies and procedures, for each covered participant, at approximately $38,000, which corresponds to $760,000 per covered participant.
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the annual ongoing cost of the broker-dealer’s reporting infrastructure.917

7. Discussion of Comments Received

The Commission received a number of comments relating to its analysis of the programmatic costs and benefits associated with the amendments described above.

One commenter stated that the Commission lacks complete data to estimate the number of non-U.S. persons that engage in ANE transactions or the number of registered broker-dealers that intermediate security-based swap transactions, and recommended that the Commission collect a more complete set of data to more precisely estimate the number of non-U.S. persons that would be affected by the proposed rules. The commenter further argued that the lack of complete data made it difficult for the Commission to estimate the market impact, costs, and benefits associated with amendments that apply Regulation SBSR to ANE transactions and transactions intermediated by registered broker-dealers.918

The Commission acknowledges that there are limitations in the TIW data but believes that the data do allow the Commission to arrive at a reasonable estimate of the number of non-U.S. persons affected by the newly adopted rules. In Section II(A)(4)(d), supra, the Commission notes that it identified four foreign dealing entities that likely engaged in ANE activity in 2015 but, based on the level of relevant activity, would be unlikely to register as security-based swap dealers. Based on the analysis, the Commission estimates that four unregistered foreign dealing entities will engage in ANE activity and thus be affected by the newly adopted rules.919 In Section XII(A)(1)(d), supra, the Commission estimates the compliance costs associated with Rule 901 for these four unregistered foreign dealing entities.920 As discussed earlier, these programmatic costs are part of the programmatic costs associated with Rule 901 that were accounted for in the Regulation SBSR Adopting Release.

While data limitations do not allow the quantification of the benefits associated with the amendments that apply Regulation SBSR to ANE transactions and transactions intermediated by registered broker-dealers, the Commission discusses these benefits qualitatively in Section XIII(H), infra.

B. Assessment Costs of Unregistered Entities Related to ANE Transactions

1. Assessment Costs of Foreign Dealing Entities Engaging in ANE Transactions

New Rule 908(b)(5) provides that an unregistered foreign dealing entity that engages in ANE transactions may incur reporting duties under Regulation SBSR, and the amendments to Rule 901(a)(2)(ii)(E) adopted herein provide that such foreign dealing entities will be the reporting side in certain cases. Thus, unregistered foreign dealing entities will incur costs to assess whether they engage in ANE transactions and, if so, whether they will incur reporting duties under Rule 901(a)(2)(ii)(E). The Commission estimates that four unregistered foreign dealing entities will incur such assessment costs. The four unregistered foreign dealing entities are in addition to the 20 additional non-U.S. persons that the Commission estimated would incur assessment costs as a result of the rules finalized in the U.S. Activity Adopting Release.921 In what follows, the Commission discusses costs that these four unregistered foreign dealing entities might incur to assess whether they engage in ANE transactions.

In the U.S. Activity Adopting Release, the Commission discussed the approaches that market participants may use to determine which transactions involve relevant activity involving U.S. personnel and thus would apply toward dealer de minimis thresholds. The Commission notes that, as an initial matter, a foreign dealing entity likely will review its current dealing operations to ascertain whether it has U.S. personnel that could be used to arrange, negotiate, or execute security-based swaps. The Commission believes that such a determination will not result in significant costs because it requires only that the foreign dealing entity check for the existence of U.S. personnel. If the foreign dealing entity does not have U.S. personnel that could be used to arrange, negotiate, or execute security-based swaps, then the foreign dealing entity’s assessment of whether it has engaged in ANE activity ends.

If, based on the review described above, the foreign dealing entity determines that it has U.S. personnel that could be used to arrange, negotiate, or execute security-based swaps, then the foreign dealing entity could choose between a number of alternative means of compliance.922 One alternative would be for the entity to implement systems to check the location of personnel used in arranging, negotiating, or executing individual security-based swap transactions. The Commission believes that the cost of developing and modifying systems to track the location of persons with dealing activity will be substantially similar to the costs of such systems discussed in the U.S. Activity Adopting Release, or $410,000 for the average foreign dealing entity. To the extent that non-U.S. persons already employ systems that track the location of persons with dealing activity, the costs of modifying such IT systems may be lower than the Commission’s estimate.923 In addition to the development or modification of such systems, the Commission estimates that entities would incur the cost of $6,500 per location per year on an ongoing basis for training, compliance, and verification costs.924 Second, the foreign dealing entity could choose to restrict personnel located in a U.S. branch or office from engaging in ANE activity in connection with the entity’s dealing activity with non-U.S. counterparties. Such a restriction on communication and staffing for purposes of avoiding certain Title VII requirements would reduce the costs of tracking the location of personnel involved in ANE activity and could remove entirely the need to implement systems to track the activities of U.S. personnel on a per-transaction basis. The Commission estimates that the costs of establishing

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917 See supra Section XII(A)(1)(d), where the Commission estimates the ongoing cost per year to be $316,500 per registered broker-dealer, and $6,330,000 for all registered broker-dealers.
918 See id. at 3, 7. This commenter also argued that the data available to the Commission at the time of the proposal would not have allowed the Commission to precisely estimate, among other things, the number of non-U.S. persons that carry out dealing activity using personnel in the United States. See id. at 7.
919 Because of the relatively low volume of transaction activity of these four entities during 2015 and the existence of affiliations with other entities expected to register as security-based swap dealers, the Commission believes, even after accounting for growth in the security-based swap market and the limitations of the limitations of the transaction data available for analysis, four is a reasonable estimate of the number of unregistered dealing entities likely to incur assessment costs as a result of new Rule 908(b)(5).
920 The initial aggregate annual costs associated with Rule 901 will be approximately $3,668,000, which corresponds to approximately $524,000 per unregistered entity. The Commission estimates that the ongoing aggregate annual costs on an unregistered entity associated with Rule 901 will be approximately $2,313,000, which corresponds to approximately $319,000 per unregistered entity.
922 See id. at 8627.
923 This cost is calculated as [internal cost, 90 hours × $50 per hour = $4,500] + [consulting costs, 10 hours × $200 per hour = $2,000] = a total cost of $6,500 per location per year. See also U.S. Activity Adopting Release, 81 FR at 8627.
policies and procedures to restrict communication between personnel located in the United States employed by non-U.S. persons (or their agents) and other personnel involved in dealing activity would be approximately $28,300 for each entity that chooses this approach.\textsuperscript{925}

Finally, a foreign dealing entity could avoid assessing transactions on a per-transaction basis by choosing to report all transactions to a registered SDR, regardless of the location of personnel engaged in ANE activity. Such an alternative may be reasonable for foreign dealing entities that expect few transactions involving foreign counterparties to be arranged, negotiated, or executed by personnel located outside the United States, such as foreign dealing entities that primarily transact in security-based swaps on U.S. reference entities or securities, and generally rely on personnel located in the United States to perform market-facing activities.\textsuperscript{926}

The Commission believes that the same principles apply to foreign dealing entities that rely on agents to arrange, negotiate, or execute security-based swaps on their behalf. The Commission anticipates that foreign dealing entities may employ any of the strategies above to comply with the final rules through the choice of their agents. For example, a foreign dealing entity may choose an agent that does not use U.S.-based personnel for arranging, negotiating, or executing security-based swap transactions with non-U.S. counterparties to avoid assessment costs. The Commission also anticipates that a foreign dealing entity might rely on representations from its agents about whether transactions conducted on its behalf involved relevant dealing activity by personnel from a location in the United States. This could occur on a transaction-by-transaction basis, or, if the agent uses personnel located in the United States in all or none of its transactions, it could choose to make a representation about the entirety of the agent’s business.

As in the U.S. Activity Adopting Release, the Commission believes that a foreign dealing entity will inform its choice between the alternative compliance strategies with a one-time review of its security-based swap business lines. This review likely will encompass both employees of the foreign dealing entity as well as employees of agents used by the foreign dealing entity, and identify whether these personnel are involved in arranging, negotiating, or executing security-based swaps. The information gathered as a result of this review will allow the foreign dealing entity to assess the revenues that it expects to flow from transaction activity performed by U.S. personnel. This information also will help these market participants form preliminary estimates about the costs associated with various alternative compliance strategies, including the trade-by-trade analysis outlined above. This initial review may be followed with reassessment at regular intervals or subsequent to major changes in the market participant’s security-based swap business, such as acquisition or divestiture of business units. The Commission estimates that the per-entity initial costs of a review of business lines will be approximately $104,000. Further, the Commission believes that periodic reassessment of business lines will cost, on average, $32,000 per year, per entity.\textsuperscript{927}

2. Assessment Costs Associated With Unregistered U.S. Persons Engaging in Security-Based Swaps Against Foreign Entities

New Rules 901(a)(2)(ii)(E)(2) and 901(3) create reporting duties for unregistered U.S. persons that transact security-based swaps with unregistered entities. Under Rule 901(a)(2)(ii)(E)(2), in a transaction between an unregistered U.S. person and an unregistered foreign dealing entity that is engaging in ANE activity, the sides would be required to select the reporting side. Under Rule 901(a)(2)(ii)(E)(3), in a transaction between an unregistered U.S. person and an unregistered non-U.S. person that is not engaging in ANE activity, the unregistered U.S. person is the reporting side. Because of these reporting duties, an unregistered U.S. person could incur costs to assess whether its foreign counterpart is in a security-based swap transaction is an unregistered foreign dealing entity engaging in ANE activity.

The Commission believes that unregistered U.S. persons will likely seek to avoid the costs of assessing whether a foreign counterpart is engaging in ANE activity by choosing to transact only with registered entities for transactions involving foreign counterparties that they believe are very few unregistered foreign dealing entities that might engage in ANE activities, and that they likely will participate in a relatively small number of security-based swap transactions in the U.S. market. As noted earlier,\textsuperscript{929} the Commission estimates that only four foreign dealing entities will remain below the de minimis threshold and thus not have to register as security-based swap dealers.\textsuperscript{930} Furthermore, to the extent that the usage of U.S. personnel by such a foreign dealing entity to engage in ANE activity is a question for a unregistered U.S. person who is a potential counterparty, the foreign dealing entity has an incentive to readily provide this information to the unregistered U.S. person—thereby obviating the need for the U.S. person to conduct an assessment—and to agree to be the reporting side. If the foreign dealing entity did not agree to be the reporting side, the unregistered U.S. person would have the option of transacting with one of several registered security-based swap dealers, both U.S. and foreign, for which the U.S. counterparty would not have to assess for ANE activity or negotiate with the other side about the reporting duty, because the duty would fall to the registered security-based swap dealer pursuant to existing Rule 901(a)(2)(ii)(B). Therefore, the Commission believes that any assessment costs incurred by unregistered U.S. persons will be limited.

3. Assessment Costs Associated With Rule 901(a)(2)(ii)(E)(4)

Under new Rule 901(a)(2)(ii)(E)(4), respondent broker-dealers (including SB SEFs) will be required to report security-based swap transactions that they intermediate if neither side incurs the duty to report (i.e., neither side includes a U.S. person, a registered security-based swap dealer, a registered major security-based swap participant, or a non-U.S. person engaging in an ANE transaction). As a result, respondent broker-dealers will incur certain costs to assess the circumstances in which they incur the duty to report transactions because neither side incurs the duty. Any such assessment costs are reflected in the cost estimates for the policies and procedures that respondent broker-dealers are required to establish, maintain, and enforce under Rule

\textsuperscript{925} See id. at 8628.

\textsuperscript{926} See id.

\textsuperscript{927} See id. at n. 283.

\textsuperscript{928} See infra Section XIII(H)(1) (discussing the potential competitive effects associated with assessments for ANE activity by unregistered U.S. persons).

\textsuperscript{929} See supra note 885 and accompanying text.

\textsuperscript{930} For foreign dealing entities that register with the Commission as security-based swap dealers, reporting duties stem from their registration status, not from the presence of any ANE activity. Therefore, for these entities, no assessment will be needed to know whether a reporting duty arises from a particular transaction.
The programmatic costs estimated by the Commission for the amendment to Rule 906(c) already incorporate the cost incurred by respondent broker-dealers when assessing whether they have a duty to report security-based swap transactions. Therefore, respondent broker-dealers will not incur any additional costs beyond the programmatic cost for the amendment to Rule 906(c) adopted herein.

4. Discussion of Comments Received

The Commission received a number of comments relating to its analysis of the assessment costs associated with the proposed amendments to Rules 901 and 906 included in the U.S. Activity Proposal. One commenter pointed out that the Commission’s analysis of assessment costs was incomplete because the analysis did not account for the additional work that market participants might undertake to meet reporting requirements during the Interim Period, the period beginning on Compliance Date 1 but before the SBS entities registration compliance date). According to the commenter, this additional work and the associated cost could be avoided if the Commission scheduled Compliance Date 1 after the SBS entities registration compliance date.

The same commenter also suggested that the Commission’s cost analysis failed to account for the possibility that some of the documentation and processes developed by market participants for Interim Period reporting would become obsolete after security-based swap dealers register with the Commission.

As discussed in Section X(C), supra, the Commission acknowledges the commentators’ concerns that requiring compliance with Regulation SBSR before the SBS entities registration compliance date would have raised numerous challenges, and that addressing these challenges would have necessitated time and investment to create interim solutions that might not have been useful after the SBS entities registration compliance date. Therefore, the Commission has determined that market participants will not be required to comply with Regulation SBSR until after the SBS entities registration compliance date.

XIII. Economic Effects and Effects on Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act 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 requires the Commission, when making rules under 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.

The Commission believes that the amendments to Regulation SBSR adopted herein will result in further progress towards 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; facilitate 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 improve risk management by security-based swap counterparties.

The economic effects of these amendments on firms that provide infrastructure services to security-based swap counterparties and the security-based swap market generally are discussed in Section X(C), supra. The Commission also considered the effects that these amendments might have on efficiency, competition, and capital formation. The Commission believes that its action today is likely to affect competition among firms that provide security-based swap infrastructure services to market participants and affect efficiency as a result of the way that these amendments allocate regulatory burdens. The effects of these amendments on capital formation are likely to be indirect and will result from the way in which these amendments affect the behavior of registered clearing agencies, counterparties to security-based swaps, and registered SDRs. To the extent that these amendments promote more efficient provision of security-based swap market infrastructure services, there would be lower transactions costs, which would free resources for investment and capital formation.

This analysis has been informed by the relationships among regulation, competition, and market power discussed in Section II(B), supra. An environment in which there is limited competition in SDR services could impose costs on the security-based swap market, including higher prices or lower quality services from SDRs. For example, a registered SDR that faces few or no competitors could seek to impose higher prices, because persons with a duty to report security-based swaps under Regulation SBSR might not be able to identify a competing SDR that offers prices close enough to marginal cost to make changing service providers efficient. Further, if consumers of SDR services have few alternative suppliers from which to choose, SDRs would have fewer incentives to produce more efficient SDR processes and services. This combination of higher prices for SDR services and/or less efficient SDR services could reduce security-based swap transaction activity undertaken by market participants to hedge assets that have cash flows that are related to the cash flows of security-based swaps. A reduction in hedging activity through security-based swaps could reduce the values of assets held by market participants and in turn result in welfare losses for these market participants.

However, there could be some offsetting benefit to limited competition in the market for SDR services for both regulatory authorities and the public. A small set of registered SDRs could make it easier for the Commission and other 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 market observers to aggregate the security-based swap transaction data disseminated by SDRs and SDRs.
multiple SDRs before using it as an input to economic decisions. The Commission also considered the effects on efficiency, competition, and capital formation stemming from the amendments to Rules 901 and 908 that will subject additional cross-border security-based swaps to regulatory reporting and public dissemination, and assign the duty to report those cross-border transactions. The adopted amendments might affect the security-based swap market in a number of ways, many of which are difficult to quantify. In particular, a number of the potential effects that the Commission discusses below are related to price efficiency, liquidity, and risk sharing. These effects are difficult to quantify for a number of reasons. First, in many cases the effects are contingent upon strategic responses of market participants. For instance, the Commission notes in Section XIII(H)(2), infra, that under the adopted approach non-U.S. persons may choose to relocate personnel, making it difficult for U.S. counterparties to access liquidity in security-based swaps. The magnitude of these effects on liquidity and on risk sharing depend upon a number of factors that the Commission cannot estimate, including the likelihood of relocation, the availability of substitute liquidity suppliers, and the availability of substitute hedging assets. Therefore, much of the discussion below is qualitative in nature, although the Commission tries to describe, where possible, the direction of these effects.

Not only can some of these effects be difficult to quantify, but there are many cases where a rule could have two opposing effects, making it difficult to estimate a net impact on efficiency, competition, or capital formation. For example, in the discussion of the net effect of certain amendments to Regulation SBSR on efficiency, the Commission expects that post-trade transparency may have a positive effect on price efficiency, while it could negatively affect liquidity by providing incentives for non-U.S. persons to avoid contact with U.S. persons. The magnitude of these two opposing effects will depend on factors such as the sensitivity of traders to information about order flow, the impact of public dissemination of transaction information on the execution costs of large orders, and the ease with which non-U.S. persons can find substitutes that avoid contact with U.S. personnel. Each of these factors is difficult to quantify individually, which makes the net impact on efficiency equally difficult to quantify.

A. Reporting of Clearing Transactions

New Rule 901(a)(2)(i) assigns the duty to report a security-based swap that has a registered clearing agency as a direct counterparty to that registered clearing agency. Existing Rule 901(a) does not assign reporting obligations for any clearing transactions; thus, in the absence of Rule 901(a)(2)(i), clearing transactions would not be subject to any regulatory reporting requirement. Without a requirement for clearing transactions to be reported to a registered SDR, the Commission and other relevant authorities would have only limited ability to carry out market oversight functions. For example, while the Commission could access transaction reports of alphas and uncleared transactions, the Commission would not be able to obtain from registered SDRs information about the open security-based swap positions of the relevant counterparties after alpha transactions are cleared. Requiring that clearing transactions be reported to registered SDRs and delineating reporting responsibilities for these transactions are particularly important given the level of voluntary clearing activity in the market as well as the mandatory clearing determinations that will be required under Title VII.940

The Commission believes that, because a 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.941 If the Commission assigned the reporting obligation for clearing transactions to a person who lacked direct access to the information required to be reported, that person would be obligated to obtain the required information from the clearing agency or another party who had access to the information to discharge its reporting obligation. Thus, assigning reporting obligations to the non-clearing-agency side could increase the number of reporting steps, thereby increasing the possibility of discrepancy, error, or delay in the reporting process. Placing the reporting duty on the non-clearing-agency side could also reduce data reliability if the data has to be reconfigured to be acceptable by the SDR.942 Inaccurate or delayed reporting of clearing transactions would negatively impact the ability of the Commission and other relevant authorities to understand, aggregate, and act on the transaction information.

New Rule 901(a)(2)(i) also allows the registered clearing agency that is required to report all clearing transactions to which it is a counterparty to select the registered SDR to which to report. As noted in Section III(B), supra, because many of the infrastructure requirements for entrant SDRs are shared by registered clearing agencies, registered clearing agencies might pursue vertical 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, registered clearing agencies will likely choose to report clearing transactions to an affiliated SDR. Because a registered clearing agency is likely to be involved in developing an affiliated SDR’s systems, the clearing agency will likely 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. To the extent that a clearing agency incurs a lower cost when connecting to an affiliated SDR, the cost of reporting clearing transactions to an affiliated SDR is likely to be lower than the cost of reporting to an independent SDR. While both a clearing-agency-affiliated SDR and an independent SDR could lower their average costs by adding clearing transactions to their existing volume of reported transactions, only the clearing agency can reduce the cost of connecting to its affiliated SDR.

Vertical integration of security-based swap clearing and SDR services 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. Even if registered clearing agencies do not enter the market for SDR services, the potential for them to pursue a vertical integration strategy could motivate independent SDRs to offer more competitive service models.

The Commission is aware of the potential costs of allowing registered

940 See General Policy on Sequencing, 77 FR at 35636.
941 Although registered clearing agencies might pass on the costs associated with reporting clearing transactions, 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.
942 See supra Section III(B).
clearing agencies to select the SDR to which they report. If Rule 901(a)(2)(i) encourages the formation of clearing-agency-affiliated SDRs that would not otherwise emerge, the aggregate number of registered SDRs might reflect an inefficient level of service provision. Once an entity has established the functionality to offer clearing and central counterparty services for security-based swaps, only marginal additional investments would likely be needed to offer SDR services. The ease with which registered clearing agencies set up affiliated SDRs could affect how well all SDRs exploit economies of scale. As noted in Section II(B)(2), supra, in the market for SDR services, economies of scale arise from the ability to amortize the fixed costs associated with infrastructure over a large volume of transactions. With a fixed volume of reportable transactions, exploitation of economies of scale by each SDR becomes more limited as the number of SDRs increases. Thus, the entry of clearing-agency-affiliated SDRs could indicate that each SDR benefits from an affiliation with a clearing agency and might not, in aggregate, result in the provision of transaction reporting services at a lower per-transaction cost than if there were fewer SDRs. Inefficiencies could result if the Commission and the public had to receive and process 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 could be costly and difficult.

The potential for efficiency gains through vertical integration of clearing agencies and SDRs could foreclose entry into the market for SDR services except by firms that are already present in the market for clearing agency services. Registered clearing agencies are more likely to benefit from efficiencies in shared infrastructure than independent SDRs, given that it is more difficult for an SDR to enter the market for clearing services than for a clearing agency to enter the market for SDR services.\footnote{\textsuperscript{343} A registered clearing agency, particularly one that acts as a central counterparty for security-based swaps, needs significant financial resources to ensure that it can absorb losses from clearing member defaults, while SDRs do not. Similarly, a registered clearing agency requires significant risk management expertise that an SDR does not. Thus, the barriers to entry into the clearing agency market are higher than the barriers to entry into the SDR market.}

Moreover, to the extent that an affiliated SDR is not as cost-effective as a competing independent SDR, a registered clearing agency could subsidize the operation of its affiliate SDR to provide a competitive advantage in its cost structure over independent SDRs. Hence, providing a registered clearing agency with the discretion to select the registered SDR could provide a competitive advantage for clearing-agency-affiliated SDRs relative to independent SDRs. If a registered clearing agency subsidizes its affiliated SDR using revenue generated from its clearing business, the clearing agency’s members would indirectly bear some of the costs of operating the affiliated SDR. Such an allocation of SDR cost to clearing members could be inefficient because the benefits of reporting transactions to an SDR (i.e., the benefits of regulatory reporting and public dissemination) accrue to market participants generally, and not just to clearing members. As a result of new Rule 901(a)(2)(ii), clearing members might find that the records of their security-based swap transactions are fragmented across multiple registered SDRs (i.e., alpha SDRs and, in addition, clearing-agency-affiliated SDRs to which registered clearing agencies report clearing transactions). The Commission does not believe, however, that fragmentation in the storage of transaction reports would create significant difficulties or inefficiencies for a clearing member that wishes to consolidate all its security-based swap transaction reports at a chosen SDR to facilitate activities such as risk management. Such a clearing member might contract with a registered clearing agency, for a fee, to transmit data for its clearing transactions to an SDR of the clearing member’s choice as a duplicate report. This would allow the registered clearing agency to satisfy its obligations while permitting the clearing member to establish and maintain access to a consolidated record of all of its security-based swap transactions in a single SDR. 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 affiliated 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 to an independent SDR.

As discussed in Section XII(B)(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 believes that, for a given registered clearing agency, these costs are likely to be lower for a connection to an affiliated SDR than to an independent SDR. Because the registered clearing agency is likely to have been involved in developing its affiliated SDR’s systems, the clearing agency can likely avoid costs related to translating or reformattting data due to incompatibilites between the clearing agency’s data format and the data format required by the SDR. The reporting of clearing transactions by registered clearing agencies to their affiliated SDRs could promote efficiency in two ways. First, a registered clearing agency would incur lower connection costs when reporting to an affiliated SDR. Second, the quality of transaction data available to the Commission could be improved to the extent that the Commission gains access to marginally more reliable transaction data because reporting by a registered clearing agency to an affiliated SDR avoids introducing errors or other data discrepancies that otherwise could occur when translating or reformattting transaction data for submission to an independent SDR.

B. Alternative Approaches to Reporting Clearing Transactions

As part of the economic analysis of the amendments adopted herein, 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 and the possibility that these infrastructures could shift the costs created by regulatory burdens onto their customers. The Commission included these economic considerations in its evaluation of alternative approaches to assigning reporting obligations for clearing transactions. As outlined above, the Commission considered four alternatives for assigning these reporting obligations as well as comments received related to these alternatives. The following section discusses the likely economic effects of these alternatives, including their likely impacts on efficiency, competition, and, indirectly, capital formation.

1. Alternative 1

The first alternative would be to apply the reporting hierarchy in existing Rule 901(a)(2)(ii) to clearing transactions. Under Alternative 1, a counterparty to a clearing transaction other than the clearing agency, such as a registered security-based swap dealer, would have the duty to report the clearing transaction. As discussed above, assigning reporting obligations to the non-clearing-agency side could increase the number of reporting steps, thereby increasing the possibility of
discrepancy, error, or delay in the reporting process. Placing the reporting duty on the non-clearing-agency side also could reduce data reliability if the data has to be reconfigured to be acceptable by the SDR.944

The Commission continues to believe 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, for two reasons.945 First, to the extent that market participants that submit security-based swaps to clearing also engage in uncleared transactions and sit atop 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 Alternative 1. 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 are required to report under new Rule 901(a)(2)(i), and reporting sides, who would be required to report under Alternative 1.

Second, non-clearing agency counterparties, particularly those who engage solely in cleared trades or who are not high in the reporting hierarchy, could 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, under the adopted approach, is at the discretion of the registered clearing agency. Nevertheless, the Commission 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, Alternative 1 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 Rule 901(a)(2)(i).

If registered clearing agencies reporting to registered SDRs on behalf of counterparties is not available under Alternative 1, then some counterparties would be required to build infrastructure to support regulatory reporting for clearing transactions. Analysis of single-name CDS transactions in 2015 in which a clearing agency was a direct counterparty shows approximately 54 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 trading practices in the security-based swap market.946 One commenter asserted that the Commission did not adequately address the role of third parties that could perform reporting duties on behalf of reporting parties.947 As noted in Section III(B), supra, Regulation SBSR permits the use of agents to carry out reporting duties and the Commission expects that a market participant that would be assigned the reporting obligation for clearing transactions under Alternative 1 would contract with an agent if it expects use of an agent to be less costly than carrying out the reporting obligation itself. As a result, the ability to use agents could further reduce costs to market participants under Alternative 1.

Under Alternative 1, 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 the transaction data could allow these counterparties 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 Alternative 1, 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 termiate 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 believes that, given this comparative advantage, applying to clearing transactions the same reporting hierarchy that it has adopted for uncleared transactions would result in a registered clearing agency reporting the transaction data to a registered SDR of a non-clearing-agency counterparty’s choice as a service to the non-clearing-agency counterparties to its clearing transactions. In this respect, the entity that performs the actual reporting of clearing transactions would likely be the same as with adopted Rule 901(a)(2)(i), which would assign this duty to the registered clearing agency. The key difference under Alternative 1 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. Such an agreement also could specify the registered SDR to which the clearing agency should send transaction data on behalf of the non-clearing-agency counterparty. 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. Further, by allowing

944 See supra Section III(B).
945 See Regulation SBSR Proposed Amendments Release, 80 FR at 14781.
946 See Regulation SBSR Proposed Amendments Release, 80 FR at 14781–82. To arrive at this estimate, the Commission staff used single-name CDS transaction data for 2015 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 79 FR at 47296, n. 150 (describing the methodology employed by the Commission to estimate the number of potential security-based swap dealers); id. at 47297, n. 153 (describing the methodology employed by the Commission to estimate the number of potential major security-based swap participants).
947 See Markit Letter at 8.
the non-clearing-agency counterparty to choose between registered SDRs, such an agreement could promote competition between SDRs.

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 format prescribed by a non-clearing-agency counterparty’s chosen SDR so that the counterparty can fulfill its reporting duty by submitting transaction data to a registered SDR of its choice could still have significant bargaining power with respect to providing that information.

The Commission believes that the adopted rules are generally consistent with the outcome under Alternative 1 in a number of key respects. First, 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 allocates the reporting responsibility in the same way—it is likely that registered clearing agencies will report clearing transactions to their affiliated SDRs.648 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 Rule 901(a)(2)(ii), the fees associated with these services will likely be part of the total fees associated with clearing security-based swaps.

In light of comments received on its proposal, the Commission acknowledges caveats to this analysis.649 Under Alternative 1, a non-clearing agency counterparty may alter the disposition of its clearing transaction data as a result of having the right to select the registered SDR to which this information is submitted. In particular, a non-clearing agency counterparty with the duty to report clearing transactions would compare the costs and benefits of contracting with the clearing agency to fulfill reporting obligations on its behalf by reporting to an affiliated SDR,650 with the costs and benefits of alternative arrangements that would place the same data at an independent SDR of its choice.

Second, under Alternative 1 and under the adopted 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 believes that Alternative 1 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.651 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 of the cleared transaction data 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 perform the duty. However, the Commission acknowledges, in line with comments received on its proposal,652 that the use of agents to carry out reporting duties could mitigate these costs, if agents are able to restructure data more efficiently than counterparties.

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, were to establish minimum standards for communication of clearing transaction data from registered clearing agencies to their counterparties. As a result, counterparties could face greater difficulties in reporting data and an increased likelihood of incomplete, inaccurate, or untimely data being submitted to registered SDRs.

Third, under this alternative the registered clearing agency that is party to the transaction potentially has weaker incentives to provide high-quality regulatory data to the counterparties 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 stronger 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 counterparties, but additionally, market forces might not provide sufficient motivation to the registered clearing agency to provide data to the counterparties in a manner that would minimize the counterparties’ 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 and may require the services of agents that clean and validate transaction data that they receive.
The Commission 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 adopted approach. As discussed above, assigning reporting obligations to the non-clearing-agency side could increase the number of reporting steps, thereby increasing the possibility of discrepancy, error, or delay in the reporting process. Placing the reporting duty on the non-clearing-agency side also could reduce data reliability if the data has to be reconfigured to be acceptable by the SDR. The Commission believes that discrepancies, errors, and delays are less likely to occur if the duty to report clearing transactions is assigned to registered clearing agencies directly, because there would be no additional or intermediate steps where data would have to be transferred or reconfigured.\(^953\)

2. Alternative 2

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. 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.

As with Alternative 1, Alternative 2 potentially results in additional reporting steps and could marginally reduce the quality of regulatory data relative to the adopted approach. A key difference, however, is that Alternative 2 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, would likely be better able to negotiate better terms by which clearing agencies report transactions on their behalf or provide the counterparties with access to the clearing data so that they can perform their own reporting.

In its discussion of Alternative 1, 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 reformattting the data for submission to a registered SDR, including the costs of outsourcing these activities to an agent. 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 non-clearing-agency counterparties 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 resulting from limited competition over their counterparties could reduce some of the drawbacks to the Alternative 1. 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 of 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.\(^954\) Nevertheless, the Commission believes that Alternative 2 does not fully address frictions that arise from limited competition among registered clearing agencies, such as high clearing fees or low quality services. The Commission believes that Alternative 2 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.

3. Alternative 3

The Commission considered a third alternative that would make the reporting side for the alpha responsible for reporting both the beta and gamma.\(^955\) Alternative 3 would require the reporting side for the alpha also to report information about a security-based swap to which it is not a counterparty, i.e., the clearing transaction between the registered clearing agency and the non-reporting side of the alpha. As discussed in Section III(B), supra, Alternative 3 would be operationally difficult to implement, could create confidentiality concerns, and could increase the likelihood of data discrepancy, error, and delay because Alternative 3 requires additional reporting steps. Alternative 3 also would require reporting sides to negotiate with registered clearing agencies to obtain transaction data and to bear the costs of correcting errors in these data, exposing them to the market power exercised by registered clearing agencies. Also, because the reporting side of the alpha would 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.

In addition, Alternative 3 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 adopted 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 (the non-dealer, one or the two registered security-based swap dealers, or the clearing agency) would be required to report the contract that results from the netting of the two gamma security-based swaps between the non-dealer and the registered clearing agency.

\(^{953}\) See supra Section III(B).


\(^{955}\) The Commission considered and rejected this approach in the Regulation SBSR Adopting Release. See 80 FR at 14639 ("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)"). However, the Commission is discussing this alternative in response to a commenter that, in response to the Regulation SBSR Proposed Amendments Release, recommended that the Commission adopt this approach. See Markit Letter at 11–13.
4. Commenter Views

One commenter proposed a fourth alternative to assigning reporting duties for cleared transactions. Under this alternative, “the platform would remain the reporting side for all platform-executed trades while for bilateral or off platform cleared transactions, the reporting side would be the clearing agency. However, the clearing agency would be required to submit beta and gamma trade records to the alpha SDR (which would be determined by the alpha trade reporting side and not the clearing agency).” For the reasons discussed above, the Commission considers this alternative less appropriate than the adopted approach. While the Commission concurs with the approach of requiring the registered clearing agency to report the resulting beta and gamma transactions, the Commission believes that the registered clearing agency, when it has the duty to report security-based swaps, should be able to choose the registered SDR to which it reports.

The same commenter stated that requiring registered clearing agencies to report their clearing transactions “is not supported by an adequate consideration of factors contained in Section 3(f) of the Exchange Act” and provided comments that focused on the proposed rule’s “considerations of efficiency and competition.” Specifically, this commenter believed that the proposed rule “ignores the efficiency benefits and reduced costs introduced by middleware reporting agencies,” and it “needlessly and unjustifiably proposes an approach to cleared (security-based swap) reporting that imposes a burden on competition.” Further, the commenter expressed the view that Rule 901(a)(2)(i) would deter competition based on service quality and cost in the market for SDR services, whereas the three alternatives would encourage such competition in the same market. The Commission believes that it has adequately considered the factors contained in Section 3(f) of the Exchange Act in this release and in the Regulation SBSR Proposed Release. Further, the Commission has evaluated four alternative allocations of reporting obligations, including their likely effects on efficiency and competition. The Commission appreciates the commenter’s concern that competition in the market for SDR services could be hindered by Rule 901(a)(2)(i) with the possible result that clearing-agency-affiliated SDRs might charge higher fees and/or offer lower quality services to their users. However, the Commission notes that such effects on competition, should they occur, would be limited because Rule 13n–4(c)(1)(i) under the Exchange Act requires an SDR, including a clearing-agency-affiliated SDR, to ensure that any dues, fees, or other charges imposed by, and any discounts or rebates offered by, the SDR are fair and reasonable and not unreasonably discriminatory. As noted in Section XIII, supra, an affiliated SDR might offer higher quality services and/or lower fees to its participants to the extent that the affiliated SDR realizes efficiency gains from vertical integration and shares some of these gains with its participants. Further, other commenters expressed the view that requiring registered clearing agencies to report clearing transactions could enhance market efficiency and improve the accuracy of reported data. Two commenters observed that clearing agencies will be able to leverage existing reporting processes and the existing infrastructure that they have in place with market participants and vendors to report clearing transactions. Another commenter observed that requiring clearing agencies to report clearing transactions in security-based swaps could be “efficient, cost effective and promote[ ] global data consistency,” because “clearing agencies have demonstrated their ability and preference to report data for cleared transactions” under swap data reporting rules established by the CFTC. The Commission is requiring a platform to report this alpha transaction. The Commission is requiring a platform to report all alpha transactions executed on the platform that will be submitted to clearing. With the ability to clear security-based swap transactions, it is possible for two counterparties to trade anonymously on a platform. 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 existing Rule 901(a)(2)(i) to determine who would be required to report this alpha transaction. The Commission is requiring a platform to report all alpha transactions executed on the platform that will be submitted to clearing, even those that might not be anonymous; this approach avoids the need for the platform and the counterparties to ascertain whether the counterparties are in fact unknown to each other.

Furthermore, the platform is the only entity at the time of execution—i.e., before the transaction is submitted for clearing—that knows the identity of both sides. Requiring the platform to...
would seek to pass on these costs to its participants. The Commission believes that the due diligence that platforms would have to perform under this alternative would impose unnecessary costs without enhancing the benefits of regulatory reporting. Such costs can be avoided by requiring a platform to report all platform-executed alphas, which is what adopted Rule 901(a)(2)(i) requires.

A second alternative would be to assign the reporting duty for all platform-executed alphas to the registered clearing agency to which the alphs are submitted. While the registered clearing agency would likely have the information necessary for reporting—because the clearing agency will need much of the same information about the alpha to clear it—the Commission believes that it would be more appropriate to assign the reporting duty to the platform. This approach creates 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 also avoids the need for the registered clearing agency to invest resources in systems to receive data elements from platforms beyond what is already required for clearing, and to report transactions to which it is not a counterparty.

D. Reporting of Clearing Transactions Involving Allocation

In the Regulation SBSR Adopting Release, the Commission explained the application of Regulation SBSR to bunched order executions that are submitted to clearing. In the Regulation SBSR Proposed Amendments Release, the Commission discussed the application of Regulation SBSR to bunched order executions that are submitted to clearing, and the security-based swaps that result from the allocation of the bunched order if the resulting security-based swaps are cleared. In this release, the Commission discusses how the amendments to Regulation SBSR that the Commission is adopting today apply to bunched order executions that are cleared. The discussion is designed to accommodate the various workflows that market participants employ to execute and allocate bunched order alphas. This guidance does not create any new duties under Regulation SBSR but does explain the application of Regulation SBSR to anonymously executed. This could further complicate separation of anonymous and non-anonymous executions.

973 See 80 FR at 14625–27.

F. Prohibition of Fees and Usage Restrictions for Public Dissemination

New Rule 900(t), as adopted herein, defines the term “widely accessible”—

974 The Commission’s estimates of events reportable under these amendments includes observable allocation by clearing agencies in the TIW data. Therefore, the costs associated with clearing transactions involving allocation are included in the Commission’s estimate of the

975 See 80 FR 14700–704. The Commission’s estimates in that release of the total number of reportable events included all security-based swap legs arising out of prime brokerage arrangements.

976 There could be situations where a market participant splits an order into two or more child orders and some child orders are anonymously executed while other child orders are not

977 The Commission has proposed, but not adopted, rules governing the registration and operation of SB SEFs. See SB SEF Proposing Release, 76 FR at 10948.

978 There could be situations where a market participant splits an order into two or more child orders and some child orders are anonymously executed while other child orders are not.

report information associated with transactions that will be submitted to clearing also reduces the number of data transmission steps between execution and reporting to a registered SDR. A platform that matches orders and executes transactions will possess or can readily obtain all of the primary trade information necessary to be reported to a registered SDR, and new Rule 901(a)(1) makes it unnecessary for counterparties to report these transactions. This approach is designed to result in a more efficient reporting process for platform-executed alphas. By reducing the number of steps between the creation of transaction data and reporting to a registered SDR, Rule 901(a)(1) reduces the possibility of data discrepancies and delays.

While the level of security-based swap activity that currently takes place on platforms and is subsequently submitted for clearing is low, future rulemaking under Title VII could cause security-based swap trading volumes on platforms and is subsequently reported to a registered SDR, and new trade information necessary to be executed while other child orders are not
which appears in the definition of "publicly disseminate" in existing Rule 900(cc)—to mean "widely available to users of the information on a non-fee basis." This new definition has 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 free and unrestricted access to the security-based swap data that registered SDRs are required to publicly disseminate is designed to reinforce the economic effects of public dissemination generally, because market observers will be able to enjoy the benefits of public dissemination without cost and without any restriction on how they use the disseminated data. Furthermore, new Rule 900(tt) reinforces the benefits of existing Rule 903(b), which provides that a registered SDR may utilize codes in the reported or disseminated data only if the information necessary to understand the codes is free and not subject to any usage restrictions. As the Commission pointed out in the Regulation SBSR Adopting Release, Rule 903(b) could improve the efficiency of data intake by registered SDRs and data analysis by relevant authorities and other users of security-based swap data; improve efficiency by minimizing operational risks arising from inconsistent identification of persons, units of persons, products, or transactions by counterparties; and promote competition by prohibiting fee-based licensing of reference information that could create barriers to entry into the security-based swap market.976 If the Commission did not prohibit fees and usage restrictions relating to the publicly disseminated data, 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. Such potential activity by a registered SDR could reduce the economic benefits of Rule 903(b) and public dissemination generally. New Rule 900(tt) is designed in part to reinforce the economic effects, and help prevent avoidance, of Rule 903(b).

The adopted 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 swap data repositories charging for public dissemination of regulatorily mandated swap transaction data. Such consistency lessens the incentives for swap data repositories registered with the CFTC to enter the security-based swap market and also register with the Commission as SDRs and charge for public dissemination of security-based swap market data. If the Commission did not take this approach, a CFTC-registered swap data repository could enter the security-based swap market and charge for public dissemination of security-based swap market data, and use revenues from this business to subsidize its operations in the swap market, where it is not permitted to charge for public dissemination of swap market data. If an SEC-registered SDR charges fees for security-based swap data 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 recognizes that, because registered SDRs are prohibited from charging for the security-based swap data that Regulation SBSR requires them to publicly disseminate, they must obtain funds for their operating expenses through other means. A registered SDR could pass the costs of publicly disseminating security-based swap data through to the persons who report transactions 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 cost of disseminating that information. By contrast, it would be more difficult to equitably calibrate a fee based on the consumption of the publicly disseminated data, because it would be difficult to measure the intensity of a market observer’s usage of the disseminated data. As the Commission discussed in the Regulation SBSR Adopting Release, the positive effects of public dissemination on efficiency, competition, and capital formation derive from the broad based use of disseminated data by a multitude of users.977 There are likely to be a large number of marginal users of the disseminated data who would not obtain the data if they were required to pay for it. Thus, many potential users of the data might never have the opportunity to develop new uses for the data. While a funding model relying on fees for transaction reporting could result in security-based swap market participants subsidizing other users of security-based swap market data, charging fees for the consumption of publicly disseminated data could drastically reduce the number of data users and the associated positive effects on efficiency, competition, and capital formation.

The Commission notes that new Rule 900(tt) does not prohibit a registered SDR from offering value-added security-based swap market products for sale, provided that the SDR does not make transaction information available through the value-added product sooner than it publicly disseminates each individual transaction. This requirement is designed to prevent a registered SDR from obtaining an unfair competitive advantage over other firms that might wish to sell value-added market data products. Any such products could allow market observers to enjoy the positive impacts of Regulation SBSR on efficiency, competition, and capital formation more directly, by making it easier for market observers to understand the publicly disseminated data. Even if the SDR does not make transaction information available through the value-added product sooner than it publicly disseminates each individual transaction, the SDR retains a time advantage over a competing provider of value-added data products. This time advantage is the time taken for the SDR to electronically disseminate transaction information to the public. While the SDR has such a time advantage, the competitive effect of this advantage depends in part on the nature of the value-added data product. For value-added data products whose usefulness is not highly sensitive to data transmission time, such as a summary of monthly security-based swap trading activity, the SDR’s time advantage would not exert a significant negative effect on other competitors. On the other hand, for value-added products whose usefulness decreases with data

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977 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 940.

976 It is unlikely, however, in the absence of Rule 900(tt) that registered SDRs would have relied on charges for public dissemination as the sole means of funding their operations.

978 See 80 FR at 14723.
transmission time, such as a product that predicts security-based swap prices or volumes over the next minute, the SDR’s time advantage could have a negative effect on other competitors. Even for such products, the SDR’s time advantage would be limited if there are multiple competing SDRs accepting data in the same asset class and the SDR is offering a value-added product that requires not only the data that it accepts but also the data publicly disseminated by other competing SDRs. Any time advantage that the SDR might enjoy with respect to the data that it accepts could be offset by the absence of time advantage when receiving data publicly disseminated by other competing SDRs.

G. Compliance Schedule for Regulation SBSR

The compliance schedule adopted in this release is designed to provide affected persons, especially registered SDRs and persons with a duty to report security-based swap transactions, with time to develop, test, and implement systems for carrying out their respective duties under Regulation SBSR. The new compliance schedule takes into consideration the fact that the CFTC’s regulatory reporting and public dissemination rules are already in effect. As a result, several SDRs have provisionally registered and are operating in the swap market under CFTC rules, and swap market participants have developed substantial infrastructure to support swap transaction reporting. It is likely that participants in both the swap and security-based swap markets will seek to repurpose much of the infrastructure implemented in the swap market to support activities in the security-based swap market, which would enable more efficient implementation of the Commission’s regime for security-based swap reporting.

Also, as discussed in Section X(C), supra, the new compliance schedule aligns Regulation SBSR compliance with security-based swap dealer registration. Thus, with respect to newly executed security-based swaps in a particular asset class, Compliance Date 1 for Rule 901 of Regulation SBSR is the first Monday that is the later of: (1) Six months after the date on which the first SDR that can accept transaction reports in that asset class registers with the Commission; or (2) one month after the SBS entities registration compliance date. Every security-based swap in that asset class that is executed on or after Compliance Date 1 must be reported in accordance with Rule 901. Compliance Date 2, when public dissemination shall commence, is the first Monday that is three months after Compliance Date 1. Compliance Date 3, by which all historical security-based swaps in that asset class must be reported to a registered SDR (to the extent that information about such transactions is available), is two months after Compliance Date 2.

The proposed compliance schedule would have required affected persons to begin complying with Regulation SBSR before security-based swap dealers register with the Commission. A number of comments urged the Commission to delay Registration SBSR compliance until after security-based swap dealers register. One commenter provided extensive estimates of the costs that market participants could have incurred to develop reporting procedures for the Interim Period that likely would not have been applicable to the period after security-based swap dealer registration. This commenter also pointed out that the Interim Period could create a competitive disadvantage for non-U.S. dealing entities because these entities could assume the responsibility but not the liability for reporting and thus might be less attractive to buy-side U.S. clients than U.S. dealing entities that could assume both the responsibility and liability for reporting.

The Commission agrees with commenters that it would be more efficient for affected persons to focus on developing compliance procedures only for the period after security-based swap dealer registration, rather than require affected persons to expend resources to develop procedures for both the period after registration as well as for the Interim Period, because Interim Period procedures might be inapplicable to the period after registration. The Commission believes that, by eliminating the Interim Period and thus the need to expend resources for developing interim procedures, the adopted compliance schedule will promote efficiency. The adopted compliance schedule should also promote capital formation to the extent that persons that would have incurred reporting obligations during the Interim Period could invest the resources that would otherwise be expended in developing Interim Period procedures into productive assets.

Furthermore, the Commission acknowledges the commenters’ concern that the Interim Period could create competitive disparities between U.S. and foreign dealing entities if buy-side U.S. persons were less willing to transact with foreign dealing entities if certain foreign dealing entities could not assume the liability for reporting. The adopted compliance schedule avoids the need for the Interim Period and thus eliminates any potential competitive disadvantage for foreign dealing entities described by the commenters. Thus, relative to the proposed compliance schedule, the adopted compliance schedule should promote competition among U.S. and foreign dealing entities that supply liquidity to the security-based swap market.

In summary, the Commission now believes, in light of the comments received on its proposal, that it would better promote efficiency, competition, and capital formation to delay compliance with the reporting obligations of Regulation SBSR until after the SBS entities registration compliance date.

The compliance schedule adopted herein also is based on the first SDR in an asset class to register with the Commission, which could confer a “first-mover advantage.” The first registered SDR could potentially capture a significant share of the SDR market because reporting parties, uncertain as to whether or when registration of other SDRs’ applications might be granted, could feel compelled to onboard with the first registered SDR to secure sufficient time to prepare for Compliance Date 1. Furthermore, the first registered SDR could hold on to its share of the SDR market for long periods if reporting persons that are connected to it face high costs of switching to a different registered SDR. Thus, the first mover advantage could potentially limit competition by making it more difficult for new SDR entrants to sign on to reporting clients.

The Commission acknowledges that a first mover could emerge. Nevertheless, the Commission believes that, if one SDR application satisfies the criteria of Rule 13n–1(c)(3) under the Exchange Act before any others, it would not be appropriate for the Commission to delay...
granting its registration because of the status of other SDR applications. The Commission continues to believe that most persons that have the desire and ability to operate as SEC-registered SDRs are already operational in the swaps market as swap data repositories provisionally registered with the CFTC, 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, and consequently, a lower likelihood of a first mover emerging.

Even if a first mover emerges, other Commission rules are designed to minimize any potential of a monopoly advantage that the first SDR might otherwise enjoy. All SDRs, even the first or only registered SDR in a particular asset class, must offer fair, open, and not unreasonably discriminatory access to users of its services. Moreover, any fees charged by an SDR must be fair and reasonable and not unreasonably discriminatory.

The newly adopted compliance schedule could give added incentive to avoid delaying the submission of an application for registration as an SDR and to commence operation as an SEC-registered SDR as quickly as possible. This result would help the Commission and other relevant authorities obtain 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.

As proposed in the Regulation SBSR Proposed Amendments Release, all historical security-based swaps in a particular asset class would have had to be reported to a registered SDR by proposed Compliance Date 1. As discussed in Section X(E), supra, the Commission has revised the compliance schedule to disassociate the requirement to report historical security-based swaps from Compliance Date 1. With respect to historical security-based swaps in a particular asset class, new Compliance Date 3 for the reporting of historical transactions is two months after Compliance Date 2, the date on which public dissemination commences. The Commission believes that the additional compliance delay for reporting historical security-based swaps represents an appropriate balancing of the benefits of mandatory reporting against the likely costs. Mandatory reporting of historical security-based swaps is generally less urgent than the reporting of newly executed transactions, particularly in light of the fact that most security-based swaps in the credit derivative asset class are already being reported on a voluntary basis to TIW. Because only available information about historical transactions must be reported, the Commission does not anticipate that reports of historical transactions made to registered SDRs will be significantly more informative than the reports already available through TIW.

Several commenters were concerned that requiring reporting pursuant to Regulation SBSR to begin before the Commission has made substituted compliance determinations “would impose significant and unnecessary burdens” on non-U.S. registered persons. Changes made by non-U.S. persons to their reporting infrastructure to comply with Regulation SBSR may not be necessary, in the commenters’ views, if the Commission subsequently grants substituted compliance to these non-U.S. persons. The Commission acknowledges the commenters’ concern regarding burdens that may arise if compliance with Regulation SBSR precedes substituted compliance determinations. However, as discussed in Section X(C)(5), supra, the Commission does not believe that it is appropriate to defer compliance with Regulation SBSR until after the Commission makes one or more substituted compliance determinations. The Commission understands that changes made by non-U.S. persons to their reporting infrastructure to comply with Regulation SBSR might become unnecessary if substituted compliance is granted. However, these changes could be limited to the extent that the Commission and other jurisdictions require the collection and reporting of similar transaction information.

H. Amendments Related to Cross-Border Transactions

The amendments to Rules 901 and 908 adopted today will, among other things, apply Regulation SBSR’s regulatory reporting and public dissemination requirements to all security-based swap transactions of a foreign dealing entity that are arranged, negotiated, or executed by U.S. personnel. Such ANE transactions are already subject to regulatory reporting and public dissemination if the other side includes a U.S. person. The amendments adopted today extend the regulatory reporting and public dissemination requirement to all ANE transactions, even if the other side is non-U.S. and not engaging in ANE activity. These amendments also for the first time assign the duty to report transactions between unregistered U.S. persons and unregistered non-U.S. persons. These amendments will have several effects on efficiency, competition, and capital formation in the U.S. financial market.

1. Competition

These amendments to Rules 901 and 908 will have implications for competition among market participants that intermediate transactions in security-based swaps as well as counterparties to security-based swaps. These amendments are designed to promote competition among liquidity providers in the security-based swap market by imposing consistent reporting and public dissemination requirements on both U.S. and foreign dealing entities, when the latter are engaging in ANE activity. If only U.S. dealing entities were subject to regulatory reporting and public dissemination requirements, the costs of these requirements would primarily affect U.S. dealing entities, their agents, and their counterparts. In contrast, foreign dealing entities and their agents, who might not be subject to comparable requirements in their home jurisdictions, could have a competitive advantage over U.S. dealing entities in serving unregistered non-U.S. counterparts using personnel located in a U.S. branch or office, were their activities not subject to the same requirements.

These amendments to Rules 901 and 908 also are designed to promote competition between U.S. persons and non-U.S. persons that trade with foreign dealing entities, when a foreign dealing entity is utilizing U.S. personnel. A transaction between an unregistered foreign dealing entity engaging in ANE activity and a U.S. counterparty already is subject to regulatory reporting and public dissemination under existing Rule 908(a)(1)(i). In the absence of...
The amendments to Rules 901 and 908 adopted herein, by requiring the public dissemination of ANE transactions, enable all market participants to have comprehensive information with which to make trading and valuation determinations for security-based swaps and related and underlying assets. The reporting of all ANE transactions to a registered SDR should enhance the Commission’s ability to oversee security-based swap activity occurring within the United States and to monitor for compliance with specific Title VII requirements (including the requirement that a person register with the Commission as a security-based swap dealer if it exceeds the de minimis threshold). The reporting of these transactions likely will enhance the Commission’s ability to monitor for manipulative and abusive practices involving security-based swap transactions or transactions in related underlying assets, such as corporate bonds or other securities transactions that result from dealing activity, or other relevant activity, in the U.S. market. The knowledge that the Commission and other relevant authorities are able to conduct surveillance on the basis of regulatory reporting could encourage greater participation in the security-based swap market since surveillance and the resulting increased probability of detection may deter potential market abuse. This could result in improved efficiency, due to the availability of more risk-sharing opportunities between market participants.

The Commission acknowledges the risk that, in response to the adopted amendments, foreign dealing entities, trading platforms, and/or registered broker-dealers could restructure their operations to avoid triggering requirements under Regulation SBSR. For example, a foreign dealing entity could restrict its U.S. personnel from intermediating transactions with non-U.S. persons, a trading platform might choose to move its principal place of business offshore, or a registered broker-dealer might cease to effect transactions in security-based swaps between unregistered non-U.S. persons. Such restructurings, if they occurred, could have an adverse effect on the efficiency of the security-based swap market by fragmenting liquidity between a U.S. security-based swap market—occupied by U.S. persons and non-U.S. persons willing to participate within the Title VII regulatory framework, with intermediation services provided by registered broker-dealers and U.S.-based trading platforms—and an offshore market in which participants seek to avoid any activity that could trigger application of Title VII to their security-based swap activity. Such market fragmentation could reduce the amount of liquidity available to market participants whose activity is regulated by Title VII, increase their search costs, or erode any gains in price efficiency and allocative efficiency that might otherwise result from regulatory reporting and public dissemination of all security-based swap transactions that exist at least in part within the United States. If foreign dealing entities use only agents who are located outside the United States, there could be reduced competition in the market for security-based swap intermediation services and this smaller pool of competitors could in turn charge higher prices for intermediation. The result would be higher costs of searching for suitable

\[992\] This effect would be diminished to the extent that a transaction of a foreign dealing entity is subject to public dissemination requirements under the rules of a foreign jurisdiction, and the costs of public dissemination are already factored into the prices offered to its counterparts.

counterparties. Higher search costs could in turn reduce the number of risk-sharing trades that foreign dealing entities execute and thus adversely affect risk-sharing efficiency in the security-based swap market broadly.

The Commission has already considered the likelihood that foreign dealing entities will cease using U.S. personnel to avoid Title VII requirements (such as security-based swap dealer registration). The Commission continues to believe that market fragmentation that results from relocation of personnel is less likely because foreign dealing entities that elect to use such a strategy to avoid regulatory reporting requirements under Title VII also would bear the costs of restructuring their operations and potentially forgoing the benefits of access to local expertise in security-based swaps that are traded in the U.S. market. Furthermore, the Commission believes that the amendments adopted herein, by extending Regulation SBSR to a small set of ANE transactions involving only non-U.S. persons and assigning the duty for reporting them, will impose only marginal burdens on platforms and registered broker-dealers.

3. Capital Formation

The amendments adopted herein could affect capital formation by affecting the transparency, liquidity, and stability of the market in which issuers seek capital. In the Regulation SBSR Adopting Release, the Commission identified benefits associated with the regulatory reporting and public dissemination of security-based swaps, such as increased transparency, improved liquidity, and greater market stability. The Regulation SBSR Adopting Release did not impose any requirements on transactions between unregistered non-U.S. persons, even if one side was engaging in ANE activity. The amendments adopted in this release, by extending Regulation SBSR to all ANE transactions, should extend the benefits of regulatory reporting and public dissemination to all ANE transactions, which in turn could lead to more efficient allocation of capital by market participants and market observers.

The Commission recognizes that the amendments to Rules 901 and 908 adopted herein could impede capital formation by fragmenting the security-based swap market. As discussed in Section XIII(H)(2), supra, fragmentation of the security-based swap market could occur if market participants restructure their business activities by moving their personnel and operations offshore or restrict the counterparties to whom such persons may provide services. Such actions could impede capital formation because resources that market participants expend to restructure would not be available for investing in productive assets. Furthermore, fragmentation could create two separate security-based swap markets: A U.S. security-based swap market and an offshore security-based swap market. If fragmentation reduces the pool of market participants in the U.S. market, the market could experience lower trading activity and liquidity which in turn could reduce the ability of U.S. market participants to hedge financial and commercial risks and force them to put more resources into precautionary savings instead of investing those resources into productive assets.

However, as the Commission noted in Section XIII(H)(2), supra, the amendments adopted herein, by extending Regulation SBSR to all ANE transactions, will impose only marginal burdens on foreign dealing entities. The Commission does not believe that these limited burdens will cause foreign dealing entities to restructure their operations and fragment the security-based swap market such that capital formation would be adversely affected.

XIV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act ("RFA") requires federal agencies, in promulgating rules, to consider the impacts of those rules on small entities. Section 603(a) of the Administrative Procedure Act, 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." Section 605(b) of the RFA 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; 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, 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. Under the standards adopted by the Small Business Administration, small entities in the finance and insurance industry include the following: (1) For entities engaged in credit intermediation and related activities, entities with $550 million or less in assets; (2) for non-depository credit intermediation and certain other activities, entities engaged in non-depository credit intermediation and related activities, $38.5 million or less in annual receipts; (3) for entities engaged in financial investments and related activities, entities with $38.5 million or less in annual receipts; (4) for

997 See id. at 8633.
998 See 80 FR at 14719–22.
1000 See id.
1001 5 U.S.C. 603(a).
1002 5 U.S.C. 603(b).
1003 5 U.S.C. 603(a).
1004 17 CFR 240.17a–5(d).
1005 17 CFR 240.0–10(a).
1006 17 CFR 240.0–10(c).
1007 Including commercial banks, savings institutions, credit unions, firms involved in other depository credit intermediation, credit card issuing, sales financing, consumer lending, real estate credit, and international trade financing. See 13 CFR 121.201 at Subsector 522.
1008 Including firms involved in secondary market financing, all other non-depository credit intermediation, mortgage and nonmortgage loan brokers, financial transactions processing, reserve, and clearing house activities, and other activities related to credit intermediation. See 13 CFR 121.201 at Subsector 522.
1009 Including firms involved in investment banking and securities dealing, securities brokerage, commodity contracts dealing, commodity contracts brokerage, securities and commodity exchanges, miscellaneous interoffice portfolio management, providing investment advice, trust, fiduciary and custody activities, and miscellaneous financial investment activities. See 13 CFR 121.201 at Subsector 523.
insurance carriers and entities engaged in related activities, \(^{1009}\) entities with $38.5 million or less in annual receipts, or 1,500 employees for direct property and casualty insurance carriers; and (5) for funds, trusts, and other financial vehicles, \(^{1010}\) entities with $32.5 million or less in annual receipts.

In the U.S. Activity Proposal, the Commission stated its belief that the majority of the amendments to Regulation SBSR proposed in that release would not have a significant economic impact on a substantial number of small entities for the purposes of the RFA. \(^{1011}\) However, the Commission acknowledged that the proposed amendments would require a registered broker-dealer (including a registered SEF) to report a security-based swap transaction that is effected by or through it. \(^{1012}\) The Commission further estimated that 30 registered broker-dealers (including SEFs) could be required to report such transactions, although the Commission was not able to estimate the number of those registered broker-dealers that would be “small entities.” \(^{1013}\) As a result, the Commission stated its preliminary belief that it is unlikely that these registered broker-dealers would be small entities and requested comment on the number of registered broker-dealers that are small entities that would be impacted by the proposed amendments, including any available empirical data. \(^{1014}\)

In the Regulation SBSR Proposed Amendments Release, the Commission certified that the amendments proposed in that release would not have a significant economic impact on a substantial number of small entities for purposes of the RFA. \(^{1015}\) 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. 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 will be part of large business entities, and that all registered SDRs will have assets in excess of the thresholds discussed above. Therefore, the Commission continues to believe that no registered SDRs will be small entities.

The Commission received no comments on the certification in the Regulation SBSR Proposed Amendments Release or, as indicated above, the Initial Regulatory Flexibility Analysis in the U.S. Activity Proposal. Accordingly, the Commission hereby certifies that the final rules adopted in this release will not have a significant impact on a substantial number of small entities for the purposes of the RFA.

**XV. Statutory Basis**

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(c) thereof, 15 U.S.C. 78c–3(e), 78k–1(b), 78m(m)(1), 78m–1(a), 78w(a)(1), 78dd(c), and 78nn(a), the Commission is amending Rules 900, 901, 902, 905, 906, 907, and 908 of Regulation SBSR under the Exchange Act, 17 CFR 242.900, 242.901, 242.902, 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, the Commission amends 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), 78(a), 78k–l(c), 78l, 78m, 78n, 78o(b), 78o(c), 78o(q), 78q(a), 78q(b), 78q(g), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

2. In § 242.900, revise paragraph (u) and add paragraph (tt) to read as follows:

**§ 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);

(3) A registered clearing agency that is required to report to that registered security-based swap data repository whether or not it has accepted a security-based swap for clearing pursuant to § 242.901(e)(1)(ii); or

(4) A registered broker-dealer (including a registered security-based swap execution facility) that is required to report a security-based swap to that registered security-based swap data repository by § 242.901(a).

* * * * *

(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)(ii), (a)(2)(iii)(E)(2) through (4), (a)(3), and (e)(1)(ii) and revise paragraphs (d)(4), (d)(8), (d)(9), (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 counterparty ID or the execution agent ID of each direct counterparty, as applicable, and the information set forth in paragraph (c) of this section (except that, with respect to paragraph (c)(5) of this section, the platform need indicate only if both direct counterparties are registered security-based swap dealers) and paragraphs (d)(9) and (10) of this section.

(i) Clearing transactions. For a clearing transaction, the reporting side is the registered clearing agency that is a counterparty to the transaction.

(ii) * * *

(E) * * *
(2) If one side includes a non-U.S. person that falls within § 242.908(b)(5) or a U.S. person and the other side includes a non-U.S. person that falls within § 242.908(b)(5), the sides shall select the reporting side.

(3) If one side includes only non-U.S. persons that do not fall within § 242.908(b)(5) and the other side includes a non-U.S. person that falls within § 242.908(b)(5) or a U.S. person, the side including a non-U.S. person that falls within § 242.908(b)(5) or a U.S. person shall be the reporting side.

(4) If neither side includes a U.S. person and neither side includes a non-U.S. person that falls within § 242.908(b)(5) but the security-based swap is effectuated by or through a registered broker-dealer (including a registered security-based swap execution facility), the registered broker-dealer (including a registered security-based swap execution facility) shall report the counterparty ID or the execution agent ID of each direct counterparty as applicable, and the information set forth in paragraph (c) of this section (except that, with respect to paragraph (c)(5) of this section, the registered broker-dealer (including a registered security-based swap execution facility) need indicate only if both direct counterparties are registered security-based swap dealers) and paragraphs (d)(9) and (10) of this section.

(3) Notification to registered clearing agency. A person who, under paragraph (a)(1) or (a)(2)(ii) of this section, 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.

(d) * * * * *

(4) For a security-based swap that is not a clearing transaction and that will not be allocated after execution, 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;

* * * * *

(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;

(9) The platform ID, if applicable, or if a registered broker-dealer (including a registered security-based swap execution facility) is required to report the security-based swap by § 242.901(a)(2)(ii)(E)(4), the broker ID of that registered broker-dealer (including a registered security-based swap execution facility); and

* * * * *

(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.

* * * * *

■ 6. In § 242.906, revise paragraphs (c)(6) and (7) and add paragraph (c)(8) to read as follows:

§ 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 the 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, trading 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 that is not a
platform, a registered clearing agency, an externally managed investment vehicle, or a registered broker-dealer (including a registered security-based swap execution facility) that becomes a participant solely as a result of making a report to satisfy an obligation under § 242.901(a)(2)(ii)(E)(4) 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 to support reporting compliance. Each participant of a registered security-based swap data repository that is a registered security-based swap dealer, registered major security-based swap participant, registered clearing agency, platform, or registered broker-dealer (including a registered security-based swap execution facility) that becomes a participant solely as a result of making a report to satisfy an obligation under § 242.901(a)(2)(ii)(E)(4) 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) * * *
(6) For periodically obtaining from each participant other than a platform, registered clearing agency, externally managed investment vehicle, or registered broker-dealer (including a registered security-based swap execution facility) that becomes a participant solely as a result of making a report to satisfy an obligation under § 242.901(a)(2)(ii)(E)(4) 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.

8. In § 242.908:
■ a. Amend paragraph (a)(1)(i) by removing the “or” at the end of the paragraph;
■ b. Amend paragraph (a)(1)(ii) by removing the period at the end of the paragraph and adding in its place a semicolon;
■ c. Add paragraphs (a)(1)(iii) through (v);
■ d. Revise paragraphs (b)(1) and (2); and
■ e. Add paragraphs (b)(3) through (5).

The revisions and additions read as follows:

§ 242.908 Cross-border matters.

(a) * * *
(1) * * *
(ii) The security-based swap is executed on a platform having its principal place of business in the United States;
(iv) The security-based swap is effected by or through a registered broker-dealer (including a registered security-based swap execution facility); or
(v) The transaction is connected with a non-U.S. person’s security-based swap dealing activity and is arranged, negotiated, or executed by personnel of such non-U.S. person located in a U.S. branch or office, or by personnel of an agent of such non-U.S. person located in a U.S. branch or office.

* * * * *

(b) * * *
(1) A U.S. person;
(2) A registered security-based swap dealer or registered major security-based swap participant;
(3) A platform;
(4) A registered clearing agency; or
(5) A non-U.S. person that, in connection with such person’s security-based swap dealing activity, arranged, negotiated, or executed the security-based swap using its personnel located in a U.S. branch or office, or using personnel of an agent located in a U.S. branch or office.

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By the Commission.

Dated: July 14, 2016.

Jill M. Peterson,
Assistant Secretary.

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