ISDA Safe, Efficient Markets

November 14, 2014

Elizabeth M. Murphy
Secretary of the Commission
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**Re: Comment Letter on the Proposed Rules re: Regulation SBSR - Regulatory Reporting and Public Dissemination of Security-Based Swap Information (78 Fed. Reg. 30967)**

The International Swaps and Derivatives Association, Inc. ("**ISDA**")[1] appreciates the opportunity to provide the Securities and Exchange Commission (the "**Commission**") with comments in response to the proposed rules regarding Regulation SBSR ("SBSR"). ISDA and its members strongly support initiatives to increase regulatory transparency, and therefore recognize the importance of SBSR. ISDA is grateful for dialogue with Commission staff in recent months to share our experience, perspectives and recommendations as the Commission works toward finalizing SBSR. In furtherance of those aims, ISDA would like to formally submit our comments and suggestions regarding the proposed SBSR rules for the Commission's consideration.

## I. Introduction

ISDA acknowledges and appreciates the time and effort the Commission is taking to thoroughly consider its trade reporting requirements, including considering the corresponding requirements in effect for other regulators, such as the Commodity Futures Trading Commission ("CFTC"), in order to either align with or improve upon such regulations while promulgating the final version of SBSR. Aligning the requirements is essential to gathering quality data that can be shared and analyzed by both commissions.

We encourage the Commission to align, wherever possible and practicable, with the CFTC's Parts 43, 45 and 46 regulations ("CFTC Reporting Rules") in order to allow both reporting entities and Swap Data Repositories ("SDRs") that intend to apply as Security Based Swap Data Repositories ("SBSDRs") to leverage their existing reporting infrastructures for an efficient and cost-effective approach to complying with SBSR. However, there are aspects of the CFTC Reporting Rules that reporting entities have found difficult to comply with and which, if simplified and clarified, would improve the quality of the reported data. These recommendations were provided in ISDA's response[2] to the CFTC's Review of Swap Data Recordkeeping and Reporting Requirements (79 Fed. Reg. 16689). The CFTC is currently considering

[1] Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 64 countries. These members include a broad range of OTC derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure including exchanges, clearinghouses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's web site: www.isda.org.

[2] http://www2.isda.org/attachment/NjY1NQ==/2014%20May%2023%20CFTC%20RFC-%20ISDA%20Response_FINAL.pdf

our recommendations, and we trust they will make some important changes to improve the quality of reported data and firms' ability to comply efficiently and consistently with the regulations. We ask that the Commission also consider our recommendations to the CFTC and enact any relevant changes to SBSR to align with the approach to reporting recommended by ISDA. Such view is based on the extensive experience of our members who have been complying with the CFTC Reporting Rules since December 31, 2012 and more broadly are reporting on a global basis in multiple jurisdictions, including the European Union. An alignment of SBSR with the CFTC Reporting Rules would also help the Commission and the CFTC compare or aggregate data, as needed. Our specific comments and suggestions regarding the proposed SBSR rules are detailed below.

## II. Comments

### A. Reporting Effective Date

We support the SBSR schedule for compliance that provides for the effective date of reporting to be six months after the registration date for all SBSDRs and after the final SBSR rule is issued, provided the SBSR regulations closely align with the CFTC Reporting Rules. Should SBSR include deviations other than those requested in this letter or in ISDA's recommendations to the CFTC, reporting parties will need additional time to alter and enhance their reporting architecture, and in such case we request an effective date that is nine months after the relevant registration date.

However, if the SBSR compliance date precedes registration for Security-Based Swap Dealers ("SBSD") and Major Security-Based Swap Participants ("MSBSP"), then parties entering into security-based swaps ("SBS") may be expected by the Commission to report ahead of the point their obligation becomes certain. Since the substantive SBS regulations are not yet final, dealers have not determined which entities they will register as SBSDs or MSBSPs, and such entities may not be the same entities that are registered as Swap Dealers ("SD") or Major Swap Participants ("MSP"). Requiring reporting prior to such determination by firms and related registration with the Commission will complicate reporting and determination of the reporting counterparty.

In evidence of the above, on October 31, 2014, the derivative trade reporting requirements for dealers and clearing agencies commenced in Canada under the provincial trade reporting rules in Ontario, Manitoba and Quebec (collectively, "91-507"). Meanwhile, completion of the dealer registration rules in Canada is not anticipated until the later part of 2015. The lack of a definitive, publicly available source for which parties are subject to the obligations of a dealer under 91-507 made the process of preparing for reporting extremely challenging, as firms were forced to obtain individual representations in order to understand which of their counterparties agreed to assume the role of a dealer in the reporting party hierarchy. Such decisions were based on broad definitions of a derivatives dealer in either the relevant version of 91-507 (Ontario and Manitoba) or in Quebec's Derivatives Act, and therefore may not align with the ultimate registration requirements of the parties.

In comparison, the deadline for registration with the CFTC as a SD or MSP was completed prior to the commencement of the CFTC Reporting Rules, allowing reporting parties to consistently and accurately populate their static data for determining both whether a swap was subject to reporting and the relevant reporting party based on the publicly available SD-MSP registry[3]. Requiring reporting ahead of the point in time from which there is certainty with respect to which parties have reporting obligations under SBSR documented through a public, accurate source which can be used to determine the reporting party hierarchy would make the task of preparing for SBSR extremely difficult and would have a negative

[3] http://www.nfa.futures.org/NFA-swaps-information/regulatory-info-sd-and-msp/SD-MSP-registry.HTML

impact on data quality since inconsistency or uncertainty would lead to gaps or duplications in reporting. Parties that are not certain whether they will be required to register as a SBSD or MSBSP, will likely take a conservative approach to agreeing to a reporting obligation ahead of the registration requirement, as the consents (they have obtained or will obtain) from their counterparties to allow them to report to the Commission are predicated on a regulatory mandate to do so. In addition, the obligation to report certain SBS could change or the reporting party obligation might shift once the registration requirement goes into effect, forcing a reevaluation and potential wide-spread adjustments to previously reported SBS.

For the reasons specified above, we respectfully urge that the Commission schedule the SBSR reporting compliance date after the effective date of the registration requirements for SBSDs and SBMSPs.

We further note that having a single registration date for all SBSDRs that will be approved ahead of the effective reporting date would ensure that all market participants have equal time to build to their chosen SBSDR. Any disparity in registration dates may disadvantage market participants that use a SBSDR that is registered later than the SBSDR which was first granted registration, therefore starting the countdown to the effective date of reporting.

### B. Reporting Party

*Reporting Side*

As previously conveyed to Commission staff by ISDA, the reporting "side" approach to determining which party is obligated to report is a significant concern for our members. Although understanding whether a direct counterparty's performance of any obligation under a SBS is guaranteed by an indirect counterparty may be required under 17 CFR Parts 240, 241 and 250[4] (the "Cross-Border rules") to determine whether a SBS is subject to reporting under SBSR, we believe the involvement of an indirect counterparty should not be included in the rules for assigning the party responsible for reporting the SBS.

Reporting entities have spent significant effort to agree and build logic to determine a single reporting counterparty for compliance with the CFTC Reporting Rules, and that same approach is being leveraged for reporting in Canada. The approach is based on a reporting party best practice published by ISDA[5] that supplements the reporting hierarchy in the CFTC Reporting Rules and establishes an agreed standard for independently determining the reporting party when the parties are at the same level within the reporting party hierarchy of the rules. This standard is being used widely and successfully by reporting entities, and thus the industry strongly prefers to implement a corresponding standard for reporting SBS that allows them to make limited changes to their existing reporting party determination logic.

Since, aside from the inclusion of the indirect counterparty, the reporting hierarchy in SBSR closely aligns with the hierarchy in the CFTC Reporting Rules, extension of the current industry standard and existing builds is a natural fit. Introduction of an indirect counterparty to the equation significantly complicates the process of determining the reporting party since firms' infrastructure and static data are currently not developed to consider the identity and status of an indirect counterparty as part of the process of determining the reporting party. Such ability has not been necessary since no other global regulator requires the parties to consider guarantor relationships when assigning the reporting counterparty. Additionally, guarantees can be provided more broadly for an entity (e.g., as a deed poll

[4] Federal Register. Vol. 79 (July 9, 2014) *Application of "Security-Based Swap Dealer" and "Major Security-Based Swap Participant" Definitions to Cross-Border Security-Based Swap Activities; Final Rule*

[5] http://www2.isda.org/attachment/NjcwNA==/CFTC%20Reporting%20Party%20Requirements%20updated%20%20May%2030%202014%20v3%20clean.pdf

guarantee) or for a specific trading relationship (e.g. as part of a master documentation) or for a specific transaction. Tracking this kind of detail on a trade by trade basis for the sole purpose of determining which entity has the reporting obligation seems to complicate a process which can be streamlined more efficiently with acceptable results. As the rule requires determination of the indirect counterparty on a trade by trade basis, the reporting side concept significantly complicates building the reporting logic in firms' infrastructures.

We further note that it will be very difficult to implement reporting of Mixed Swaps if there is a different reporting counterparty under the CFTC Reporting Rules and SBSR. Given that compo swaps are Mixed Swaps, there are a significant number of Mixed Swaps that will be reported and for which the data quality would be negatively impacted by a bifurcation in reporting party logic.

Although we recognize that with regards to the reporting side concept the Commission is looking to put the reporting burden on the most sophisticated market participants, we believe the complexity added to the process of determining the party responsible for reporting significantly outweighs any potential gain for non-registrants that may rely on the ability of their indirect counterparty to report on their behalf. Non-registrants that are associated with a registered entity are likely to leverage the existing technological infrastructure of their registered affiliate regardless. Alternatively, a non-registrant affiliated with a registered entity may agree to report the SBS on behalf of the parties. Both of these scenarios are routine to CFTC reporting.

We strongly encourage the Commission to remove the indirect counterparty from SBSR for determining the reporting side to the SBS, and instead adopt a reporting party standard that only considers the status of the direct counterparties to the SBS while still allowing either party to use a third-party facilitator to meet its reporting obligations.

*Indirect counterparty*

The current definition of "Indirect counterparty" in proposed SBSR[6] implies that an indirect counterparty can cause a trade to be subject to reporting even in cases where the direct counterparties to the trade would not lead to a conclusion that the trade is reportable. If the Commission is concerned about picking up guarantors, then we recommend that SBSR limit the scope to U.S. person guarantors and not, as currently drafted, any guarantor. The issue may be resolvable by changing the definition of "Indirect counterparty" as follows:

> *Indirect counterparty* means a U.S. Person guarantor of a direct counterparty's performance of any obligation under a securities-based swap.

We believe this change is consistent with the intent demonstrated by the Commission in the preamble where reference is made to U.S. Person guarantors. The change would be consistent with the CFTC's approach regarding guaranteed affiliates.

*Prime Brokerage*

Prime brokerage, as discussed in this letter, means a credit intermediation arrangement whereby, in its simplest form, a counterparty commits to the economic terms of a transaction with an "executing dealer"

[6] §242.900 (o) *Indirect Counterparty* means a guarantor of a direct counterparty's performance of any obligation under a securities-based swap.

("ED"), with whom the counterparty need not have a credit relationship, and as a result of such commitment two "mirror image" transactions are entered into. One transaction (the "PB-ED SBS") is between the ED and the counterparty's "prime broker" ("PB"), and is generally on the terms committed to between the counterparty and the ED. The other trade (the "PB-client SBS") is between the counterparty and its PB, and is on substantially identical terms to the PB-ED SBS, subject to differences that may reflect the PB's fee or other customized terms agreed to between the counterparty and its PB.

In accordance with current industry practice under the CFTC Reporting Rules, we request that §242.901 of SBSR, unless otherwise agreed by the SBS dealers, assign responsibility for a reporting of the PB-ED SBS to the ED, while assigning responsibility for the reporting of the PB-client SBS to the PB. The ED or PB, respectively, in these cases is best positioned to report the SBS timely and accurately. The CFTC Division of Market Oversight accepted this approach in its No-Action Letter No. 12-53 ("NAL 12-53")[7], and ISDA has requested that the CFTC codify this assignment of reporting responsibilities in revisions to its Part 45 rules. Aligning the approach to reporting prime brokerage trades between the agencies would promote efficiency and consistency and facilitate a single reporting party for Mixed Swaps, thus improving data quality. For the same reason, the Commission, in consultation with the CFTC, should clarify the reporting responsibilities of the parties under the various transaction patterns that occur in cross-border prime brokerage arrangements.

We believe that prime brokerage transactions also require special consideration with respect to the time of execution and public dissemination. Please see sections C. and H., respectively, for details.

*Cleared SBS*

The proposed SBSR rules do not currently assign any reporting obligation to the clearing agency for a cleared SBS. We believe the clearing agency is best-positioned to report cleared SBSs timely and accurately as an extension of the clearing process. Derivatives Clearing Organizations ("DCO's") are currently reporting cleared swaps under the CFTC Reporting Rules, and the clearing agency has been assigned primary responsibility for reporting cleared transactions in many global jurisdictions, including the European Union and Canada.

The CFTC Reporting Rules currently assign primary responsibility to the DCO for reporting of cleared swaps, but also require a SD or MSP to send valuation data on cleared swaps daily to the SDR. Such shared responsibility for the reporting of cleared swaps has proven extremely problematic since DCOs and SD/MSPs may be connected to different SDRs and thus may currently be incapable of sending all data for the swap to the same SDR. CFTC staff has granted relief[8] from the requirement for SD/MSPs to send valuation data for cleared swaps, and ISDA has recommended that the CFTC eliminate the requirement permanently[9]. To avoid similar issues, if the Commission assigns responsibility to clearing agencies for the reporting of cleared SBS, the clearing agency should be the sole party responsible for reporting all the trade data for cleared swaps, including valuation data.

Assuming reporting commences prior to a clearing agency registration requirement, the SBSR should be clear which party is responsible for reporting in the interim as well as in the event a SBS is cleared through a clearing agency that is not required to register, exempted from registration, or granted relief

[7] http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-53.pdf
[8] http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-90.pdf
[9] http://www2.isda.org/attachment/NjY1NQ==/2014%20May%2023%20CFTC%20RFC-%20ISDA%20Response_FINAL.pdf at page 13

similar to the relief in no-action letters issued by the CFTC's Division of Clearing and Risk.[10] We note that the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") deemed some clearing agencies to be registered clearing agencies[11] for clearing SBS, but presumably the list of clearing agencies subject to a registration requirement or recognition will be expanded. Ideally, the clearing agency should be responsible for reporting both before and after a registration requirement, thus eliminating the need for market participants to build to initially report cleared SBS and then be forced to revise their reporting logic to transition such responsibilities to the clearing agency. This process was challenging under the CFTC Reporting Rules and could be improved and simplified based on the lessons learned from that implementation. For the sake of clarity and consistency, the reporting requirement for a clearing agency should apply equally to clearing agencies required to register and those that may be exempted from the requirement but which clear SBS subject to reporting.

SBSR should also clarify the applicable reporting requirements under each of the agency and principal clearing models. Each model results in a different number of SBS and distinct legal entity pairings to those SBS. The CFTC Reporting Rules do not currently acknowledge these clearing models in order to assign reporting responsibility in accordance with the relevant associated swaps. Rather, the CFTC has asked clearing agencies to report in accordance with the agency style model in all cases. ISDA has expressed concerns with respect to this approach[12], but more importantly we would prefer that the approach in the U.S. is aligned. We note that there are already disparities in approaches required for reporting cleared transactions relative to the clearing model[13] which will impact the ability to meaningfully aggregate and compare data globally.

*Alpha swaps*

The CFTC Reporting Rules treat a cleared swap as a single trade[14] and thus do not clearly and purposefully assign reporting responsibility for the individual swaps that make up the cleared swap flow. The industry commonly refers to the original bilateral trade between the counterparties as the alpha, and the trades that result from the process of clearing between each of the counterparties and the clearing agency, as the beta and gamma. As explained above, we believe the clearing agency is uniquely positioned to report the beta and gamma.

As regards the alpha (which under CFTC Reporting Rules is reportable by one of the counterparties to the alpha trade), ISDA has suggested the CFTC should eliminate the Part 45 SDR reporting obligation for the alpha swap, arguing that the alpha adds little or no value to an analysis of market exposure since it is immediately replaced by the beta and gamma and cannot exist unless the swap is cleared. CFTC staff is currently considering this change. As regards public dissemination of relevant pricing data for a SBS subject to clearing, such reporting should be done by the clearing agency when a SBS is accepted for clearing and the clearing agency reports for the beta and gamma. Such real time reporting will be shortly after execution and submission for clearing of the alpha trade. Ideally, the CFTC and the Commission will settle on an aligned approach. Should the approach differ, the key to improving data quality is to have a single party responsible for reporting a cleared transaction, and thus with respect to either reporting for purposes of public dissemination and/or reporting to a SBSDR, the clearing agency should be responsible for the alpha once it is accepted for clearing. This approach allows the data pertaining to the execution of the alpha to be more easily and accurately linked to the resulting beta and gamma.

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[10] See, e.g., http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-107.pdf; http://www.cftc.gov/ucm/groups/public/@newsroom/documents/letter/14-27.pdf.
[11] 15 U.S.C. 78q-1(l).
[12] http://www2.isda.org/functional-areas/technology-infrastructure/data-and-reporting/responses/ at p. 45
[13] *Ibid;*
[14] http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-33199a.pdf at 2156, 2157

*SEF executed*

The CFTC assigns the initial reporting responsibility for swaps executed on or pursuant to the rules of a Swap Execution Facility ("SEF") or Designated Contract Markets ("DCM") to the SEF or DCM. Certain aspects of reporting bilateral swaps executed on-facility have been challenging due to (i) the difficulty for SEFs to know and report certain trade data that is not essential to the trade execution and (ii) because of the shared responsibility for reporting since the SEF/DCM is responsible for the initial creation data reporting and the SD/MSP is responsible for the continuation data reporting. On the first point, requiring SEFs to report data that is not in their possession has created enormous challenges and concerns under the CFTC Reporting Rules for both SEFs and their counterparties. Shared reporting responsibility for on-facility trades yields the same difficulties described above with respect to cleared swaps, since the SEF/DCM and the SD/MSP may be connected to different SDRs.

The proposed SBSR rules do not currently assign a reporting responsibility to the execution platform. Since having both the SEF/DCM and the SD/MSP report on a bilateral swap is problematic in the CFTC space, we recommend a bifurcated approach to reporting of SBS executed on-facility that aligns with our recommendations in the preceding section regarding alpha swaps. Under such approach, the clearing agency is responsible for a reporting an alpha trade once it has been accepted for clearing. For a bilateral transaction that is not intended for clearing, one of the counterparties should be responsible for reporting per the reporting party hierarchy (as addressed above). Therefore, no reporting responsibility should be assigned to the SEF/DCM in accordance with the proposed SBSR rules, allowing a uniform approach to reporting cleared vs. uncleared SBS regardless of the execution method.

*Reporting novated SBS*

The proposed SBSR rules transfer the responsibility for reporting a novated SBS from the transferor to the transferee in the event the transferor was the reporting side. ISDA believes this approach is problematic from both an implementation and maintenance perspective. First, as a result of the transfer of reporting obligations along with the SBS, it is possible that a reporting side will be established for the SBS that contradicts the reporting hierarchy in the SBSR (e.g. a MSBSP reports over a SBSD or a non-SBSD/MSBSP that's a U.S. Person reports instead of a SBSD). Such contradiction to the reporting hierarchy will be confusing to parties and difficult to implement since non-SBSD/MSBSPs may not have the infrastructure for reporting. In addition, reporting entities do not currently have the technological capability to carry the reporting party as a term of the novated transaction in their booking systems. Rather the reporting party for a transaction is determined in separate systems as part of their reporting infrastructure, thus retaining a reporting party determination at a trade level that contradicts the reporting hierarchy will be challenging to build and may lead to over or under-reporting in the event of any inconsistencies between the parties. Should there be a discrepancy between the parties with respect to which of them holds the reporting obligation, the history of the trade will need to be considered rather than simply referring to the hierarchy in the SBSR. This would also make it more difficult for the Commission to monitor which party holds the reporting obligation.

Instead, ISDA recommends that the Commission follow the standard established by the industry for reporting in other juridictions whereby the reporting party is reassessed upon novation based on the current registration status of the remaining party and the transferee, thus taking into account their presumed technological capabilities relative to one another. As reporting entities have already built to this standard, the approach can be readily leveraged for reporting SBS and will not require parties to build new methods of transferring the reporting party as a trade-intrinsic value of the novated SBS. Following this industry standard approach would also support determination of the same reporting party for Mixed Swaps.

### C. Primary and Secondary Trade Information

We appreciate the general efforts of the Commission to come up with a clearly defined list of reportable data fields. Requiring reporting of data fields that are not explicitly defined is extremely challenging for repositories and reporting parties to comply with and undermines data quality. However, we believe certain data fields currently included in proposed SBSR would be difficult to provide or could benefit from additional clarity, as provided below. Further, we believe any required data should be clearly established by the Commission in its rules and not decided in part by SBSDRs.

*ID fields*

The secondary trade information in SBSR includes the requirement to report, as applicable, the broker ID, desk ID and trader ID of the direct counterparty on the reporting side. No industry standard Unique Identification Code ("UIC") has been established for broker, desk or trader IDs, nor is one under development. A UIC for these fields either established by an internationally recognized standards-setting body or one assigned by a SBSDR would be costly and take a great deal of effort and time to implement. Since we do not believe there is a much value to be derived from reporting this data, we ask the Commission to reconsider the requirement. Adding such functionality will be challenging and costly, especially for less-sophisticated market participants that may have reporting obligations. Reporting such values will be extremely difficult for firms as they are not required in most cases by other regulators and thus many reporting entities do not have the technological capabilities in place to report them. Only the identity of the SEF or DCM is reported under the CFTC Reporting Rules. Under the EMIR rules, broker ID is required, but not desk ID or trader ID. In Canada, only broker ID is required, but we note that reporting entities are struggling with the availability of an LEI to identify brokers that have not been subject to a mandate to obtain one. So depending on which regime(s) under which a reporting entity may also have trade reporting requirements, they will have limited capacity to comply based on their current infrastructure. We suggest that the Commission eliminate broker ID, desk ID and trader ID from the list of reportable secondary trade information. If the Commission wants to retain these fields we strongly believe a cost-benefit analysis should be conducted.

*Governing agreements*

Proposed §242.901(d)(1)(iv) requires the reporting of the title and date of any master agreement, or any other agreement governing the transaction, including those regarding margin obligations, which is incorporated by reference. It is not apparent what value the title and date of these party level agreements adds to the analysis of SBS data, and such information may be difficult to provide. The title and date of a Credit Support Agreement or other similar document ("CSA") governing the collateral arrangement between the parties is not required to be reported in other global jurisdictions; therefore, global trade repositories do not currently have fields to support separate reporting of data pertaining to the CSA from those which define the master agreement. Equally challenging is firms' ability to report data pertaining to the CSA as the terms of these agreements are not readily reportable in an electronic format nor could this be easily or accurately achieved. Any attempt to require the terms of governing agreements must be considered under the right framework, based on industry evolution to standardize these elements for a broader purpose. As a first example, FpML has started the development of a framework for the representation of legal documents; version 5.7 contains a representation for the Standardized Credit Support Annex ("SCSA"). But in the meantime, this has not evolved sufficiently and should not be required. Importantly, other global regulators have reviewed the need for the terms of master agreements and other governing agreements and have limited their trade reporting requirements to the relevant date and type of the master agreement. We believe the requirement should be limited to identification of party level master agreements that govern all the derivatives transactions between the parties, and should not include master confirmations or other documentation that is used to facilitate confirmation of the SBS.

*Market value*

Proposed §242.901(d)(1)(v) requires reporting of the data elements necessary to determine the market value of the transaction. This requirement is vague, leaving reporting parties and trade repositories with the task of establishing the reportable data with potentially different result. Based on experience reporting under other global regulatory requirements, we believe this section of the rule should clarify the requirement to report (i) the mark-to-market value and currency code and (ii) the date and time of the valuation in Coordinated Universal Time (UTC).

As secondary trade information, the elements necessary to determine the market value would be reportable in the timeframes prescribed in proposed §242.901(d)(2), which may be as little at fifteen minutes after the time of execution. However, as further addressed in section F. below, such valuation data is determined as part of end of day processes and therefore cannot be reported in the same timeframe as other secondary trade information. We request that SBSR include a separate timeframe for reporting the data pertaining to market value that is based on the end of day on which the relevant data was determined.

*Execution venue*

Proposed §242.901(d)(ix) requires reporting of the venue where the SBS was executed. We assume this only refers to execution platforms required to register with the Commission or the CFTC (i.e. a SEF), but request that the Commission clarify in SBSR.

*Time of Execution*

In accordance with the methodology recognized in NAL 12-53, we request that SBSR specify that the time of execution for a PB-ED SBS is the time of commitment to economic terms with the PB client, while for the PB-client SBS, the PB may use the time of acceptance as the time of execution for reporting purposes. This approach is consistent with our proposed treatment of prime brokered SBS for public dissemination provided in section H. below.

*SBSDR data requirements*

Proposed §242.907(a)(1) provides that SBSDRs must establish policies and procedures that enumerate the specific data elements of a SBS or a lifecycle event that the reporting side must report, which shall include, at a minimum, the data elements specified in 242.901(c) and (d). This provision implies that some authority to establish data requirements is being delegated to SBSDRs. For the sake of certainty for purposes of complying with SBSDR and the quality and consistency of data gathered across SBSDRs, we request that the Commission clarify any data it requires in SBSR and that any additional fields provided by SBSDRs for reporting should be optional.

### D. Reporting Timing

*Bunched Orders and Allocations*

Proposed §242.901(c) requires that the primary trade information for a SBS be reported in real time, or if not subject to public dissemination, no later than the applicable deadline established in 242.901(d)(2) for reporting the secondary trade information. The deadlines are based on a defined period after the time of execution.

Some SBS are initially entered into between a dealer and an asset manager on behalf of its clients (a "bunched order") with an aggregate notional that is later allocated to different funds. Once the asset manager has provided the dealer with the identity of the counterparties and the notional breakdown for the bunched order, the dealer can complete its trade bookings and determine whether each allocation is subject to reporting based on the relevant static data for each counterparty. Therefore, the timeline for reporting of SBS resulting from a bunched order can only begin once the dealer, presumably the reporting party, has received and booked the allocations. Most bunched orders are allocated within a few hours of execution, but on occasion allocation may occur on the day following the trade date (e.g. if the dealer and asset manager are in different time zones). We request that SBSR reflect that the timeframe for reporting SBS resulting from a bunched order commences upon receipt of the identity of the counterparties to the bunched order by the reporting party during its own business hours.

Since reporting of post-allocation data does not enhance price-discovery, we suggested that the bunched order be subject to public dissemination instead of the allocations. This approach is applied under the CFTC's Part 43 rules.

*Confirm*

The term *Confirm* is defined in §242.900 for the purpose of establishing reporting timeframes in 242.901(d)(2) based on the method of confirmation (i.e. electronic vs. non-electronic). Confirms are exchanged and agreed via a variety of flows, many of which do not involve an actual or equivalent of "signing" the confirm. Therefore we suggest that the Commission use the term "issued" instead to better reflect existing market practice with respect to confirming the terms of a SBS.

### E. Post-priced SBS

ISDA has already discussed with Commission staff the existing questions regarding the timing for reporting SBS for which all primary trade information may not be known at the point a client places an order, and for which the completion of the terms of the agreement maybe contingent upon subsequent hedging activity or an agreed upon market observation period ("post-priced SBS"). The primary concern presented by such transactions is the information leakage which would result from the reporting of a post-priced SBS before all material terms of the SBS are finalized, in particular price and size, and the advantage which other market participants will gain due to this information leakage to the determinant of the SBS customer. Importantly, it is extremely difficult in practice for reporting parties to report prior to the time the key pricing and/or notional terms are known. Requiring reporting prior to the certainty of such terms would result in incomplete and incorrect or misleading data.

Therefore, we respectfully request that the Commission make it clear in SBSR that the "time of execution" which commences the timeframe for reporting post-priced swaps is only achieved once all relevant primary trade information is determined, including the price and the notional.

### F. Continuation Reporting

*Lifecycle event reporting*

Proposed SBSR requires parties to "promptly" report any adjustment due to a lifecycle event that results in a change to information previously reported. Under the CFTC Reporting Rules, an SD or MSP is allowed to report such events as either lifecycle event data on the same day the event occurs or as state data daily. Non-SD/MSPs may report these events as lifecycle event data or state data no later than the end of the first business day following the event. As reporting parties wish to leverage their existing CFTC reporting infrastructures for SBSR, we request that the Commission confirm in their rules that the same approach and timelines may be applied to meet the requirement under SBSR.

We also request that the reference to "dividends" in relation to corporate actions be removed from the definition of life cycle event in §242.900(p). These are contract intrinsic events that do not result in a change to the contractual terms of the SBS and therefore, should not be a defined as reportable life cycle events.

*Valuation data reporting*

Proposed SBSR requires the reporting side to "promptly" provide updated information regarding a change in valuation data that has been reported. We infer this means that there is no requirement to report valuation data on a daily basis provided there has been no change in the data, and would appreciate the Commission's confirmation of that approach. We further note that valuation data is determined as part of firms' end of day processes, so prompt reporting of a relevant change could occur only after completion of the relevant batch processes.

### G. Unique Identifiers

*Trade Identifier*

Proposed SBSR provides that the SBSDR should assign the Transaction ID. We strongly believe the party reporting the SBS should assign or provide the Transaction ID instead. At this stage, reporting is global in nature and many SBS already have been reported to other global jurisdictions for which a Unique Trade Identifier ("UTI") (including a CFTC Unique Swap Identifier) has already been assigned by one of the parties or a central execution, affirmation or confirmation platform in accordance with industry standard practices for trade identifiers that have developed in absence of a global regulatory standard. For the sake of efficiency and in consideration of global data aggregation, we recommend that the Commission allow a reporting party to use the UTI already established for a SBS for further reporting under SBSR and acknowledge that trades newly subject to reporting under SBSR may be assigned a trade identifier in accordance with existing industry UTI best practices[15].

If the Transaction IDs are not conformed to the CFTC approach, Mixed Swaps could have different identifiers under CFTC and SEC rules, which would complicate firms' internal reconciliation processes as well as data comparisons between the agencies. Further, having the SBSDR supply the Transaction ID could delay its availability for the SBSD to use as a UTI in other jurisdictions, which would also complicate firms' internal reconciliation processes and aggregation of data globally.

[15] http://www2.isda.org/attachment/NzAxOQ==/2014%20Oct%202%20UTI%20Whitepaper%20v10.7_Final.pdf

In order to support a goal of Dodd-Frank to promote effective and consistent global regulation[16] and in accordance with the *Feasibility study on approaches to aggregate OTC derivatives data* released by the Financial Stability Board[17] ("FSB") on September 19, 2014 (the "FSB study"), we recognize the benefit of a single trade identifier that is used for multi-jurisdictional reporting. ISDA and its members, in cooperation with other trade organizations, wish to work with global regulators to help converge on a global solution that is acceptable to the FSB members. The standard for a global trade identifier developed through ISDA is in use broadly in the market for reporting in numerous jurisdictions. Firms would like to continue to follow this standard while we work with global regulators to either obtain regulatory acceptance of ISDA's UTI standard or jointly develop and transition to a variation on, or alternative to, this approach.

*Party Identifier*

The Global Legal Entity Identifier ("LEI") standard has developed significantly since the Commission first issued proposed SBSR; therefore we suggest the rules reflect primary use of LEI as the Party Identifier. However, despite the advancement of the LEI as a global standard and the clear value of its consistent use, there are still a significant number of global counterparties that are not yet required to obtain one by their primary regulator or have not yet done so. In addition, based on the large scale of historical SBS that we expect will be subject to reporting, there will be transactions for which the counterparty no longer exists or for which the reporting party no longer has an active relationship. In such cases it is either impossible or extremely difficult to compel the availability of an LEI.

We recommend that the SBSR reflect the need to use an LEI "when available", thereby recognizing that a reporting party may request but cannot compel its counterparties to obtain one and instead may need to use an alternative party identifier. The industry has established a standard waterfall of alternative counterparty identifiers (e.g. a GTR Participant ID, AVOX ID or a reporting party internal ID) for use in other reporting jurisdictions in the event an LEI is not available, and we expect that firms will need to extend such practice to SBSR.

*Product ID*

There is no UIC that has yet been assigned by an internationally recognized standards setting body for use as the Product ID. In lieu of this, proposed SBSR says the Product ID is the code assigned by the SBSDR. Market participants are already using an industry standard taxonomy developed by ISDA for purposes of reporting a Unique Product Identifier ("UPI") for derivatives trade reporting. The ISDA OTC Taxonomy[18] is in use or is planned for use in a number of jurisdictions, including Canada, Japan, Australia, Hong Kong, Singapore, in addition to reporting under the CFTC Reporting Rules.

ISDA has been working with global regulators to obtain acceptance of the ISDA OTC Taxonomy as the UPI standard for reporting in the first instance, while working with global regulators on a robust UPI solution. In furtherance of the recommendations in FSB study, we will continue that dialogue and are open to collaborating with regulators to enhance the taxonomy to meet their mutual aims. In the meantime, we ask that the Commission acknowledge use of the ISDA OTC Taxonomy as an acceptable Product ID for reporting under SBSR and recognize that reporting parties, as opposed to SBSDRs, are generally best positioned to assign these values.

[16] Sec.752. INTERNATIONAL HARMONIZATION (H. R. 4173 -375)
[17] http://www.financialstabilityboard.org/publications/r_140919.pdf
[18] http://www2.isda.org/attachment/NzA1MQ==/ISDA%20OTC%20Derivatives%20Taxonomies%20-%20version%202014-10-22_live.xls

## H. Public dissemination

*Excluded SBS*

Proposed §242.907(a)(4) implies that a SBSDR should make its own assessment and establish policies for how and whether certain data should be reported, including "transactions that, in the estimation of the registered [SBSDR], do not accurately reflect the market." Whether and how certain SBS activity is publicly disseminated seems to be delegated to the discretion of SBSDRs. Rather than allowing SBSDRs to make such important policies which impact public transparency, we respectfully request that the Commission clearly establishes in SBSR that certain SBS activity is not subject to public dissemination.

Certain SBSs and SBS activity should be excluded from the requirement for public dissemination under §242.902 if they are not arm's length transactions or do not result in a corresponding change in the market risk position between two parties. We request that the Commission specify in SBSR that inter-affiliate trades, trades resulting from portfolio compression exercises, post-allocation activities, the PB-client leg of a prime brokerage intermediation transaction, and any activity on a SBS that does not affect the price of the reportable SBS are excluded from the public dissemination requirement. With respect to allocations and bunch orders, only information relating to the pre-allocation SBS should be subject to public dissemination and not the allocations themselves as it is only the market-facing SBS that enhances price discovery. Further, with respect to SBS entered into via prime brokerage arrangements, the PB-client SBS serves no price discovery function since the pricing of the PB-client SBS generally is determined by the earlier commitment to economic terms reflected in the ED-PB SBS, and the prime broker assumes no net market risk upon acceptance of the mirror image SBS transactions.

ISDA believes that public dissemination of these types of SBSs and SBS activities does not increase price transparency. Public display of such activities may actually confuse the market and undermine the value of the data provided for public transparency since it would artificially inflate the amount of activity that has been executed and off-set the reporting of activity that reflects market risk. It would also increase costs to implement reporting. Excluding the above list of SBS activity from public dissemination would align SBSR with the CFTC Reporting Rules and facilitate equal treatment of Mixed Swaps with respect to public dissemination.

In addition to the fact that such transactions and activities do not enhance price discovery, the public disclosure of such information may also increase the likelihood of disclosing information to make it easy to identify a counterparty's identity, their business transactions or market positions.

*Lifecycle events*

As suggested above, only lifecycle events that result in a change to the price of the SBS should be subject to public dissemination, otherwise such activity will misrepresent the level of market activity and the cost of the activity relative to current market pricing.

The SBSR should clarify what shall be reported as the *time of execution* for a lifecycle event for purposes of public dissemination. While the CFTC Reporting Rule has no specific provision on this point, CFTC staff has clarified that it wishes market participants to report the execution time of the original trade as the execution time for a life cycle event on such trade (and not the time when the parties agreed on the post trade event as the execution time for the life cycle event). We note that under the CFTC's suggested approach, the data that is publicly disseminated for lifecycle events may not be that meaningful to the public as it does not include any indication of the point in time the reported price has been traded. In addition, the Commission may have more difficulties monitoring whether reporting for these events was completed timely. Instead, we believe the *time of execution* for a lifecycle event for purposes of public

dissemination should be the date and time such price-forming event is agreed; a value that should be separately maintained from the time of execution for the SBS.

We ask that the Commission coordinate with the CFTC on a uniform approach to the time of execution for swaps, SBS and Mixed Swaps and include specific requirements in SBSR. An inconsistent approach lessens the ability to meaningfully analyze the data and complicates reporting.

*Disseminated data*

Proposed §242.902(a) should be revised to clarify that the transaction report shall consist of only the information reported pursuant to (c) of §242.901, rather than all information reported pursuant to §242.901.

*Illiquid SBS*

The Federal Reserve Bank of New York published *An Analysis of CDS Transactions: Implications for Public Reporting* (the "Fed Report") in 2011. The Fed Report characterized only 48 of the 1,554 corporate reference entities studied as 'actively traded' – these entities traded an average of 10 times per day (with a maximum of 22). The Fed Report characterized roughly 200 entities as 'less actively traded' which traded approximately 4 times per day. *The approximately 1,200 remaining credits traded less frequently than once per day*.[19] They note that "the combination of low and variable trading frequency with large and homogenous notional trade size…seem to highlight the importance of market makers…Hence any public reporting rules should take into account the impact of enhanced trade reporting on the current activity of market makers."[20]

ISDA believes that the institutional and illiquid nature of the SBS market requires a somewhat different approach to post-trade price transparency than has been applied to other markets with higher trade counts and broader participation. Most institutional investors today already have significant pre- and post-trade transparency in the form of direct communication from dealers. General market practice is for dealers to broadly disseminate indicative pricing on a range of reference entities, including those that have not traded recently, in the form of electronic messages called "runs". A brief survey of buy-side users of SBS indicates that a typical buy-side institution gets thousands of runs from their trading counterparties with pre-trade price information on single name CDS daily. The combination of these name-attributed runs and a rapidly disseminated set of post-trade information would make it relatively easy for many participants to reconstruct the identity of parties to a particular transaction. This may reduce dealer willingness to disseminate pre-trade price information in the form of runs, thereby reducing pre-trade price transparency for recently traded as well as not traded reference entities.

ISDA respectfully proposes that illiquid SBS should receive an exception from real-time reporting and asks that delays roughly commensurate with the trading frequency of an SBS be permitted.[21] This will allow both for transparency to the public prior to the expected occurrence of the next trade and at least some extended time for the participants in the trade to offset their resulting exposure.[22]

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[19] Katherine Chen et. al.. *An Analysis of CDS Transactions: Implications for Public Reporting*. Federal Reserve Bank of New York Staff Reports no. 517. September 2011, p. 10

[20] *Ibid; p. 12.*

[21] For example, if a particular SB swaps trades on average once per day, then a 24 hour delay is appropriate, where as one that trade 10 times a day could be reported in real time.

[22] We note, for example, the recent issue that public dissemination led to the identification of the Mexican oil hedging strategy. For more information: http://www.ft.com/intl/cms/s/0/4d8957a0-4015-11e4-a343-00144feabdc0.html.

*Block dissemination*

In discussing the original proposed SBSR, the Commission devoted significant space to the question of block trade reporting delays (FR 75 at 75224-232). Within the discussion, the Commission focuses on the impact of a dealer's cost to hedge in the SBS market itself. However, participants may enter into risk mitigating transactions using other products that are more readily available at the time of the initial trade (for example, CD index product, CDS in related reference entities, bonds or loans issued by the reference entity or a related entity, equities or equity options).[23] Those imperfect hedges may themselves be in highly illiquid products. The hedges would remain in place until such time as the dealer is able to offset the original risk. Under this scenario, full and immediate dissemination of the price and size of the block trade could undermine the dealers' ability to engage in both the temporary hedge and the ultimately offsetting CDS transaction.

The Division of Trading and Markets and the Division of Economic and Risk Management published a memorandum on October 17th regarding "Inventory risk management by dealers in the single-name credit default swap market" (the "Hedging Memo"). This follows from other work done by regulatory bodies and industry groups on the liquidity in the SBS market. The Hedging Memo's methodology was to attempt to determine a "seed transaction" in which a dealer entered into a large initial risk transfer with a customer and then attempts to estimate "the degree to which dealers hedge" the seed transactions.[24] The memo concludes that "hedging activity is not common and most hedging activity happens within a day of the initial inventory shock."[25]

While not disputing the data in the Hedging Memo, ISDA respectfully disagrees with the conclusion. The data does not imply that hedging does not occur nor does it imply that dealers leave large portions of trades unhedged indefinitely. According to the Fed Report, most reference entities trade "less than once a day"[26] and that "only a small subset of [reference entity/maturity pairs] were traded [at all] over the period."[27] If a reference entity trades less frequently than once per day, and a particular reference entity/maturity combination trades less frequently than that, it is unlikely that a dealer could hedge a large transaction using CDS in the same reference entity even over a period of five days.[28]

As stated above, hedging can take many forms and, particularly in illiquid products, is frequently performed using instruments other than the one in which the original (or "seed") risk transfer occurred. ISDA interprets the data in the study to imply that such temporary hedges in other asset classes (rather than offsetting transactions in the precise reference entity originally traded) are the norm for an illiquid market. Furthermore, they can remain in place for several days, if not weeks or months. We believe the

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In addition, the CFTC has recognized that the public dissemination of data in illiquid products could disclose the business transactions and market positions of a counterparty. The CFTC acknowledged that swaps in less liquid markets may be subject to longer reporting time, noting that "there are bespoke, off-facility transactions in which the underlying asset is a physical commodity; these transactions carry a significantly increased likelihood that the public dissemination of the underlying asset may disclose the identity, business transactions or market positions of a counterparty." 77 Fed. Reg. at 1210. More recently, the CFTC granted no-action relief from its Part 43 requirements for certain illiquid swaps. See CFTC Letter No. 14-134 (Nov. 6, 2014). We believe that the public reporting of illiquid SBS yields the same concerns relating to disclosure of identities, business transactions and market positions.

[23] Fed Report, p. 17.

[24] Hedging Memo, p. 8.

[25] *Ibid;* p. 9.

[26] Fed Report, p. 10.

[27] *Ibid;*

[28] Furthermore if a dealer would leave a large CDS trade unhedged, the dealer is certainly engaged in poor risk management and may run afoul of other regulations including the Volcker Rule.

Fed Report supports this interpretation. [29] Therefore, to say that little subsequent activity occurred in the CDS of a particular reference entity between day one and day five is not to say that the transaction remained unhedged and that consequently same day reporting will not harm liquidity providers. Since dissemination of block trade information can impact transactions not only in the SBS itself but also in related products, ISDA believes a significant delay in dissemination is justified.

We therefore recommend that rather than requiring SBSDRs to publicly disseminate a SBS transaction that constitutes a block trade immediately upon receipt and withhold certain trade information, we recommend that SBSDRs instead apply a delay to public dissemination of the SBS in its entirety for at least five days and delay dissemination of the full notional indefinitely. ISDA notes that (i) the CDS market, for example, is significantly less liquid than the underlying bond market (ii) TRACE allows for an eighteen month delay in displaying the full size of block trades and (iii) the CFTC's Part 43 requirements allow for an indefinite delay of the full notional amount.

*Cap Sizes*

Understanding the objective to balance the goal of post-trade transparency and the ability for market participants to mitigate risks, we recommend the use of a notional cap in each asset class. The use of such a cap should be harmonized with CFTC methodology (in each of the asset classes), which at a point following April 10, 2014, the CFTC can produce minimum cap sizes, announcing their "post initial period", based on a newer 75% methodology (roughly 75% of the total notional amount of swaps in that category that were transacted over a designate period). The recommended harmonized approach for SBSR should follow the same 75% framework (rather than the current CFTC cap size framework of static dollar amount by asset class (example: $100M for CDS)).[30] The use of such caps will also help to protect against the public dissemination of information that could identify the identities, business transactions and market positions of market participants.

*Special Treatment for transactions between SBSDs*

Proposed SBSR requires the indication to the effect that both counterparties to a SBS are SBSDs. Creating special treatment for such transactions reduces the anonymity of transaction participants and may therefore create incentives that impair liquidity in the SBSD market and reduce the variety of tools used to mitigate risk. ISDA believes that such an indication will result in worse pricing and reduced liquidity for end-users.

The population of SBSD is sufficiently small that an educated market participant may be able to identify the SBSD participant based on the ongoing characteristics of their transactions. The CFTC has made specific provisions through-out their Part 43 rules to protect the anonymity of parties to a swap, and prohibit dissemination of pricing and swap transaction information which may facilitate identity discovery, including the exclusion of SD classification from the publicly reportable data set. Further, in other markets (cash equities as example), publically disseminating that a trade is between two market makers is not an existing reporting requirement. In the effort of harmonization, the same should hold true in SBSR.

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[29] It deserves note that the Fed Report conclusions are in line with this reasoning. The report correctly states that "same day reporting of CDS trading activity may not significantly disrupt same day hedging activity…*in the same instrument*". From one perspective, that statement is self-evident since a CDS trade a dealer does with a client is likely the only trade done in that reference entity on that day. From ISDA's perspective, the more relevant question is "what impact will same day reporting have on a dealer ability to hedge in related instruments and to trade out of the precise CDS risk over a period of weeks or months?"

[30] We note that TRACE also uses caps based on volume with respect to information that is publicly disseminated.

*Terms of Floating Rate Payments for Equity Swaps*

For many SBSs in the equity asset class, the floating rate leg of the SBS is comprised of a benchmark rate plus/minus a spread. In these SBSs, the spread over or under the benchmark contains information about the direction of the customer transaction (positive spreads indicating a customer long swap and negative spreads indicating a customer short SBS). This information (i.e., which side of the market the customer has taken) is not publicly disseminated in other reporting regimes. ISDA believes that this additional disclosure may harm customers as they build their positions by offering other market participants an opportunity to anticipate their execution strategy in a manner that is not available through public disclosure of execution prices. Accordingly, if reporting the spread value is a required or optional field, ISDA believes that when disclosing the price or terms of the floating rate payment, the spread value should be masked for SBS in the equity asset class.

*Transaction ID*

Proposed SBSR requires public dissemination of the Transaction ID, either immediately upon receipt by the SBSDR or as part of the complete transaction report for a block trade. We feel strongly that the Transaction ID should not be publicly disseminated as it could compromise the anonymity of the parties to the SBS. As currently created, most UTI include a prefix to ensure uniqueness that could be used to identify the party that created the UTI. The SDR uses the UTI behind the scenes to administer data that is publicly disseminated without actually displaying such value. Instead an SDR may create a separate Dissemination ID solely for purposes of tagging publicly disseminated transactions. SBSR should distinguish between a transaction ID (i.e. a UTI) used for reporting to a SBSDR vs. a transaction ID used exclusively for SBSDRs to administer public reporting.

*Proprietary baskets*

§242.901(c)(2) requires the reporting of information that identifies the SBS instrument and the specific asset(s) or issuer(s) of any security on which a SBS is based as primary trade information; as such, this data would be subject to public dissemination. Reportable SBS may include customized narrow-based baskets which a counterparty deems proprietary to their business and for which public disclosure would compromise their anonymity and negatively impact their trading activity. We believe that proprietary baskets should qualify as non-disseminated information under §242.902(c) and request that in SBSR the Commission specifically recognize propriety baskets as example of non-disseminated information.

*Restriction on market data sources*

With respect to §242.902(d), it is unclear why any person should be allowed to make the data available to another market data source ahead of the time that a SBSDR is allowed to publicly disseminate such transaction. We recommend this section be revised to refer only to the time that a SBSDR disseminates a report of the SBS.

This provision should also include a carve out for (i) counterparties and their affiliates to allow for internal communication of SBS data and (ii) third party service providers which one or both counterparties use for execution, confirmation, trade reporting, portfolio reconciliation and other services that do not include the public dissemination of SBS data.

Finally, in accordance with the CFTC's regulation §43.3(d)(2), once publicly disseminated, the data should be freely available and readily accessible to the public.

## I. Pre-enactment and Transitional SBS ("historical SBS")

Proposed SBSR requires pre-enactment SBS to be reported no later than January 12, 2012 (a date that clearly cannot be met), while transitional SBS are reportable on the effective reporting date (i.e. six months after the SBSDR registration date). As firms' systems cannot easily distinguish pre-enactment from transitional SBS, practically they should have the same timeline for reporting. Such approach would be in accordance with how reporting requirements for historical trades were met with respect to the CFTC's Part 46 rules.

In order to meet their reporting obligation for lifecycle events, reporting entities have found it practical to report live historical trades in advance of the reporting effective date applicable to new transactions and life-cycle reporting. Therefore, we suggest an aligned reporting effective date for historical SBS that are still live, or expected to be live, as of the reporting effective date.

However, there is not a similar dependency for reportable historical SBS that are no longer live. Due to the length of time that will have transpired between the enactment date of Dodd-Frank and the commencement of reporting under SBSR, the volume of non-live historical SBS will be massive and therefore it will require a great deal of time and effort for firms to identify, prepare and report these transactions to a SBSDR. Additionally, some of the information may already be "archived" and it may, thus, take more time to access internally. Conducting this effort at the same time firms are preparing to commence reporting of new trading activity would be a significant burden for reporting entities. As these SBS do not reflect current industry exposure, we believe reporting of non-live historical SBS should be made subsequent to live historical SBS. Establishing a reporting effective date for non-live historical SBS that is a year after the commencement of SBS reporting would allow sufficient time for reporting entities to report these transactions accurately and effectively without compromising the quality of the reporting for new SBS activity.

## J. Cross-border matters

*Conducted within*

§242.908(a)(1)(i) provides that a reporting side shall report a SBS if it is conducted within the United States. As the Commission did not include guidance for "transactions conducted within the United States" in the Cross-Border rules and instead intends to seek public comment in order to revisit this concept, we request that the Commission remove this provision from SBSR.

We note for the Commission's consideration, that complying with a reporting requirement for SBS that would not otherwise be reportable based solely on location of dealing activity would not be practicable since it would need to be determined on a trade by trade basis and could not be based on party level static data. The architecture does not currently exist for a reporting party to determine this type of nexus for themselves, but worse, a party would not have the capability to understand and capture whether its counterparty meets the parameters for a "conducted in" requirement in order to determine whether the trade is reportable. The counterparties must have a clear, accurate and aligned understanding of which SBS are subject to reporting in order to determine the reporting side. We strongly believe that it is not possible to share a reporting obligation based on trade by trade level determination of the location for dealing activity applicable to each non-U.S. counterparty.

*Non-SBSD/MSBSP, non-U.S. Person SBS*

Proposed §242.901(a)(5)(i) provides that if neither side of the SBS includes a SBSD or MSBSP and either both sides include a U.S. person or neither side includes a U.S. person, then the sides shall select the reporting side. We do not believe that a SBS for which neither party is a SBSD, MSBSP nor a U.S. Person would be subject to reporting under SBSR, and therefore we ask that §242.901(a)(5)(i) be revised to refer only to cases where both sides are U.S. persons.

### K. Data Privacy

Based on the issuance of the September 2014 *Report of the OTC Derivatives Regulatory Group (ODRG) on Cross-Border Implementation Issues*[31], we know the Commission is cognizant of the legal impediments that reporting parties face with respect to data privacy restrictions based, for instance, on either their own jurisdiction and/or the jurisdiction of their counterparties. If either (i) consent is required for disclosing trade data to the Commission and such consent has not or cannot be obtained or (ii) a counterparty consent is not sufficient to overcome the data privacy restrictions, then reporting parties face legitimate issues with identifying the party to the transaction in their reporting. The restrictions and potential implications of violating such laws vary based on a firm's particular circumstance, including its presence in a particular jurisdiction.

Reporting entities should not be put in a conflict of law situation by their global regulators so that compliance with applicable laws from different jurisdictions does not seem possible. As detailed in its letter of August 12, 2014,[32] the ODRG has requested the FSB establish deadlines for the G-20 to remove barriers (i.e. data protection laws, blocking statutes, state secrecy laws, and bank secrecy laws) that prevent reporting of counterparty-identifying information. In response, the FSB has "stressed the importance of rapid action by jurisdictions to remove those barriers."[33] Until such time as this has been achieved, we ask that the Commission recognize in the SBSR the necessity for reporting parties to redact/mask counterparty-identifying information with respect to SBS if the reporting party reasonably believes, based on counsel advice (including in-house), that disclosure of such counterparty-identifying information may violate the laws of another jurisdiction.

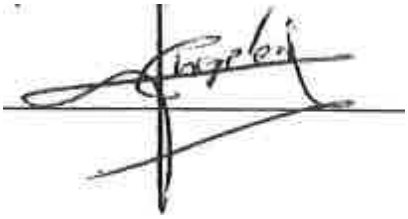
[31] http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/oia_odrgreportg20_0914.pdf
[32] *Ibid; p. 8*
[33] http://www.financialstabilityboard.org/2014/09/pr_140918/

## III. Conclusion

ISDA and its members thank the Commission for its consideration of the comments on proposed SBSR provided herein. We welcome any questions you may have with respect to our recommendations and are happy to provide any additional feedback or information as may be helpful to the Commission's important task of finalizing SBSR.

Please contact me or ISDA staff if you have any questions or require further input.

Sincerely,



Karel Engelen
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International Swaps and Derivatives Association, Inc.