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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

Release No. 34-74245; File No. S7-03-15

RIN 3235-AL71

Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; guidance.

SUMMARY: The Securities and Exchange Commission ("SEC" or "Commission") is proposing certain new rules and rule amendments to Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information ("Regulation SBSR"). Specifically, proposed Rule 901(a)(1) of Regulation SBSR would require a platform (i.e., a national securities exchange or security-based swap execution facility ("SB SEF") that is registered with the Commission or exempt from registration) to report to a registered security-based swap data repository ("registered SDR") a security-based swap executed on such platform that will be submitted to clearing. Proposed Rule 901(a)(2)(i) of Regulation SBSR would require a registered clearing agency to report to a registered SDR any security-based swap to which it is a counterparty. The Commission also is proposing certain conforming changes to other provisions of Regulation SBSR in light the proposed amendments to Rule 901(a), and a new rule that would prohibit registered SDRs from charging fees for or imposing usage restrictions on the users of the security-based swap transaction data that they are required to publicly disseminate. In addition, the Commission is explaining the application of Regulation SBSR to prime brokerage

transactions and proposing guidance for the reporting and public dissemination of allocations of cleared security-based swaps. Finally, the Commission is proposing a new compliance schedule for the portions of Regulation SBSR for which the Commission has not specified a compliance date.

DATES: Comments should be received on or before [insert date 45 days after publication in Federal Register].

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/proposed.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-03-15 on the subject line; or
- Use the Federal eRulemaking Portal (http://www.regulations.gov). Follow the instructions for submitting comments.

Paper Comments:

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-03-15. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/proposed.shtml). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the SEC's website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at www.sec.gov to receive notifications by e-mail.

FOR FURTHER INFORMATION CONTACT: Michael Gaw, Assistant Director, at (202) 551-5602; Yvonne Fraticelli, Special Counsel, at (202) 551-5654; George Gilbert, Special Counsel, at (202) 551-5677; David Michehl, Special Counsel, at (202) 551-5627; Geoffrey Pemble, Special Counsel, at (202) 551-5628; all of the Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-7010.

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I. Introduction

Section 13A(a)(1) of the Exchange Act[1] provides that each security-based swap that is not accepted for clearing by any clearing agency or derivatives clearing organization shall be subject to regulatory reporting. Section 13(m)(1)(G) of the Exchange Act[2] provides that each security-based swap (whether cleared or uncleared) shall be reported to a registered SDR, and Section 13(m)(1)(C) of the Exchange Act[3] generally provides that transaction, volume, and pricing data of security-based swaps shall be publically disseminated in real time, except in the case of block trades.[4]

In a separate release, the Commission is adopting Regulation SBSR,[5] which contains several rules relating to regulatory reporting and public dissemination of security-based swap transactions. The Commission initially proposed Regulation SBSR in November 2010.[6] In May 2013, the Commission re-proposed the entirety of Regulation SBSR as part of the Cross-Border Proposing Release, which proposed rules and interpretations regarding the application of Title

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1 15 U.S.C. 78m-1(a)(1). All references in this release to the Exchange Act refer to the Securities Exchange Act of 1934.

2 15 U.S.C. 78m(m)(1)(G).

3 15 U.S.C. 78m(m)(1)(C).

4 Section 13(m)(1)(E) of the Exchange Act, 15 U.S.C. 78m(m)(1)(E), provides that, with respect to cleared security-based swaps, the rule promulgated by the Commission related to public dissemination shall contain provisions, among others, that "specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts" and "specify the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public."

5 Securities Exchange Act Release No. 74244 (February 11, 2015) (no Federal Register publication yet) ("Regulation SBSR Adopting Release").

6 See Securities Exchange Act Release No. 63346 (November 19, 2010), 75 FR 75207 (December 2, 2010) ("Regulation SBSR Proposing Release").

VII of the Dodd-Frank Act to cross-border security-based swap activities.[7] In this release, the Commission is proposing certain new rules of Regulation SBSR as well as amendments to, and guidance regarding Regulation SBSR, as adopted. The Commission also is proposing a compliance schedule for Regulation SBSR. The Commission seeks comment on all of the rules, rule amendments, and guidance proposed in this release.[8]

II. Reporting by Registered Clearing Agencies and Platforms—Proposed Amendments to Rule 901(a) and Conforming Changes

Section 13(m)(1)(F) of the Exchange Act[9] provides that parties to a security-based swap (including agents of parties to a security-based swap) shall be responsible for reporting security-based swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission. Section 13(m)(1)(G) of the Exchange Act[10] provides that each security-based swap (whether cleared or uncleared) shall be reported to a registered SDR.

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7 See Securities Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30967 (May 23, 2013) ("Cross-Border Proposing Release").

8 With these proposed rules, rule amendments, and guidance, the Commission is not re-opening comment on the rules adopted in Regulation SBSR Adopting Release. The Commission received 86 comments that were specifically directed to the comment file (File No. S7-34-10) for the Regulation SBSR Proposing Release, of which 38 were comments submitted in response to the re-opening of the comment period. Of the comments directed to the comment file (File No. S7-02-13) for the Cross-Border Proposing Release, six referenced Regulation SBSR specifically, while many others addressed cross-border issues generally, without specifically referring to Regulation SBSR. As discussed in the Regulation SBSR Adopting Release, the Commission also has considered other comments that are relevant to regulatory reporting and/or public dissemination of security-based swaps that were submitted in other contexts. The comments discussed in this release are listed in the Appendix. For ease of reference, this release identifies commenters using the same naming convention as the Regulation SBSR Adopting Release, although it does not discuss all of the comment letters included in the Regulation SBSR Adopting Release. For example, this release refers to a letter identified as "ISDA IV," but does not discuss ISDA I, ISDA II, or ISDA III because those letters are not relevant to the current release.

9 15 U.S.C. 78m(m)(1)(F).

10 15 U.S.C. 78m(m)(1)(G).

Section 13A(a)(3) of the Exchange Act[11] specifies the party obligated to report a security-based swap that is not accepted for clearing by any clearing agency or derivatives clearing organization. Consistent with these statutory provisions, Rule 901(a) of Regulation SBSR, as adopted, assigns the duty to report "covered transactions," which include all security-based swaps except: (1) clearing transactions;[12] (2) security-based swaps that are executed on a platform and that will be submitted to clearing; (3) transactions where there is no U.S. person, registered security-based swap dealer, or registered major security-based swap participant on either side; and (4) transactions where there is no registered security-based swap dealer or registered major security-based swap participant on either side and there is a U.S. person on only one side. This release proposes to assign the duty to report security-based swaps in categories (1) and (2) above. The Commission anticipates seeking additional public comment in the future on the reporting obligations for security-based swaps in categories (3) and (4) above.

Rule 901(a), as proposed and re-proposed, would have used a hierarchy to assign reporting obligations for all security-based swaps—including those in the four non-covered categories noted above—without regard to whether a particular security-based swap was cleared or uncleared. In the Regulation SBSR Proposing Release, the Commission expressed a preliminary view that cleared and uncleared security-based swaps should be subject to the same

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[11] 15 U.S.C. 78m-1(a)(3).

[12] Rule 900(g), as adopted, defines "clearing transaction" as "a security-based swap that has a registered clearing agency as a direct counterparty." This definition describes security-based swaps that arise when a registered clearing agency accepts a security-based swap for clearing as well as security-based swaps that arise as part of a clearing agency's internal processes, such as security-based swaps used to establish prices for cleared products and security-based swaps that result from netting other clearing transactions of the same product in the same account into an open position. See Regulation SBSR Adopting Release, Section V(B)(2).

reporting hierarchy.[13] In addition, Rule 901(a), as proposed and as re-proposed, did not differentiate between security-based swaps that are executed on a platform and other security-based swaps. The Commission preliminarily believed that security-based swap dealers and major security-based swap participants generally should be responsible for reporting security-based swap transactions of all types, because they would be more likely than other persons to have appropriate systems in place to facilitate reporting.[14]

The Commission requested comment on a range of issues related to Rule 901(a), as proposed and as re-proposed. In particular, the Commission sought comment on whether platforms or clearing agencies should be required to report security-based swaps.[15] The Commission also asked whether counterparties to a security-based swap executed anonymously on a platform and subsequently cleared would have the information necessary to know which counterparty would incur the reporting obligation under Rule 901(a).[16] The comments that the Commission received in response are discussed below.

In light of comments received and upon additional consideration of the issues, the Commission is proposing two amendments to Rule 901(a) of Regulation SBSR. First, the Commission is proposing a new subparagraph (1) of Rule 901(a), which would provide that, if a security-based swap is executed on a platform and will be submitted to clearing, the platform on which the transaction was executed shall have the duty to report the transaction to a registered SDR. Second, the Commission is proposing a new subparagraph (2)(i) of Rule 901(a), which would assign the reporting duty for a clearing transaction to the registered clearing agency that is

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13 See 75 FR at 75211.

14 See id.

15 See id. at 75212.

16 See id.

a counterparty to the security-based swap. In connection with these proposed rules, the Commission also is proposing several conforming rule amendments to Regulation SBSR. The Commission describes each of these proposed rules and rule amendments in more detail below, following a description of the process for central clearing of security-based swap transactions.

A. Clearing Process for Security-Based Swaps

As discussed in Section V of the Regulation SBSR Adopting Release, two models of clearing—an agency model and a principal model—are currently used in the swap markets. In the agency model, which predominates in the U.S. swap market, a swap that is accepted for clearing—often referred to in the industry as an "alpha"—is terminated and replaced with two new swaps, known as "beta" and "gamma." The Commission understands that, under the agency model, one of the direct counterparties to the alpha becomes a direct counterparty to the beta, and the other direct counterparty to the alpha becomes a direct counterparty to the gamma. The clearing agency would be a direct counterparty to each of the beta and the gamma.[17] This release uses the terms "alpha," "beta," and "gamma" in the same way that they are used in the agency

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[17] If both direct counterparties to the alpha are clearing members, the direct counterparties would submit the transaction to the clearing agency directly and the resulting beta would be between the clearing agency and one clearing member, and the gamma would be between the clearing agency and the other clearing member. The Commission understands, however, that, if the direct counterparties to the alpha are a clearing member and a non-clearing member (a "customer"), the customer's side of the trade would be submitted for clearing by a clearing member acting on behalf of the customer. When the clearing agency accepts the alpha for clearing, one of the resulting swaps—in this case, assume the beta—would be between the clearing agency and the customer, with the customer's clearing member acting as guarantor for the customer's trade. The other resulting swap—the gamma—would be between the clearing agency and the clearing member that was a direct counterparty to the alpha. See, e.g., Byungkwon Lim and Aaron J. Levy, "Contractual Framework for Cleared Derivatives: The Master Netting Agreement Between a Clearing Customer Bank and a Central Counterparty," 10 Pratt's J. of Bankr. Law 509, 515-517 (LexisNexis A.S. Pratt) (describing the clearing model for swaps in the United States).

model of clearing in the U.S. swap market.[18] The Commission notes that, under Regulation SBSR, an alpha is not a "clearing transaction," even though it is submitted for clearing, because it does not have a registered clearing agency as a direct counterparty.[19]

B. Summary of the Proposed Amendments to Rule 901(a) and Conforming Changes

In a separate release, the Commission is adopting Regulation SBSR under the Exchange Act. In light of comments received in response to both the Regulation SBSR Proposing Release and the Cross-Border Proposing Release (which re-proposed Regulation SBSR in its entirety), the Commission in this release is proposing to amend Rule 901(a) of Regulation SBSR to assign reporting duties for: (1) platform-executed security-based swaps that will be submitted to clearing; and (2) clearing transactions.

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[18] In the principal model of clearing, which the Commission understands is used in certain foreign swap markets, a customer is not a direct counterparty of the clearing agency. Under this model, a clearing member would clear a swap for a customer by entering into a back-to-back swap with the clearing agency: the clearing member would become a direct counterparty to a swap with the customer, and then would become a counterparty to an offsetting swap with the clearing agency. In this circumstance, unlike in the agency model of clearing, the swap between the direct counterparties might not terminate upon acceptance for clearing. The Commission notes that one commenter recommended that Regulation SBSR should clarify the applicable reporting requirements under each of the agency and principal clearing models. See ISDA IV at 6. Although this release focuses on the agency model of clearing, which predominates in the United States, the Commission is requesting comment regarding the application of the principal model.

[19] This release does not address the application of Section 5 of the Securities Act of 1933, 15 U.S.C. 77a et seq. ("Securities Act"), to security-based swap transactions that are intended to be submitted to clearing (e.g., alphas, in the agency model of clearing). Rule 239 under the Securities Act, 17 CFR 230.239, provides an exemption for certain security-based swap transactions involving an eligible clearing agency from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provisions. This exemption does not apply to security-based swap transactions not involving an eligible clearing agency, including a transaction that is intended to be submitted to clearing, regardless of whether the security-based swaps subsequently are cleared by an eligible clearing agency. See Exemptions for Security-Based Swaps Issued By Certain Clearing Agencies, Securities Act Release No. 33-9308 (March 30, 2012), 77 FR 20536 (April 5, 2012).

1. Proposed Rule 901(a)(1)—Reporting by Platforms

The Commission is proposing a new subparagraph (1) of Rule 901(a), which would require a platform to report to a registered SDR any security-based swap that is executed on that platform and that will be submitted to clearing (i.e., any alpha executed on the platform).[20] As the person with the duty to report the transaction, the platform would be able to select the registered SDR to which it reports.[21]

2. Proposed Reporting Obligations of Registered Clearing Agencies

The Commission is proposing a new subparagraph (2)(i) of Rule 901(a), which would designate a registered clearing agency as the reporting side for all clearing transactions to which it is a counterparty. In its capacity as the reporting side, the registered clearing agency would be permitted to select the registered SDR to which it reports a clearing transaction.

The Commission also is proposing certain rules to address reporting requirements for life cycle events arising from the clearing process. Subparagraph (i) of Rule 901(e)(1), as adopted, provides that the reporting side for a security-based swap must generally report a life cycle event of that swap, "except that the reporting side shall not report whether or not a security-based swap has been accepted for clearing." The Commission is proposing a new subparagraph (ii) of Rule

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[20] If the execution occurs otherwise than on a platform, or if the security-based swap is executed on a platform but will not be submitted to clearing, the reporting hierarchy in Rule 901(a)(2)(ii), as adopted, will apply to the transaction.

[21] This is consistent with the Commission's guidance in Section V(B) of the Regulation SBSR Adopting Release that, for transactions subject to Rule 901(a)(2)(ii), the reporting side may choose the registered SDR to which it makes the report required by Rule 901: "The reporting side may select the registered SDR to which it makes the required report. However, with respect to any particular transaction, all information required to be reported by Rule 901(a)(2)(ii), as adopted, must be reported to the same registered SDR."

901(e)(1), which would require a registered clearing agency to report whether or not it has accepted an alpha security-based swap for clearing.[22]

Rule 901(e)(2), as adopted, requires a life cycle event to be reported "to the entity to which the original security-based swap transaction will be or has been reported." Thus, proposed Rule 901(e)(1)(ii) would require a registered clearing agency to report to the registered SDR that received or will receive the transaction report of the alpha (the "alpha SDR") whether or not it has accepted the alpha for clearing. As discussed in Section II(C)(3), infra, the Commission is proposing that this obligation to report whether or not it has accepted the alpha for clearing would cause the registered clearing agency to become a participant of the alpha SDR.

If the registered clearing agency does not know the identity of the alpha SDR, the registered clearing agency would be unable to report to the alpha SDR whether or not it accepted the alpha transaction for clearing, as would be required by proposed Rule 901(e)(1)(ii). Therefore, the Commission is proposing a new subparagraph (3) of Rule 901(a), which would require a platform or reporting side for a security-based swap that has been submitted to clearing to promptly provide the relevant registered clearing agency with the identity of the alpha SDR and the transaction ID of the alpha transaction that has been submitted to clearing.

C. Discussion of Comments and Further Explanation of the Proposal

The Commission requested and received comment on a wide range of issues related to Rules 901(a) and 901(e), as initially proposed in the Regulation SBSR Proposing Release and as re-proposed in the Cross-Border Proposing Release. For example, in the Regulation SBSR

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[22] If the alpha security-based swap is not required to be reported to a registered SDR—which could occur if Rule 901(a) does not assign a reporting obligation for the transaction or if the person assigned under Rule 901(a) is not enumerated in Rule 908(b)—the registered clearing agency would have no duty to report whether or not it has accepted the alpha for clearing.

Proposing Release, the Commission asked commenters about the types of entities that should have the duty to report security-based swaps and the practicability of the proposed reporting hierarchy in certain cases where the counterparties might not know each other's identities.[23]

1. Reporting Clearing Transactions

Six commenters addressed the Commission's proposal to treat cleared security-based swaps the same as uncleared security-based swaps for purposes of assigning reporting obligations under Rule 901(a). Two commenters generally supported the Commission's proposal, noting that it would allow security-based swap counterparties, rather than clearing agencies, to choose the registered SDR that receives data about their security-based swaps.[24] However, three other commenters objected to the proposal on statutory or operational grounds.[25] One commenter argued that Title VII's security-based swap reporting provisions and Regulation SBSR should not extend to clearing transactions.[26] Two commenters stated that the reporting hierarchy in Regulation SBSR is appropriate for OTC bilateral markets, but that it should not be applied to cleared transactions because the clearing model substantially differs from OTC bilateral markets.[27] These commenters argued that, in the alternative, if the Commission requires clearing transactions to be reported to a registered SDR, the clearing agency that clears the alpha should have the duty to report the associated clearing transactions to a registered SDR of its

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23 See 75 FR at 75212.

24 See DTCC VI at 8-9; MarkitSERV III at 3-5.

25 See CME/ICE Letter at 2-4; ICE Letter at 2-5; CME II at 4; ISDA IV at 5-6.

26 See CME II at 5 (stating that "a choice by the Commission to require that data on cleared SBS be reported to a third-party SDR would impose substantial costs on market participants which greatly outweigh the benefits (if any). . . . The Commission already has access to this data via the clearing agency.")

27 See ICE Letter at 2; CME/ICE Letter at 2.

choice.[28] Another commenter expressed the view that a clearing agency is best-positioned to report cleared security-based swaps.[29]

a. Requirements for Reporting of Clearing Transactions to a Registered SDR

Two commenters argued that the Exchange Act does not require data on clearing transactions to be reported to a registered SDR for regulatory reporting purposes.[30] They noted that Section 13A(a)(1) of the Exchange Act[31] provides that "[e]ach security-based swap that is not accepted for clearing by any clearing agency or derivatives clearing organization shall be reported" to a registered SDR or the Commission. In the view of these commenters, Section 13A(a)(1) is intended to ensure that the Commission has access to data for uncleared security-based swaps. Section 13A(a)(1) does not, according to these commenters, apply to clearing transactions, because complete data for these security-based swaps already would be collected, maintained, and made available to the Commission by the relevant clearing agency.[32] Accordingly, these commenters contend that "any system that would require a Clearing Agency to make duplicative reports to an outside third party regarding [security-based swaps] it clears would be costly and unnecessary."[33]

The Commission does not agree with the commenters' reading of the Exchange Act.

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28 See CME II at 4-5; CME/ICE Letter at 2-4; ICE Letter at 2-3.

29 ISDA IV at 5 (stating further that …"[I]f the Commission assigns responsibility to clearing agencies for the reporting of cleared [security-based swaps], the clearing agency should be the sole party responsible for reporting all the trade data for cleared swaps.") See also ICE Letter at 2-3 (stating that "The Clearing Agency is best positioned to have the sole responsibility to report . . . required swap data, including valuation data").

30 See CME/ICE Letter at 4; CME II at 4.

31 15 U.S.C. 78m-1(a)(1).

32 See CME/ICE Letter at 2, 4; CME II at 4.

33 CME/ICE Letter at 4.

While Section 13A(a) of the Exchange Act requires all uncleared security-based swaps to be reported to a registered SDR and specifies who must report an uncleared security-based swap, it does not address whether cleared security-based swaps must be reported to a registered SDR. However, Section 13(m)(1)(G) of the Exchange Act[34] provides that "[e]ach security-based swap (whether cleared or uncleared) shall be reported to a registered security-based swap data repository." This section explicitly requires reporting of each security-based swap to a registered SDR, including a security-based swap that is a clearing transaction, because all security-based swaps necessarily are either cleared or uncleared.

Furthermore, the Commission preliminarily believes that having data for all security-based swaps reported to registered SDRs will provide the Commission and other relevant authorities with the most efficient access to security-based swap information.[35] If data for clearing transactions were not reported to registered SDRs, the Commission would have to obtain transaction information from multiple types of registered entities—i.e., registered clearing agencies as well as registered SDRs—to obtain a complete picture of the security-based swap market. Obtaining transaction data separately from additional types of registrants would exacerbate concerns about fragmentation of the data that could be reduced by requiring all security-based swap transactions to be reported to registered SDRs. For example, registered clearing agencies might store, maintain, and furnish data to the Commission in a format different from the data provided by registered SDRs, which would force the Commission to expend

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[34] 15 U.S.C. 78m(m)(1)(G).

[35] Section 13(n)(5)(G) of the Exchange Act, 15 U.S.C. 78m(n)(5)(G), provides specified authorities other than the Commission with access to security-based swap data held by SDRs, but does not grant similar access to security-based swap data held by registered clearing agencies. If the Commission relied exclusively on registered clearing agencies to store data for clearing transactions, the ability of other relevant authorities to access the information could be impaired.

greater resources harmonizing the data sets.

b. Determining the Reporting Side for Clearing Transactions

Two commenters supported the Commission's original proposal to assign reporting obligations for all security-based swaps, including clearing transactions, through the reporting hierarchy in all circumstances.[36] One of these commenters expressed the view that counterparty choice would "ensure that a party to the transaction (instead of a platform or clearinghouse) can chose [sic] the most efficient manner of performing its reporting across all of the regions and asset classes that it is active in."[37] This commenter further stated that permitting a platform or clearing agency to report security-based swaps would impose costs on market participants by obligating them to establish connectivity to multiple trade repositories.[38]

Three other commenters objected to this aspect of Regulation SBSR, as proposed and re-proposed. Two of these commenters argued that, if clearing transactions are subject to Regulation SBSR, they should be reported by the clearing agency that clears the alpha: "in contrast to uncleared [security-based swaps], the Clearing Agency is the sole party who holds the complete and accurate record of transactions and positions for cleared [security-based swaps] and in fact is the only entity capable of providing accurate and useful positional information on cleared [security-based swaps] for systemic risk monitoring purposes."[39] The other commenter stated that the clearing agency is best positioned to report cleared security-based swaps timely and accurately as an extension of the clearing process, and that the clearing agency should be the

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36 See DTCC VI at 8-9; DTCC VIII (recommending that the Commission should not assign reporting obligations to clearing agencies because Regulation SBSR, as proposed and re-proposed, would not have required reporting by clearing agencies); MarkitSERV III at 4.

37 MarkitSERV III at 4.

38 See id.

39 CME/ICE Letter at 3-4.

sole party responsible for reporting all the trade data for cleared swaps, including valuation data.[40]

After careful consideration of the comments, the Commission now preliminarily believes that a registered clearing agency should have the duty to report any clearing transaction to which it is a counterparty. The Commission believes that, because the registered clearing agency creates the clearing transactions to which it is a counterparty, the registered clearing agency is in the best position to provide complete and accurate information for the clearing transactions resulting from the security-based swaps that it clears.[41]

The Commission understands that certain registered clearing agencies that offer central clearing in swaps currently report their clearing transactions to swap data repositories that are

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40 ISDA IV at 5. The Commission notes that Regulation SBSR as adopted does not require the reporting of the market value of a security-based swap. See Regulation SBSR Adopting Release, Section II(B)(3)(e) and Section II(B)(3)(k).

41 One commenter urged the Commission to be clear which party is responsible for reporting a clearing transaction in the event that reporting commences before security-based swap clearing agencies are required to register with the Commission or in the event that a security-based swap is cleared through a clearing agency that is not required to register, exempted from registration, or granted relief. See ISDA IV at 6. This commenter further recommended that the reporting requirement for a clearing agency should apply equally to clearing agencies required to register and those that may be exempted from the requirement but which clear security-based swaps subject to reporting. See id. The Commission believes that the proposed rules are clear as to which side would have the responsibility for reporting a clearing transaction. The Commission notes that proposed Rule 901(a)(2)(i) would impose the duty to report clearing transactions on registered clearing agencies. It is possible that a non-U.S. person could register with the Commission as a clearing agency under Section 17A of the Exchange Act, 15 U.S.C. 78q-1. The Commission generally believes that, if a person registers with the Commission as a clearing agency, it should assume the same obligations as all other persons that register as clearing agencies. Proposed Rule 901(a)(2)(i) would not apply to unregistered clearing agencies (i.e., persons that act as clearing agencies outside the United States that are not required to, and choose not to, register with the Commission). If in the future the Commission contemplates a process for exempting clearing agencies from registration or considers an application for relief from clearing agency registration requirements, the Commission could at that time consider the issue of whether to extend the duty to report clearing transactions to an exempt clearing agency.

provisionally registered with the CFTC. These registered clearing agencies have adopted rules stating that they will comply with the CFTC's swap data reporting rules by reporting beta and gamma swaps to a swap data repository that is an affiliate or business unit of the registered clearing agency. These current swap market practices evidence the ability of registered clearing agencies to report clearing transactions. The Commission's proposal to assign to registered clearing agencies the duty to report clearing transactions is intended, in part, to promote efficiency in the reporting process under Regulation SBSR by leveraging these existing workflows.

The Commission has considered the following alternatives to proposed Rule 901(a)(2)(i):

(1) Utilize the reporting hierarchy in Regulation SBSR, as re-proposed. Under this approach, a registered clearing agency would occupy the lowest spot in the hierarchy, along with other persons who are neither registered security-based swap dealers nor registered major security-based swap participants. Thus, in the case of a beta or gamma transaction between a registered security-based swap dealer or registered major security-based swap participant and a registered clearing agency, the registered security-based swap dealer or registered major security-based swap participant would be the reporting side. In the case of a beta or gamma transaction between a non-registered person and a registered clearing agency, the outcome would depend on whether the non-clearing agency direct counterparty is guaranteed by a registered security-based swap dealer or registered major security-based swap participant. If the non-clearing agency direct counterparty is guaranteed by a registered security-based swap dealer or registered major security-based swap participant, that side would be the reporting side. If the non-clearing agency direct counterparty has no guarantor or is guaranteed by a person who is not a registered security-based swap dealer or registered major security-based swap participant, there

would be a tie and the sides would be required to select the reporting side.

(2) Modify the re-proposed hierarchy to place registered clearing agencies above other non-registered persons but below registered security-based swap dealers and registered major security-based swap participants. Thus, in a transaction between a registered clearing agency and a registered security-based swap dealer (or a transaction between a registered clearing agency and a non-registered person who is guaranteed by a registered security-based swap dealer), the outcome would be the same as in Alternative 1: the side with the registered security-based swap dealer would have the duty to report. However, the outcome would be different from Alternative 1 in the case of a beta or gamma transaction between a registered clearing agency and a non-registered person who is not guaranteed by a registered security-based swap dealer or registered major security-based swap participant: instead of the sides choosing, the registered clearing agency would have the duty to report.

(3) Require the reporting side of the alpha to report both the beta and gamma transaction. Under this approach, the reporting side of the alpha transaction also would be the reporting side for the beta and gamma transactions. Under this approach, the beta and gamma could be viewed as life cycle events of the alpha, and thus should be treated like other life cycle events of the alpha, which the reporting side of the alpha has the duty to report.

The Commission preliminarily believes that each of these three alternatives for assigning the reporting duty for clearing transactions would be less efficient and could result in less reliable reporting than assigning to registered clearing agencies the duty to report all clearing transactions. Two commenters have asserted that a clearing agency is the only party that has

complete information about clearing transactions immediately upon their creation.[42] Each of the three alternatives could require a person who does not have information about the clearing transaction at the time of its creation to report that transaction. The only way such a person could discharge its reporting duty would be to obtain the information from the registered clearing agency or from the counterparty to the registered clearing agency. This extra and unnecessary step could introduce more opportunities for data discrepancies, errors, or delays in reporting. The Commission preliminarily believes instead that a more efficient way to obtain a regulatory report of each clearing transaction would be to require the registered clearing agency to report each clearing transaction to a registered SDR directly.

Under Alternative 1, applying the reporting hierarchy to a transaction between a registered clearing agency and a registered security-based swap dealer or registered major security-based swap participant would result in the side opposite the clearing agency being the reporting side for the security-based swap. This approach would comport with the suggestion of commenters who opposed placing reporting obligations on registered clearing agencies.[43] As discussed above, however, the Commission believes that it would be more efficient to require the registered clearing agency to report the transaction. Furthermore, applying the reporting hierarchy to a transaction between a registered clearing agency and another non-registered person (assuming it is not guaranteed by a registered security-based swap dealer or major security-based swap participant) would require the sides to select the reporting side. While it is likely that the counterparties in this case would select the registered clearing agency as the

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42 See CME/ICE Letter at 3-4. Even the commenters who opposed reporting by clearing agencies did not suggest that a clearing agency lacks adequate information to report the beta and the gamma.

43 See DTCC VI at 8-9; DTCC VIII (noting that Regulation SBSR, as proposed and re-proposed, would not have required reporting by clearing agencies); MarkitSERV III at 4.

reporting side, the Commission preliminarily believes that it would be more efficient to obviate the need for registered clearing agencies and non-registered persons to negotiate reporting duties. As discussed in the Regulation SBSR Adopting Release, the Commission designed Rule 901(a), in part, to minimize the possibility of reporting obligations being imposed on non-registered counterparties.[44]

Alternative 2 would assign the reporting obligation to a registered security-based swap dealer or registered major security-based swap participant when it is a counterparty to a registered clearing agency, while avoiding the need for non-registered persons to negotiate reporting obligations with registered clearing agencies. The Commission preliminarily believes, however, that this alternative—like Alternatives 1 and 3—would be less efficient than requiring the registered clearing agency to report the transaction information directly to a registered SDR, because the registered clearing agency is the only person who has complete information about a clearing transaction immediately upon its creation.

Under Alternative 3, the reporting side for the alpha also would be the reporting side for the beta and gamma. Alternative 3 would require the reporting side for the alpha also to report information about a security-based swap—the clearing transaction between the registered clearing agency and the non-reporting side of the alpha—to which it is not a counterparty. The Commission could require the non-reporting side of the alpha to transmit information about its clearing transaction to the reporting side of the alpha. In theory, this would allow the reporting side of the alpha to report both the beta and the gamma. The Commission believes, however,

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[44] See Regulation SBSR Adopting Release, Section V. See also Vanguard Letter at 6 (noting that clearing agencies, platforms, security-based swap dealers, and major security-based swap participants would be better situated to report security-based swaps than other types of market participants, such as buy-side firms).

that this result could be difficult to achieve operationally and, in any event, could create confidentiality concerns, as an alpha counterparty may not wish to reveal information about its clearing transactions except to the registered clearing agency (and, if applicable, its clearing member). Moreover, all other things being equal, having more steps in the reporting process—e.g., more data transfers between execution and reporting—introduces greater opportunity for data discrepancies and delays than having fewer steps. Also, because the reporting side of the alpha would have the duty to report the beta and gamma, Alternative 3 is premised on the view that the beta and gamma are life cycle events of the alpha. The Commission, however, considered and rejected this approach in the Regulation SBSR Adopting Release.[45]

In sum, having considered these alternatives, the Commission preliminarily believes that the most direct and efficient way of reporting clearing transactions to a registered SDR is to assign to a registered clearing agency the duty to report all clearing transactions to which it is a counterparty. Therefore, the Commission is proposing new subparagraph (i) of Rule 901(a)(2) to achieve this result. A registered clearing agency has complete information about all clearing transactions to which it is a counterparty, including betas and gammas that arise from clearing alpha security-based swaps. The alternative reporting regimes discussed above could result in less efficiencies in reporting, and thus greater costs, because persons that are less likely to have established infrastructure for reporting or that do not possess the same degree of direct and complete access to the relevant data as the registered clearing agency could have the duty to

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[45] See Regulation SBSR Adopting Release, Section V(B)(2) at note 267 ("Under Rule 900(g), a security-based swap that results from clearing is an independent security-based swap and not a life cycle event of a security-based swap that is submitted to clearing. Thus, Rule 901(e), which addresses the reporting of life cycle events, does not address what person has the duty to report the clearing transactions that arise when a security-based swap is accepted for clearing").

report. Furthermore, these non-clearing agency counterparties would first have to obtain information about executed clearing transactions from the registered clearing agency before they, in turn, could provide the transaction information to a registered SDR. This extra step in reporting could result in delays, or create opportunities for errors that could lead to a loss of data integrity. The Commission preliminarily believes that data discrepancies, errors, and delays are less likely to occur if the duty to report information about clearing transactions were assigned to registered clearing agencies directly.

c. Choice of Registered SDR for Clearing Transactions

The Commission has carefully considered how registered clearing agencies would fulfill their reporting obligations under proposed Rule 901(a)(2)(i), including whether registered clearing agencies could choose the registered SDR to which they report or whether they should be required to report clearing transactions to the registered SDR that received the report of the associated alpha transaction. Regulation SBSR allows the reporting side to choose the registered SDR to which it reports, subject to the requirement that reports of life cycle events must be made to the same registered SDR that received the initial report of the security-based swap.[46]

As noted in the Regulation SBSR Adopting Release, a clearing transaction is an independent security-based swap and not a life cycle event of an alpha security-based swap that is submitted to clearing.[47] As discussed in the Regulation SBSR Adopting Release, the Commission believes that, in general, the person with the duty to report a security-based swap

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46 See Regulation SBSR Adopting Release, Section V(B)(2) ("The reporting side may select the registered SDR to which it makes the required report").

47 See Regulation SBSR Adopting Release, Section V(B). However, the determination by a registered clearing agency of whether or not to accept the alpha for clearing is a life cycle event of the alpha. Proposed Rule 901(e)(1)(ii) would require registered clearing agencies to report these life cycle events to the alpha SDR.

under Rule 901(a) should be permitted to discharge this duty by reporting to a registered SDR of its choice.[48] This approach is designed to promote efficiency by allowing the person with the reporting duty to select the registered SDR that offers it the greatest ease of use or the lowest fees. Under proposed Rule 901(a)(2)(i), a registered clearing agency would be the reporting side for all clearing transactions to which it is a counterparty; because the registered clearing agency would have the duty to report, it also would have the ability to choose the registered SDR. The Commission considered proposing that reports of betas and gammas go to the same registered SDR that received the report of the associated alpha, but has declined to do so, for the reasons discussed below.

If Regulation SBSR were to require registered clearing agencies to report betas and gammas to the registered SDR that received the report of the associated alpha, the registered clearing agency would be required to report to a registered SDR that might not offer it the greatest ease of use or the lowest fees. As such, this result could be less efficient for the registered clearing agency than the alternative approach of permitting the registered clearing agency to choose the registered SDR to which it reports the beta and gamma. Moreover, the Commission preliminarily believes that it would have sufficient tools to be able to track related transactions across SDRs,[49] and thus that it would be appropriate to allow a registered clearing agency to choose where to report the beta and gamma, even if it chooses to report to a registered SDR other than the alpha SDR.

One commenter asserted that allowing a registered clearing agency to report betas and

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48 See Regulation SBSR Adopting Release, Section V(B).

49 See Regulation SBSR Adopting Release, Section II(B)(3)(j) (explaining that Rule 901(d)(10), as adopted, will facilitate the Commission's ability to link transactions using the transaction ID); Regulation SBSR Adopting Release, Section VIII (further describing the ability of the Commission to link related transactions using the transaction ID).

gammas to a registered SDR of the clearing agency's choice, rather than to the alpha SDR, would impose substantial costs on security-based swap counterparties because the non-clearing agency counterparties would have to establish connectivity to multiple SDRs.[50] This comment appears premised on the idea that non-clearing agency counterparties would have ongoing obligations to report subsequent information—such as life cycle events or a daily mark of the security-based swap—to registered SDRs not of their choosing, which could force them to establish connections to multiple registered SDRs. However, proposed Rule 901(a)(2)(ii) would assign the reporting duty for a clearing transaction to the registered clearing agency, and Regulation SBSR, as adopted, does not impose any duty on a non-reporting side to report life cycle events or a daily mark.[51] Therefore, the Commission does not believe that any duty under Regulation SBSR, as adopted, or the amendments to Regulation SBSR proposed herein, would cause non-clearing agency counterparties to incur significant costs resulting from the ability of a registered clearing agency to select the registered SDR to which it reports clearing transactions.[52]

d. Reporting Whether an Alpha Transaction is Accepted for Clearing

One commenter expressed the view that a clearing agency would be well-positioned to issue a termination report for the alpha and subsequently report the beta, gamma, and, if

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50 See MarkitSERV III at 4, n. 11.

51 Nor does Regulation SBSR require a non-reporting side to alert a registered SDR if it becomes aware that any security-based swap information has been reported erroneously. Under the proposed amendments to Rule 905(a) discussed below, if an error is discovered by a person other than the person having the duty to report a security-based swap, the person who discovered the error would report such error to the person who had the duty to report the transaction, rather than to the registered SDR directly.

52 Non-clearing agency counterparties to clearing transactions might incur modest costs associated with reporting certain unique identification code ("UIC") information required by Rule 906(a), e.g., their branch ID, broker ID, trader ID, and trading desk ID, as applicable. See Regulation SBSR Adopting Release, Section XXII(C)(6)(c) (discussing the costs of complying with Rule 906(a), as adopted).

necessary, open positions to a registered SDR.[53] The Commission agrees with this commenter and is therefore proposing a new subparagraph (ii) of Rule 901(e)(1), which would require a registered clearing agency to report to the alpha SDR whether or not it has accepted the alpha for clearing. Rule 901(e)(1)(i), as adopted, requires the reporting side of a security-based swap to report—to the same entity to which it reported the original transaction—any life cycle event (or adjustment due to a life cycle event) except for whether or not the security-based swap has been accepted for clearing. Proposed Rule 901(e)(1)(ii) would address the reporting of whether or not the security-based swap has been accepted for clearing, and would assign that duty to the registered clearing agency to which the transaction is submitted for clearing, rather than to the reporting side of the original transaction. Proposed Rule 901(e)(1)(ii) would ensure that all potential life cycle events (and adjustments due to life cycle events) would be subject to regulatory reporting, and that Regulation SBSR would specify the person who has the duty to report each kind of life cycle event (or adjustment).

When an alpha is submitted for clearing, the registered clearing agency will review the trade and decide whether or not to accept it. Acceptance for clearing can result in the termination of the alpha and the creation of the beta and gamma. Furthermore, rejection from clearing is an important event in the life of the alpha—because rejection could result in the voiding of the transaction or the activation of credit support provisions that would alter the character of the transaction—and thus is the kind of event that Rule 901(e) is designed to capture for regulatory purposes. Accordingly, proposed Rule 901(e)(1)(ii) would require a registered clearing agency to report whether or not it has accepted a security-based swap for clearing.

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[53] See ICE Letter at 2-5.

The Commission preliminarily believes that requiring a registered clearing agency, rather than the reporting side of the alpha, to report whether or not the registered clearing agency has accepted an alpha for clearing is consistent with the Commission's approach of assigning reporting obligations to the person with the most complete and efficient access to the required information. The registered clearing agency would have the most complete and efficient access to information about whether a particular alpha has been accepted for clearing because the registered clearing agency determines whether to accept a submitted alpha and knows the precise moment when the transaction is cleared. Although it would be possible for the reporting side for the alpha transaction to report whether a registered clearing agency has accepted the alpha for clearing, the reporting side would need to learn this information from the clearing agency. The Commission preliminarily believes it is more efficient to require the registered clearing agency to report to the alpha SDR whether or not the registered clearing agency has accepted the alpha for clearing.

Rule 901(e)(2), as adopted, requires whoever has the duty to report a life cycle event to include in the report of the life cycle event the transaction ID of the original transaction. If the Commission ultimately adopts proposed Rule 901(e)(1)(ii), a registered clearing agency that accepts or rejects an alpha transaction from clearing would incur this duty under existing Rule 901(e)(2). The transaction ID of the alpha transaction is information that the registered clearing agency might not have, because the registered clearing agency is not involved in the execution or reporting to a registered SDR of the alpha transaction. Therefore, the Commission also is proposing a new subparagraph (3) of Rule 901(a), which would provide that "a person who, under [Rule 901(a)(1) or 901(a)(2)(ii)] has a duty to report a security-based swap that has been submitted to clearing at a registered clearing agency shall promptly provide that registered

clearing agency with the transaction ID of the submitted security-based swap and the identity of the registered security-based swap data repository to which the transaction will be reported or has been reported." Proposed Rule 901(a)(3) would ensure that the registered clearing agency knows the identity of the alpha SDR and the transaction ID of the alpha, so that the registered clearing agency knows where to report whether or not it accepts the alpha for clearing—as required under existing Rule 901(e)(2)—and so that this report can be linked to the alpha report.

The Commission recognizes the potential for proposed Rules 901(e)(1)(ii) and 901(a)(3) to result in the registered clearing agency reporting whether or not it accepted the alpha for clearing to the alpha SDR before the alpha transaction itself has been reported to the alpha SDR. This could occur during the interim phase for regulatory reporting and public dissemination, which the Commission discussed in Section VII of the Regulation SBSR Adopting Release. Rule 901(j), as adopted, generally permits the person with the duty to report a security-based swap up to 24 hours after the time of execution to report to a registered SDR the transaction information required by Rules 901(c) and 901(d). Accordingly, an alpha could be submitted for clearing immediately after execution, but not reported to a registered SDR for up to 24 hours (or, if 24 hours after the time of execution would fall on a day that is not a business day, by the same time on the next day that is a business day). If the registered clearing agency accepts the alpha for clearing, the registered clearing agency might, pursuant to proposed Rule 901(e)(1)(ii), submit a report of this life cycle event to the alpha SDR before the alpha SDR has received the transaction report of the alpha transaction itself.[54]

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[54] To submit the report contemplated by proposed Rule 901(e)(1)(ii), the registered clearing agency would need to know the transaction ID of the alpha. The person with the duty to report the alpha might know the transaction ID of the alpha before it reports the transaction to a registered SDR. Under Rules 903(a) and 907(a)(5), as adopted, there is

To account for this possibility, the Commission is proposing a minor amendment to Rule 901(e)(2). Rule 901(e)(2), as adopted, states in relevant part that a life cycle event must be reported "to the entity to which the original security-based swap transaction was reported" (emphasis added). Under the proposed amendment to Rule 901(e)(2), a life cycle event would have to be reported "to the entity to which the original security-based swap transaction will be reported or has been reported." This amendment mirrors the language in proposed Rule 901(a)(3), which would require a person who reports an alpha to provide the registered clearing agency to which the alpha is submitted the transaction ID of the alpha and the identity of the registered SDR to which the alpha "will be reported or has been reported."

A registered SDR should consider—in formulating its policies and procedures under Rule 907(a), as adopted—whether those policies and procedures should address the situation where it receives a report from a registered clearing agency stating whether or not it has accepted an alpha (with a particular transaction ID) for clearing before the registered SDR has received a transaction report of the alpha. For example, the policies and procedures could provide that the registered SDR would hold a report from a registered clearing agency that it accepted the alpha for clearing in a pending state until it receives the transaction report of the alpha, and then

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no requirement that a registered SDR itself assign a transaction ID. Under those rules, a registered SDR may allow third parties—such as reporting sides or platforms—to assign a transaction ID using a methodology endorsed by the registered SDR. If the registered SDR allows third parties to assign the transaction ID, the reporting side or platform could tell the registered clearing agency the transaction ID, which in turn could allow the registered clearing agency to report to the alpha SDR whether or not the alpha has been accepted for clearing before the alpha has been reported to the registered SDR. If, however, the person with the duty to report the alpha does not obtain the transaction ID until it reports the alpha to a registered SDR, the person could not provide the transaction ID of the alpha to the registered clearing agency, and the registered clearing agency could not report whether or not it accepts the alpha for clearing until after it received alpha's transaction ID.

disseminate the security-based swap transaction information and the fact that the alpha has been terminated as a single report.

2. Reporting by a Platform

Some commenters, responding to Rule 901(a) as initially proposed, suggested that the Commission require a platform to report security-based swaps executed on or through its facilities.[55] One of these commenters stated that a platform would have the technology to report a security-based swap executed on its facilities and would be in the best position to ensure that the transaction was reported accurately and on a real-time basis.[56] This commenter also stated that the counterparties to a transaction executed on a platform should be relieved of any reporting obligations because they would not be in a position to control or confirm the accuracy of the information reported or to control the timing of the platform's reporting.[57] Another commenter expressed the view that having platforms report security-based swaps would facilitate economies in the marketplace because fewer entities, including end users, would be required to build the systems necessary to support security-based swap reporting.[58] Four commenters, however, raised concerns about imposing reporting requirements on platforms.[59]

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55 See ICI I at 5; Tradeweb Letter at 3-4; Vanguard Letter at 2, 7.

56 See Tradeweb Letter at 3.

57 See id. at 3-4. The commenter also noted that the CFTC's proposed swap data reporting rules would require a SEF or designated contract market to report a swap executed on its facilities. See id. at 4. The CFTC has subsequently adopted a final rule that requires SEFs and designated contract markets to report swaps executed on their facilities. See 17 CFR 45.3.

58 See Vanguard Letter at 7; ICI I at 5 (arguing that because investment funds would need to spend significant time and resources to build security-based swap reporting systems, platforms and security-based swap dealers should be obligated to report security-based swap data).

59 See ISDA/SIFMA I at 18; ISDA IV at 7; MarkitSERV III at 4; WMBAA II at 6.

After carefully considering these comments, the Commission is proposing to require a platform to report any security-based swap that is executed on the platform, but only if the security-based swap will be submitted to clearing. Proposed Rule 901(a)(1) provides that, if a security-based swap is executed on a platform and will be submitted to clearing, the platform on which the transaction was executed shall report to a registered SDR the information required by Rules 901(c) (the primary trade information), 901(d)(1) (the participant ID or execution agent ID for each counterparty, as applicable), and 901(d)(9) (the platform ID). If the security-based swap will not be submitted to clearing, the platform would have no reporting obligations under Regulation SBSR. Instead, the reporting hierarchy in Rule 901(a)(2)(ii), as adopted, will determine which side is the reporting side for such a platform-executed transaction.[60] As discussed below, proposed subparagraph (1) of Rule 901(a) is intended to maximize the accuracy and completeness of data reported to registered SDRs, while continuing to align the reporting duty with persons that are best able to carry it out.

The Commission understands that each counterparty to a platform-executed transaction that will be submitted to clearing intends to assume the credit risk of the clearing agency rather than any of the other platform participants, so there is no need to have credit and other documentation in place between itself and its counterparty. Thus, such a transaction could be executed anonymously, as there might be no mechanism by which one counterparty would learn the identity of the other.[61] The direct counterparties to such an alpha might not know which side

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60 See Regulation SBSR Adopting Release, Section V.

61 The Commission notes that the offer and sale of security-based swaps, even if affected anonymously on a platform, must either be registered under the Securities Act or be made pursuant to an exemption from registration. The registration exemption in Section 4(a)(2) of the Securities Act, 15 U.S.C. 77d(a)(2), generally is available for transactions by an issuer not involving any public offering. One factor in determining the availability

would be the reporting side (if the hierarchy in Rule 901(a)(2), as adopted, applied) and there might be no mechanism for them to learn this information because they would not be assuming each other's credit risk.[62] Even if the direct counterparties could agree that one side—for example, the side selling protection in a single-name credit default swap—would report the trade, the reporting side might not learn the identity of its counterparty even though Rule 901(d)(1), as adopted, requires the reporting side to report all counterparty IDs.[63]

Although some platform-executed transactions that will be submitted to clearing might not be executed anonymously, the Commission preliminarily believes that it would be more efficient to require the platform to report all security-based swaps executed on that platform that will be submitted to clearing, regardless of whether the counterparties are, in fact, anonymous to each other. The Commission preliminarily believes that assigning the duty to report to the platform minimizes the number of reporting steps and thus minimizes the possibility of data

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of the Section 4(a)(2) exemption is that the purchasers of the securities in the transaction must be sophisticated investors. As previously noted by the Commission, Congress determined that eligible contract participants are sophisticated investors for purposes of security-based swap transactions. See Exemptions for Security-Based Swaps Issued By Certain Clearing Agencies, Securities Act Release No. 9308 (March 30, 2012), 77 FR 20536 (April 5, 2012); Exemptions for Security-Based Swaps, Securities Act Release No. 9231 (July 1, 2011), 76 FR 40605 (July 11, 2011). The Commission believes that Congressional determination of eligible contract participants as sophisticated investors for purposes of security-based swap transactions applies as well for purposes of Section 4(a)(2) of the Securities Act. In addition, the exemption in Rule 240 under the Securities Act, 17 CFR 230.240, also may be available for security-based swap transactions involving eligible contract participants, to the extent applicable.

62 Cf. Cross-Border Adopting Release, 79 FR at 47325 (creating an exception, from having to be counted against the de minimis thresholds, for certain security-based swap transactions that a non-U.S. person enters into anonymously on a platform and that are cleared through a clearing agency, because each counterparty would not be in a position to know whether the other is a U.S. person).

63 Rule 901(d)(1) requires the reporting side to provide the counterparty ID or execution agent ID for each counterparty, as applicable. If the execution occurs anonymously, neither side would know the counterparty ID or execution agent ID of the other side.

corruption and delays in reporting the transaction to a registered SDR. Thus, the Commission preliminarily believes that all platform-executed transactions that will be submitted to clearing should be reported by the platform. This approach would be more efficient than if the platform had to assess on a transaction-by-transaction basis whether or not the counterparties are in fact unknown to each other.

As noted above,[64] four commenters generally opposed assigning to platforms the duty to report security-based swap transactions. One commenter stated generally that "the reporting party should be able to choose which SDR to report to, while being allowed to delegate the actual reporting to qualified third parties where it sees fit."[65] The commenter appeared to suggest that a platform could be a qualified third party acting as an agent for a reporting side.[66] The Commission agrees with the commenter that the platform is well-placed to carry out the act of reporting, but, unlike the commenter, the Commission preliminarily believes that the platform itself should have the legal duty to report for the reasons discussed above.

Three other commenters argued generally that platforms should not be assigned the duty to report because they lack certain information that would have to be reported. One of these commenters stated, for example, that "the SB SEF or national securities exchange may not itself have access to all of the information required, such as whether the trade has been accepted for clearing."[67] The other commenter argued that "[t]he SB SEF would likely not be privy to all of

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64 See supra note 59.

65 MarkitSERV III at 4.

66 See id. (stating that counterparties should be able to choose the registered SDR "regardless of whether the transaction is executed on a SEF").

67 ISDA/SIFMA I at 18. See also ISDA IV at 7 (stating that the clearing agency should be responsible for reporting the alpha trade once it is has been accepted for clearing, and that one of the counterparties should be responsible per the reporting hierarchy for reporting a

the terms required to be reported in accordance with proposed Regulation SBSR, such as, but not limited to: (i) contingencies of the payment streams of each counterparty to the other; (ii) the title of any master agreement or other agreement governing the transaction; (iii) data elements necessary to calculate the market value of the transaction; and (iv) other details not typically provided to the SB SEF by the customer, such as the actual desk on whose behalf the transaction is entered. Moreover, and quite critical, an SB SEF would not be in a position or necessarily have the capabilities to report life cycle event information. Indeed, even if an SB SEF were required to report the transaction details as the proposed regulation requires, something we do not think advisable, it would likely take at least 30 minutes to gather and confirm the accuracy of that information."[68]

The Commission shares the commenters' concern that it would not be appropriate to require platforms to report information that they do not have or that would be impractical to obtain. However, a close examination of the data elements that must be reported under Rules 901(c) and 901(d), as adopted, suggests that a platform would not be put in this position:

- Rule 901(c)(1) requires reporting of the product ID, if available, or else other information that identifies the security-based swap. Proposed Rule 901(a)(1) would apply only to platform-executed security-based swaps submitted to clearing, which suggests that these

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bilateral transaction that is not intended for clearing). The last commenter also stated that certain aspects of the CFTC regime for reporting bilateral swaps executed on a facility have been challenging due to the difficulty for SEFs to know and report certain trade data that is not essential to trade execution, and because of the shared responsibility for reporting since the SEF/DCM is responsible for the initial creation data reporting and the SD/MSP is responsible for continuation data reporting. See id. The Commission notes that Regulation SBSR, as adopted, applies the reporting hierarchy in Rule 901(a) to a security-based swap executed on a platform that is not intended to be cleared. See Regulation SBSR Adopting Release, Section V(C)(4).

68 WMBAA II at 6.

are products that would have a product ID. Even if these security-based swaps did not have a product ID, the platform would have sufficient information to identify a security-based swap traded on its facilities to allow its subscribers to trade it; this same information would be sufficient for the platform to report the information required by Rule 901(c)(1) to a registered SDR.

- Rules 901(c)(2), 901(c)(3), and 901(c)(4) require reporting of the date and time of execution, the price, and the notional amount, respectively, of the security-based swap. The platform will know these data elements because they were determined on the platform's facilities.
- Rule 901(c)(5) requires reporting of whether both sides of the transaction include a registered security-based swap dealer. The Commission anticipates that this information will be publicly available, or the platform could easily obtain it from a platform participant.
- Rule 901(c)(6) requires reporting of whether the direct counterparties intend that the security-based swap will be submitted to clearing. Rule 901(d)(6) requires reporting of the name of the clearing agency to which the security-based swap will be submitted to clearing. The fact that the transaction is intended to be cleared may be implicit in the product ID (e.g., if the security-based swap traded has a product ID of a "made available to trade" product). Alternatively, the counterparties may inform the platform that the security-based swap will be submitted to clearing; in some cases, the platform may provide the mechanism for reporting the transaction to a clearing agency. The Commission presumes that, if the platform knows that the security-based swap will be submitted to clearing, the platform will also know the name of the clearing agency. If the

platform has no knowledge that the transaction will be submitted to clearing, the platform would have no duty to report it under proposed Rule 901(a)(1).

- Rule 901(c)(7) requires reporting, if applicable, of any flags pertaining to the transaction that are specified in the policies and procedures of the registered SDR to which the transaction will be reported. The Commission preliminarily believes that, because the transaction occurs on the platform's facilities, the platform would have knowledge of any circumstances that would require application of a flag.
- Rule 901(d)(1) requires reporting of the counterparty ID or the execution agent ID of each counterparty, as applicable. A platform will know the identity of each direct counterparty or the execution agent for each direct counterparty because those market participants will be using the platform's facilities to execute the alpha transaction. To the extent that such alphas have an indirect counterparty, the Commission presumes that the platform will be able to obtain this information from the participant that is a direct counterparty to the alpha.
- Rule 901(d)(2) requires <u>the reporting side</u> to report the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID "of the direct counterparty on the reporting side." Regardless of whether a platform has these UICs for the counterparties to a security-based swap executed on its facilities, the platform would not be the reporting side for such a transaction because it is not a counterparty to the security-based swap.[69] Thus, when a platform has the duty to report a transaction, there is no reporting side, and the registered SDR to which the platform reports the security-based swap would be

[69] Under Rule 900(hh), as adopted, the sides are counterparties to the security-based swap. Thus, the platform would not be one of the sides (except possibly in unusual circumstances) and thus could not be the reporting side.

required to obtain the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID, as applicable, from each direct counterparty using the process in Rule 906(a), as adopted.[70]

- Rules 901(d)(3) and 901(d)(5) require reporting of the terms of any fixed or floating rate payments and any other elements included in the agreement necessary to calculate the value of the contract, respectively, but only "[t]o the extent not provided pursuant to [Rule 901(c)]." The Commission believes that all of the identifying information would be contained in the product ID or otherwise available to the platform and reported by the platform pursuant to Rule 901(c).[71] Therefore, the Commission preliminarily believes

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70 See Regulation SBSR Adopting Release, Section XIII (describing Rule 906(a), as adopted). The Commission preliminarily believes that relying on the Rule 906(a) process to obtain UIC information from both sides to a platform-executed security-based swap that will be submitted to clearing would not cause counterparties to such transactions to incur significant additional costs. See Regulation SBSR Adopting Release, Section XXII(C)(6)(c) (estimating the costs of complying with Rule 906(a), as adopted, for reporting sides). As noted above, assigning the reporting duty to the platform should minimize the number of reporting steps and thus the possibility of data corruption and delays in reporting the transaction to a registered SDR because a platform will have superior access to the economic terms of security-based swaps that are executed on its facilities and will be submitted to clearing. The Commission further notes that the platform could report the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID, as applicable, as agent for a direct counterparty, if the direct counterparty provided this information to the platform. See Regulation SBSR Adopting Release, Section V(C)(2) (discussing use of agents to carry out reporting duties).

71 For a platform to make a security-based swap eligible for trading on its facilities, it must display a product in specific enough detail for the platform participants to reach a meeting of the minds about what they are trading. In other words, the platform must provide information that identifies the security-based swap, the effective date, the scheduled termination date, and the terms of any standardized fixed or floating rate payments and the frequency of such payments. The platform would be required to report these elements, or a product ID that incorporates these elements, to a registered SDR pursuant to Rule 901(c).

that the information required under Rules 901(d)(3) and 901(d)(5) would be a null set for a transaction executed on a platform that is submitted to clearing.

- Rule 901(d)(4) requires reporting of the titles and dates of agreements that are "incorporated by reference into the security-based swap contract." The terms of the alpha security-based swap will be established according to the rules of the platform and, potentially, the rules of the registered clearing agency to which the security-based swap will be submitted, and likely will not be written. Therefore, the Commission presumes that there will be no agreements incorporated by reference to such contracts, and the information required under Rule 901(d)(4) would be a null set for a transaction executed on a platform that will be submitted to clearing.
- Rule 901(d)(7) would apply only if the direct counterparties do <u>not</u> intend to submit the security-based swap to clearing. Rule 901(d)(8) would apply only if the transaction is <u>not</u> submitted to clearing. Because a platform would be required to report a security-based swap executed on its facilities <u>only if the transaction will be submitted to clearing</u>, Rules 901(d)(7) and 901(d)(8) would not be applicable.
- Rule 901(d)(9) requires reporting of the platform ID. The platform can provide this information.
- Rule 901(d)(10) would apply only if the security-based swap arises from the allocation, termination, novation, or assignment of one or more existing security-based swaps. To the extent that platforms facilitate allocations, terminations, novations, or assignments of existing security-based swaps, the platform participants engaging in such exercises could

provide the platform with the transaction IDs of those existing security-based swaps,[72] which the platform would need to report pursuant to Rule 901(d)(10).

Two commenters who raised general issues about platforms having the duty to report questioned, in particular, a platform's ability to report subsequent events affecting the initial alpha transaction. One commenter stated that "an SB SEF would not be in a position or necessarily have the capabilities to report life cycle event information."[73] The second commenter noted that "the SB SEF or national securities exchange may not itself have access to . . . whether the trade has been accepted for clearing."[74] This commenter further noted that "the relevant clearing agency . . . could report the missing data in parallel."[75] The Commission broadly agrees with that suggestion and therefore is proposing a new subparagraph (ii) of Rule 901(e)(1), which would require a registered clearing agency to report whether or not it has accepted a security-based swap for clearing. Proposed Rule 901(e)(1)(ii) reflects the Commission's preliminary view that the registered clearing agency—and not a platform or any other person—has the most direct access to that information and, therefore, should have the duty to report it to the alpha SDR.[76] Similarly, the Commission generally agrees with the first commenter that a platform is not in a good position to know about life cycle events of security-

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72 For a platform to facilitate allocations, terminations, novations, or assignments of existing security-based swaps, the platform participants necessarily must provide a significant amount of information to the platform regarding those existing security-based swaps. Given that the platform participants must provide a significant amount of information about the existing transactions to the platform, the Commission preliminarily believes that the platform participants also could provide the platform with the transaction IDs of those existing security-based swaps.

73 WMBAA II at 6.

74 ISDA/SIFMA I at 18.

75 Id.

76 See supra Section II(C)(2)(d).

based swaps executed on their facilities. However, the Commission preliminarily believes that the only life cycle event of a platform-executed security-based swap that will be submitted to clearing will be whether the security-based swap is accepted for clearing. Proposed Rule 901(e)(1)(ii) would require the registered clearing agency to report that information, not the platform.

The Commission notes that proposed Rule 901(a)(1) would require a platform to report a security-based swap only if the security-based swap will be submitted to clearing. If the platform-executed transaction will not be submitted to clearing, Rule 901(a)(2)(ii), as adopted, already requires the counterparties to apply the reporting hierarchy to determine which side will have the duty to report the transaction, as well as any life cycle event of that transaction. This result is consistent with Section 13A(a)(3) of the Exchange Act,[77] which sets out a reporting hierarchy under which one of the counterparties, but not a platform, will have the duty to report a security-based swap that is not accepted by any clearing agency.

3. Additional Amendments to Account for Platforms and Registered Clearing Agencies Incurring Duties to Report

Under Rule 901(h), as adopted, "a reporting side" must electronically transmit the information required by Rule 901 in a format required by the registered SDR.[78] The Commission is now proposing to replace the term "reporting side" in Rule 901(h) with the phrase "person having a duty to report" because, under the proposed amendments to Rule 901(a), platforms and registered clearing agencies would have duties to report certain transaction information, in addition to reporting sides. The Commission believes that all persons who have a

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[77] 15 U.S.C. 78mA(a)(3).

[78] Rule 907, as adopted, requires a registered SDR to establish and maintain written policies and procedures to govern various aspects of the registered SDR's operations, including the manner and format in which the registered SDR will accept data from its participants.

duty to report under Regulation SBSR—i.e., platforms, registered clearing agencies, and reporting sides—should electronically transmit the information required by Rule 901 in a format required by the registered SDR.

Under Rule 900(u), as adopted, platforms and registered clearing agencies would not be participants of registered SDRs solely as a result of reporting security-based swap transaction information pursuant to proposed Rule 901(a)(1) or 901(e)(1)(ii), respectively.[79] However, consistent with the proposed amendment to Rule 901(h) described immediately above, the Commission believes that platforms and registered clearing agencies should be participants of any registered SDR to which they report security-based swap transaction information. Imposing participant status on platforms and registered clearing agencies would explicitly require those entities to report security-based swap transaction information to a registered SDR in a format required by that registered SDR. If platforms and registered clearing agencies were not participants of the registered SDR and were permitted to report data in a format of their own choosing, it could be difficult or impossible for the registered SDR to understand individual transaction reports or aggregate them with other reports in a meaningful way. This could adversely affect the ability of the Commission and other relevant authorities to carry out their oversight responsibilities and could interfere with the ability of a registered SDR to publicly disseminate security-based swap transaction information as required by Rule 902, as adopted. Therefore, the Commission is proposing to amend the definition of "participant" in Rule 900(u) to mean: (1) a person that is a counterparty to a security-based swap, provided that the security-

[79] Rule 900(u), as adopted, provides that a "[p]articipant, with respect to a registered security-based swap data repository, means a counterparty, that meets the criteria of [Rule 908(b)], of a security-based swap that is reported to that registered security-based swap data repository to satisfy an obligation under [Rule 901(a)]."

based swap is subject to regulatory reporting under Regulation SBSR and is reported to a registered SDR pursuant to Regulation SBSR; (2) a platform that is required to report a security-based swap pursuant to Rule 901(a)(1); or (3) a registered clearing agency that is required to report a life cycle event pursuant to Rule 901(e).[80]

4. Examples

The following examples illustrate the proposed reporting process for alpha, beta, and gamma security-based swaps, assuming an agency model of clearing under which a non-clearing member counterparty becomes a direct counterparty to a clearing transaction:[81]

- Example 1. A registered security-based swap dealer enters into a security-based swap with a private fund. The transaction is not executed on a platform. The counterparties intend to clear the transaction (i.e., the transaction is an alpha). Neither side has a guarantor with respect to the alpha, and both direct counterparties are U.S. persons.
    - The registered security-based swap dealer is the reporting side under Rule 901(a)(2)(ii), as adopted, and must report this alpha transaction to a registered SDR (and may choose the registered SDR).
    - Proposed Rule 901(a)(3) would require the registered security-based swap dealer, as the reporting side of the alpha transaction, to promptly provide

80 A registered clearing agency that is required to report a clearing transaction pursuant to proposed Rule 901(a)(2)(i) would be a counterparty to a security-based swap and covered by the first prong of the proposed definition of "participant."

81 As noted in Section II(A), supra, because clearing of security-based swaps in the United States is still evolving, other models of clearing might emerge where customers would not become direct counterparties of a registered clearing agency.

to the registered clearing agency the transaction ID of the alpha and the identity of the alpha SDR.

- If the registered clearing agency accepts the alpha for clearing and terminates the alpha, two clearing transactions—a beta (between the registered security-based swap dealer and the registered clearing agency) and a gamma (between the registered clearing agency and the private fund)—take its place.
- Proposed Rule 901(e)(1)(ii) would require the registered clearing agency to report to the alpha SDR that it accepted the transaction for clearing.
- Under proposed Rule 901(a)(2)(i), the registered clearing agency would be the reporting side for each of the beta and the gamma. Therefore, the registered clearing agency would be required to report the beta and gamma to a registered SDR and could choose the registered SDR to which it reports the beta and gamma. The report for each of the beta and the gamma must include the transaction ID of the alpha, as required by Rule 901(d)(10), as adopted.

- Example 2. Same facts as Example 1, except that the private fund and the registered security-based swap dealer transact on a SB SEF.
  - Proposed Rule 901(a)(1) would require the SB SEF to report the alpha transaction (and allow the SB SEF to choose the registered SDR).
  - Upon submission of the alpha for clearing, proposed Rule 901(a)(3) would require the SB SEF to promptly report to the registered clearing agency the transaction ID of the alpha and the identity of the alpha SDR.

- Once the alpha is submitted to clearing, the reporting workflows are the same as in Example 1.

D. Request for Comment

The Commission requests comment on all aspects of the proposed new Rules 901(a)(1), 901(a)(2)(i), and 901(a)(3), as well as the proposed amendment to Rule 901(e).

1. Is the Commission's discussion of how Regulation SBSR—under the amendments proposed in this release—would apply to different steps or actions in the clearing process under the agency model sufficiently clear and complete? If not, please provide detail about the operation of the agency model of clearing (e.g., particular steps or actions in the clearing process) that you believe the Commission has not adequately addressed and how you believe they should be treated under Regulation SBSR.
2. Do you believe that the principal model of clearing is or is likely to become sufficiently prevalent in the U.S. market that the Commission should address how Regulation SBSR would apply to different steps in the clearing process under the principal model? If so, do you think that further guidance is necessary to apply Regulation SBSR effectively to the principal model? What aspects of the principal model should the Commission focus on for purposes of providing further guidance?
3. At the time that a security-based swap is accepted for clearing, will any person other than the registered clearing agency have complete information about the beta and the gamma that result from clearing?
4. Do you agree with the Commission's preliminary assessment of the data elements

under Rules 901(c) and 901(d) that will be available to a platform and required to be reported for a platform-executed security-based swap that will be submitted to clearing? If not, what information would the platform find difficult to obtain? For example, could a platform be reasonably be expected to know of guarantors of direct counterparties transacting on its facilities (if the guarantors are clearing members who guarantee platform participants who are not themselves direct members of the clearing agency)?

5. If the Commission were to adopt the basic requirement that a platform must report transactions executed on its facilities that are submitted to clearing but, as discussed above, would not require the platform to report certain data elements in Rule 901(c) or 901(d), what data elements should be excepted? Can you suggest an alternate mechanism—besides requiring the platform to report—for such data elements to be reported to the registered SDR?

6. Would a platform have knowledge of any special circumstances of a transaction executed on its facilities that might have to be flagged pursuant to the policies and procedures of the registered SDR to which the platform reports the transaction? Are there any special circumstances that it would be difficult or impossible for a platform to know? If so, please discuss and suggest how the transaction could be appropriately flagged if the platform does not do so.

7. Are there any potential life cycle events of a platform-executed security-based swap that will be submitted to clearing, other than acceptance or rejection from clearing? If so, what are they and who do you think should have the duty of reporting such life cycle events to a registered SDR? Why?

8. What costs might platforms incur to report security-based swap transactions pursuant to proposed Rule 901(a)(1)? Could other market participants report these transactions more efficiently or cost effectively?

9. Would a registered clearing agency have the information necessary to report a platform-executed alpha that will be submitted to clearing? If so, should the registered clearing agency, rather than the platform, be required to report the transaction? Why or why not? How long does it typically take between the execution of a security-based swap on a platform and submission to clearing? How long does it typically take between submission to clearing and when the registered clearing agency determines whether to accept or reject the transaction?

10. Rule 901(d)(2), as adopted, requires the reporting side to report—"as applicable"— the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID with respect to the direct counterparty on the reporting side. As described above, the Commission is proposing that the registered clearing agency would be the reporting side for all clearing transactions to which it is a counterparty. Would the branch ID, broker ID, execution agent ID, trader ID, or trading desk ID ever be applicable to a registered clearing agency? Why or why not?

11. Rule 906(a), as adopted, provides a mechanism for a registered SDR to obtain the branch ID, broker ID, execution agent ID, trading ID, and trading desk ID—"as applicable"—for the non-reporting side of a security-based swap. Thus, mechanisms exist under Regulation SBSR, as adopted, for the Commission to learn the UICs, as applicable, for both sides of the alpha transaction. Would these

UICs be applicable to the non-clearing agency side of a clearing transaction? Why or why not? If not, do you believe that the Commission should provide guidance that there is no requirement under Rule 906(a) to report the UICs for the non-clearing agency counterparty of a clearing transaction?

12. Will registered clearing agencies be able to leverage existing reporting processes to report data to registered SDRs? What additional reporting processes might registered clearing agencies need to develop to ensure accurate reporting in accordance with the proposed amendments to Rule 901? What costs might registered clearing agencies incur to adopt these processes?

13. Would other market participants be able to report clearing transactions or terminations of transactions submitted to clearing more efficiently or cost effectively than the registered clearing agency? What costs might counterparties incur if one of the sides of the alpha were assigned the duty to report a clearing transaction rather than the registered clearing agency?

14. Should the proposed reporting requirements for registered clearing agencies apply only to registered clearing agencies having their principal place of business in the United States rather than to all registered clearing agencies (which could include registered clearing agencies having their principal place of business outside the United States)? Why or why not? Would U.S. persons, registered security-based swap dealers, and registered major security-based swap participants be in a better position to report transactions with non-U.S. person registered clearing agencies? Why or why not?

15. Under proposed Rule 901(e)(1)(ii), a registered clearing agency would be

required to report whether or not it has accepted a security-based swap for clearing. Should this information be required to be reported to the same registered SDR that receives the transaction report of the alpha? If not, how would the Commission and other relevant authorities be able to ascertain whether or not the alpha had been cleared? If so, what costs would be imposed on registered clearing agencies for having to report this transaction information to a registered SDR not of their choosing?

16. Is it appropriate to require a registered clearing agency to become a participant of the alpha SDR solely as a result of reporting whether or not it has accepted an alpha for clearing? What costs would be imposed on registered clearing agencies as a result of this requirement? If a registered clearing agency did not become a participant of the alpha SDR solely by virtue of reporting the disposition of an alpha, in what other way should the registered clearing agency be required to report the disposition of an alpha such that the systems of the alpha SDR can accept and understand that report?

17. What costs might platforms and reporting sides incur to comply with proposed Rule 901(a)(3), which would require the person with the duty to report a security-based swap that has been submitted to clearing at a registered clearing agency to promptly provide that registered clearing agency with the transaction ID of the submitted security-based swap and the identity of the alpha SDR? Is there a more efficient way of ensuring that registered clearing agencies know the transaction ID of the alpha and the identity of the alpha SDR? If so, please discuss.

18. Should platforms and registered clearing agencies be participants of the registered

SDRs to which they report? If not, how would a registered SDR ensure that these persons provide data in a format required by the registered SDR?

19. How might the policies and procedures of a registered SDR address the circumstance where the registered SDR receives a termination report of an alpha pursuant to proposed Rule 901(e)(1)(ii) before it receives the initial report of the alpha? What costs would registered SDRs incur to implement policies and procedures addressing this scenario?

20. Can anonymous trading occur on any other type of trading venue besides a platform? If so, please describe where and how such activity occurs and provide your view as to how Regulation SBSR should, if necessary, be amended to require reporting of such transactions.

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

The Regulation SBSR Adopting Release provides guidance for the reporting of certain security-based swaps executed by an asset manager on behalf of multiple clients—transactions involving what are sometimes referred to as "bunched orders."[82] Specifically, the Regulation SBSR Adopting Release explains how Regulation SBSR applies to executed bunched orders that are reported pursuant to the reporting hierarchy in Rule 901(a)(2)(ii), as adopted, including

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82 See Regulation SBSR Adopting Release, Section VIII. The Commission recognizes that market participants may use a variety of other terms to refer to such transactions, including "blocks," "parent/child" transactions, and "splits." The Commission has determined to use a single term, "bunched orders," for purposes of this release, as this appears to be a widely accepted term. See, e.g., "Bunched orders challenge SEFs," MarketsMedia (March 25, 2014), available at http://marketsmedia.com/bunched-orders-challenge-sefs/, (last visited September 22, 2014); "Cleared bunched trades could become mandatory rule," Futures and Options World (October 31, 2013), available at http://www.fow.com/3273356/Cleared-bunched-trades-could-become-mandatory-rule.html, (last visited September 22, 2014).

bunched order alphas. That release also explains how Regulation SBSR applies to the security-based swaps that result from allocation of that executed bunched order, if the resulting security-based swaps are uncleared. This section explains how the Commission preliminarily believes Regulation SBSR, as adopted and as proposed to be amended by this release, would apply to a platform-executed bunched order that will be submitted to clearing, and the security-based swaps that result from the allocation of any bunched order execution, if the resulting security-based swaps are cleared.

As described in the Regulation SBSR Adopting Release, to execute a bunched order, an asset manager negotiates and executes a security-based swap with a counterparty, typically a security-based swap dealer, on behalf of multiple clients. The bunched order could be executed on- or off-platform. After execution of the bunched order, the asset manager would allocate a fractional amount of the aggregate notional amount of the transaction to each of several clients, thereby creating several new security-based swaps and terminating the bunched order execution.[83] By executing a bunched order, the asset manager avoids having to negotiate the client-level transactions individually, and obtains exposure for each client on the same terms (except, perhaps, for size).

In the Regulation SBSR Adopting Release, the Commission explained that a bunched order execution and the security-based swaps resulting from the allocation of the bunched order execution, if they are not cleared, must be reported like other security-based swaps. Regulation SBSR provides that the registered SDR to which the initial bunched order execution is reported must disseminate a report of the bunched order execution, including the full notional amount of

[83] In aggregate, the notional amount of the security-based swaps that result from the allocation is the same as the notional amount of the executed bunched order.

the transaction. The Commission observed that publicly disseminating bunched order executions in this manner would allow the public to "know the full size of the bunched order execution and that this size was negotiated at a single price."[84] Rule 902(c)(7), as adopted, provides that the registered SDR shall not publicly disseminate any information regarding the allocation of a bunched order execution, which would include the smaller security-based swaps resulting from the allocation of the initial transaction as well as the fact that the initial transaction is terminated following this allocation.

A. Examples

The following examples illustrate how Regulation SBSR would apply to platform-executed bunched order alphas, and security-based swaps that result from allocation of bunched order alphas, if the resulting security-based swaps are cleared. The examples specify which actions are addressed by Regulation SBSR, as adopted, and which actions would be addressed by the new provisions of Regulation SBSR that are being proposed in this release. The Commission notes that the proposed amendments to Rule 901(a) and the conforming changes discussed in Section II, supra, would not affect the examples describing the reporting of bunched orders and the security-based swaps that result from their allocation that the Commission provided in the Regulation SBSR Adopting Release. Furthermore, the examples assume that the bunched order alpha would be cleared using the agency model of clearing.[85] In the case of a bunched order alpha, the final placement of risk will take the form of clearing transactions between: (1) the client accounts of the asset manager and the registered clearing agency that clears the bunched order alpha; and (2) the registered security-based swap dealer and the registered clearing agency.

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84 Regulation SBSR Adopting Release, Section VIII.

85 As noted in Section II(A), supra, the agency model of clearing predominates in the United States.

The Commission understands that market participants may use a variety of workflows for allocating a bunched order alpha. Regulation SBSR, as adopted, provides that, regardless of the workflow employed, a bunched order alpha that is executed off-platform shall be reported and publicly disseminated as a single transaction, showing the full notional amount.[86] The proposed interpretation discussed below would take the same approach to bunched order alphas that are executed on a platform. Regulation SBSR, as adopted, further provides that the security-based swaps that result from allocation of a bunched order execution are subject to regulatory reporting but not public dissemination, if these resulting security-based swaps are uncleared. The proposed interpretation discussed below would take the same approach to cleared security-based swaps that result from the allocation of a bunched order alpha.[87]

1. Example 1: Off-Platform Cleared Transaction

Assume that an asset manager, acting on behalf of several advised accounts, executes a bunched order alpha with a registered security-based swap dealer. The execution does not occur on a platform, and there are no indirect counterparties on either side of the bunched order alpha. The transaction is submitted to a registered clearing agency.

a. Reporting the Bunched Order Alpha

The reporting hierarchy of Rule 901(a)(2)(ii), as adopted, applies to the bunched order alpha because the execution does not occur on a platform and the bunched order alpha is not a clearing transaction. Under Rule 901(a)(2)(ii)(B), as adopted, the registered security-based swap dealer is the reporting side for the bunched order alpha because its side includes the only registered security-based swap dealer. As the reporting side, the registered security-based swap

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86 See Regulation SBSR Adopting Release, Section VIII(A).

87 See ISDA IV at 10 (recommending that bunched order executions be subject to public dissemination instead of the transactions resulting from the allocation).

dealer must report the primary and secondary trade information for the bunched order alpha to a registered SDR (the "alpha SDR") of its choice within 24 hours after the time of execution. Rule 902(a), as adopted, requires the alpha SDR to publicly disseminate a transaction report of the bunched order alpha immediately upon receiving the report from the registered security-based swap dealer.[88]

When the registered security-based swap dealer submits the bunched order alpha to a registered clearing agency for clearing, proposed Rule 901(a)(3) would require the registered security-based swap dealer promptly to provide the registered clearing agency with the transaction ID of the bunched order alpha and the identity of the alpha SDR. This requirement would facilitate the registered clearing agency's ability to report whether or not it accepts the bunched order alpha for clearing pursuant to proposed Rule 901(e)(1)(ii).

b. Reporting the Security-Based Swaps Resulting From Allocation

Proposed Rule 901(a)(2)(i) would require the registered clearing agency to report all clearing transactions that arise as a result of clearing the bunched order alpha, regardless of the workflows used to clear the bunched order alpha.[89]

If the asset manager provides allocation instructions prior to or contemporaneous with the clearing of the bunched order alpha, clearing could result in the creation of a beta (i.e., the clearing transaction between the registered clearing agency and the security-based swap dealer) and a "gamma series" (i.e., the gammas between the registered clearing agency and each of the

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

89 Like other clearing transactions that arise from the acceptance of a security-based swap for clearing, these security-based swaps would not be subject to public dissemination. See Rule 902(c)(6). See also Rule 902(c)(7) (exempting from public dissemination any "information regarding the allocation of a security-based swap"); Regulation SBSR Adopting Release, Section VI(D)(1) (describing final Rule 902(c)(7)).

client funds selected by the asset manager to receive a portion of the initial notional amount). The beta and each security-based swap that comprises the gamma series would not be treated differently under Regulation SBSR than any other clearing transactions.[90]

If the asset manager does not provide allocation instructions until after the bunched order alpha is cleared, clearing could result in the creation of a beta (i.e., the clearing transaction between the registered clearing agency and the security-based swap dealer) and an "intermediate gamma" (i.e., the clearing transaction between the clearing agency and the side representing the clients of the asset manager). The beta would be the same—and would be treated the same—as any other clearing transaction, while the intermediate gamma would continue to exist until the registered clearing agency receives the allocation information, which could come from the asset manager or its clearing member and would allow for the creation of the gamma series. As the registered clearing agency receives the allocation information, it would terminate the intermediate gamma and create new security-based swaps as part of the gamma series. The partial terminations of the intermediate gamma would be life cycle events of the intermediate gamma that the registered clearing agency must report under Rule 901(e)(1)(i), as adopted. Rule 901(e)(2), as adopted, would require the registered clearing agency to report these life cycle events to the same registered SDR to which it reported the intermediate gamma. Under proposed Rule 901(a)(2)(i), the registered clearing agency also would be required to report to a registered SDR each new security-based swap comprising part of the gamma series. Because these security-based swaps arise from the termination (or partial termination) of an existing security-based swap (i.e., the gamma series), Rule 901(d)(10), as adopted, requires the registered clearing agency to link each new transaction in the gamma series to the intermediate gamma by including

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[90] See supra Section II(C)(1) (explaining the reporting process for clearing transactions).

the transaction ID of the intermediate gamma as part of the report of each new security-based swap in the gamma series.

2. Example 2: Cleared Platform Transaction

Assume the same facts as Example 1, except that the registered security-based swap dealer and asset manager execute the bunched order alpha on a SB SEF.

a. Reporting the Bunched Order Alpha

Because the initial transaction is executed on a platform and will be submitted to clearing, the platform would have the duty, under proposed Rule 901(a)(1), to report the bunched order alpha to a registered SDR. To satisfy this reporting obligation, the platform would be required to provide all of the applicable information required by proposed Rule 901(a)(1). Commission staff understands from discussions with market participants that, even if the platform does not know and thus cannot report the counterparty IDs of each account that will receive an allocation, the platform would know the identity of the execution agent who executed the bunched order alpha on behalf of its advised accounts. The platform, therefore, could report the execution agent ID of the execution agent, even though it might not know the intended counterparties of the security-based swaps that will result from the allocation.[91] Rule 902(a), as adopted, requires the registered SDR that receives the report of the bunched order alpha from the platform to publicly disseminate a report of the bunched order alpha. Then, pursuant to Rule

[91] See Rule 901(d)(1) (requiring reporting of the counterparty ID "or the execution agent ID of each counterparty, if applicable"). If the counterparties—i.e., the specific accounts who will receive allocations—are not yet known, the requirement to report the execution agent ID instead of the counterparty ID would apply. Similarly, if the asset manager uses an execution agent to access the platform, the platform would report the identity of the asset manager's execution agent.

906(a), as adopted, the registered SDR would be required to obtain any missing UICs from its participants.

b. Reporting the Security-Based Swaps Resulting From Allocation

If the asset manager provides allocation instructions prior to or contemporaneous with the clearing of the bunched order alpha, clearing would (under the agency model of clearing) result in the creation of a beta (i.e., the clearing transaction between the registered clearing agency and the registered security-based swap dealer) and a "gamma series" (i.e., the gammas between the clearing agency and each of the asset manager's clients). The beta and each security-based swap that comprises the gamma series would be no different—and would not be treated differently under Regulation SBSR—from other clearing transactions.[92]

If the asset manager does not provide allocation instructions until after the bunched order alpha is cleared, clearing (under the agency model) would result in the creation of a beta (between the registered clearing agency and the security-based swap dealer) and an intermediate gamma (between the registered clearing agency and the side representing the clients of the asset manager). The registered clearing agency would then be required to report the termination of the bunched order alpha and the creation of the beta and intermediate gamma, pursuant to proposed Rules 901(e)(1)(ii) and 901(a)(2)(i), respectively. From this point on, the beta would be treated the same as any other clearing transaction, while the intermediate gamma would be decremented and replaced by the gamma series, as described in Example 1.

B. Request for Comment

The Commission requests comment on all aspects of its preliminary views regarding how the proposed amendments to Regulation SBSR would apply to various allocation scenarios

[92] See supra Section II(C)(1) (explaining the reporting process for clearing transactions).

involving cleared security-based swaps.

21. Is the Commission's discussion of how Regulation SBSR—under the amendments proposed in this release—would apply to different steps in the process for reporting the betas and gammas that result from clearing a bunched order alpha sufficiently clear and complete? If not, please provide detail about particular steps that you believe the Commission has not adequately addressed and how you believe they should be treated under Regulation SBSR.

22. Are there additional processes or workflows related to the clearing of bunched order alphas for which market participants need guidance? If so, please describe these situations and your recommendation for how Regulation SBSR should address them.

23. Do asset managers identify the clients that will receive allocations from a bunched order alpha before the bunched order alpha is submitted to clearing? If so, when is allocation of the bunched order alpha complete? If the bunched order alpha is allocated prior to clearing, would the information provided to the registered clearing agency allow the registered clearing agency to recognize that it is clearing a bunched order alpha? If a registered clearing agency is unable to recognize that it is clearing a bunched order alpha, would the registered clearing agency be able to fulfill its reporting duties under the proposed amendments to Regulation SBSR?

IV. Reporting and Public Dissemination of Prime Brokerage Transactions

Commission staff understands from discussions with market participants that, under a prime brokerage arrangement, a customer of a prime broker will negotiate and agree to the

economic terms of a security-based swap with a registered security-based swap dealer (the "executing dealer") but both the customer and the executing dealer ultimately will face the prime broker, rather than each other.[93] Before negotiating with one or more executing dealers, the customer will first enter into a prime brokerage arrangement with a prime broker.[94] The terms of this arrangement typically will, among other things, set out the types of transactions eligible for prime brokerage treatment, enumerate the executing dealers with whom the customer may negotiate, and establish terms for the credit support and other transaction-related services provided by the prime broker to the customer. A prime brokerage arrangement allows a customer to negotiate transactions with a range of executing dealers without having to negotiate credit documentation with each dealer individually. This is because both the customer and the executing dealer know that the transaction between them will be replaced by separate transactions between each of them and the prime broker, thus obviating the need for credit documentation between the two original counterparties.[95]

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93 See The Financial Markets Lawyers Group, CFTC No-Action Letter No. 12-53 at 2-3 (December 17, 2012) ("CFTC NAL No. 12-53"); Division of Swap Dealer and Intermediary Oversight, CFTC No-Action Letter at 3-4 (April 30, 2013) ("CFTC NAL No. 13-11"). These no-action letters describe the CFTC's understanding of prime brokerage arrangements in the swap market. It is the Commission's understanding that prime brokerage arrangements in the security-based swap market are similar to those in the swap market.

94 For purposes of this release, the Commission assumes that both the prime broker and the executing dealer would be registered security-based swap dealers.

95 The agreement between the customer and the executing dealer would constitute a contract for the sale of a security for purposes of the federal securities laws. See Securities Offering Reform, Securities Act Release No. 33-8591 (July 19, 2005), 70 FR 44722, 44767 (August 3, 2005) (discussing the determination of the time of sale with respect to a contract of sale for securities and noting that "a contract of sale under the federal securities laws can occur before there is an unconditional bilateral contract under state law").

Through the prime brokerage arrangement, the prime broker permits the customer to negotiate and agree to the terms of security-based swaps with approved executing dealers, subject to specified limits and parameters.[96] If the terms of the transaction agreed to by the customer and the executing dealer are within those parameters, the prime broker would replace the initial transaction between the customer and the executing dealer with two separate transactions—one between the prime broker and the customer and the second between the prime broker and the executing dealer—having substantially the same terms as the original transaction between the customer and the executing dealer. Thus, a prime brokerage arrangement in the security-based swap market typically results in the following three transactions:

- Transaction 1. The customer and the executing dealer negotiate and agree to the terms of a security-based swap transaction (the "customer/executing dealer transaction") and notify the prime broker of these terms.
- Transaction 2. The prime broker will accept the transaction and face the executing dealer in a security-based swap with the same economic terms agreed to by the executing dealer and the customer, if the terms are within the parameters established by the prime brokerage arrangement (the "prime broker/executing dealer transaction").
- Transaction 3. Upon executing the security-based swap with the executing dealer, the prime broker will enter into an offsetting security-based swap with the customer (the "prime broker/customer transaction").[97]

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96 See ISDA, 2005 Master Give-Up Agreement (providing standard terms that market participants can use to document prime brokerage arrangements). See also CFTC NAL No. 12-53, supra note 93, at 2-3 (describing a typical prime brokerage arrangement in the swap market).

97 See CFTC NAL No. 12-53, supra note 93, at 2-3; CFTC NAL No. 13-11, supra note 93, at 3-4 (describing typical prime brokerage arrangements in the swap market).

A. Application of Regulation SBSR as Adopted to Prime Brokerage Transactions

The Commission understands that prime brokerage arrangements involve credit intermediation offered by the prime broker, rather than a registered clearing agency. Thus, prime brokerage transactions are not cleared. Therefore, Rule 901(a)(2)(ii), as adopted, assigns the reporting duty for Transaction 1, because Transaction 1 is not a clearing transaction.

If the prime broker determines that Transaction 1 meets the terms of the prime brokerage arrangement, the prime broker would initiate Transactions 2 and 3, which would have the effect of terminating Transaction 1. The termination would be a life cycle event of Transaction 1, and the reporting side for Transaction 1 (likely the executing dealer) would be required by Rule 901(e)(i), as adopted, to report the life cycle event to the same SDR to which it reported the transaction initially.[98] If the reporting side for Transaction1 did not report whether Transaction 1 was terminated, the Commission and market observers might incorrectly conclude that the counterparties to Transaction 1 (the customer and executing dealer) continue to have exposure to each other.

Transactions 2 and 3 (i.e., the prime broker/executing dealer transaction and the prime broker/customer transaction, respectively) also are security-based swaps that must be reported

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[98] If the prime broker determines that Transaction 1 does not meet the terms of the prime brokerage arrangement, the executing dealer also would be required to report this fact to the registered SDR to which it reported the transaction initially pursuant to Rule 901(e)(2), as adopted. Rule 901(e)(2) requires, in relevant part, reporting a life cycle event to the entity to which the original security-based swap was reported. Pursuant to commonly used industry documentation for prime brokerage trades, the rejection by the prime broker could cause the initial transaction to be void or, in some cases, the customer and executing dealer could agree to revise their initial agreement and preserve their contract without the involvement of the prime broker. See ISDA, 2005 ISDA Compensation Agreement, at Section 2. In either case, a life cycle event of Transaction 1 would result, because the terms of Transaction 1 would change.

pursuant to Rule 901(a)(2)(ii), as adopted. Because both sides of Transaction 2 likely include a registered security-based swap dealer, the sides are required to select the reporting side. In the case of Transaction 3, however, the prime broker is likely to be the only registered security-based swap dealer involved in the transaction, in which case the prime broker would be the reporting side.[99] Furthermore, because each of these transactions is a security-based swap that arises from the termination of another security-based swap (i.e., the Transaction 1), Rule 901(d)(10), as adopted, requires the reporting of Transaction 1's transaction ID as part of the secondary trade information for both Transaction 2 and Transaction 3. As the Commission stated in the Regulation SBSR Adopting Release, Rule 901(d)(10) is designed to ensure that the Commission and other relevant authorities have an accurate picture of counterparty exposures. In the case of prime brokerage transactions, Rule 901(d)(10) should enable the Commission and other relevant authorities to link the three prime brokerage transactions together for surveillance purposes and to identify the parties that ultimately assume the risks of these transactions.

Rule 902(a), as adopted, requires public dissemination of each security-based swap, unless it falls within a category enumerated in Rule 902(c). Each prime brokerage transaction (i.e., the customer/executing dealer transaction, the prime broker/executing dealer transaction,

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[99] If, however, both sides of Transaction 3 include a registered security-based swap dealer, the sides would be required to select the reporting side. One commenter recommended that, in accordance with current industry practice under the CFTC rules, Regulation SBSR assign the reporting duty for the prime broker/executing broker transaction (Transaction 2) to the executing broker, and responsibility for reporting the prime broker/client transaction (Transaction 3) to the prime broker. See ISDA IV at 5. Under the application of the rules as adopted, as just discussed, if both sides of the prime broker/executing broker transaction include a registered security-based swap dealer, the sides are required to choose who has the reporting duty and can choose the executing broker. Likewise, with respect to the prime broker/client transaction, it is likely that the prime broker is the only registered security-based swap dealer involved in the transaction, and thus application of the reporting hierarchy would result in the side with the prime broker being the reporting side.

and the prime broker/customer transaction) is subject to Rule 902(a). The statutory provisions relating to the reporting of security-based swap transactions state that "each" security-based swap shall be reported; these statutory provisions do not by their terms limit the reporting requirement to transactions having particular characteristics,[100] and Rule 902(c), as adopted, does not contain an exclusion from public dissemination for prime brokerage transactions.

One commenter requested that the Commission exempt the prime broker/customer leg of a prime broker transaction from public dissemination, stating its belief that dissemination of this transaction would not increase price transparency, and a concern that dissemination of this transaction may confuse the market and undermine the value of the data made public.[101] The Commission believes that publicly disseminating reports of prime brokerage transactions could provide market observers with useful information about the cost of the prime broker's credit intermediation services, because prime brokers may charge for these services by pricing Transaction 2 or 3 differently than Transaction 1. This differentiates Transactions 2 and 3 from clearing transactions that are excepted from public dissemination under Rule 902(c)(6), because a registered clearing agency is compensated for its credit intermediation services through clearing fees that are publicly disclosed. With prime brokerage transactions, however, the only mechanism for ascertaining the charge for the credit intermediation service offered by the prime broker would be to compare the prices of Transaction 1 with the prices of the two subsequent transactions. Thus, market observers could discern useful information by comparing reports of the related prime brokerage transactions, and the Commission does not believe at this time that an exception from public dissemination is warranted for any prime brokerage transactions. If a

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[100] See Section 13(m)(1)(G) of the Exchange Act, 15 U.S.C. 78m(m)(1)(G).

[101] See ISDA IV at 13.

report of each prime brokerage transaction is publicly disseminated, price discovery would be enhanced. The published transaction reports would be required to consist of all the information reported pursuant to Rule 901(c), as adopted, plus any condition flags required by the registered SDR's policies and procedures, such as a flag indicating that the three transactions are related.

Rule 907(a)(4), as adopted, requires each registered SDR to establish and maintain written policies and procedures for, among other things, establishing flags to denote special characteristics of a security-based swap, or special circumstances associated with the execution or reporting of a security-based swap. Rules 907(a)(4)(i) and (ii) require the registered SDR to identify those characteristics or circumstances that could, in the fair and reasonable estimation of the registered SDR, cause a person without knowledge of those characteristic(s) or circumstance(s), to receive a distorted view of the market and establish flags to denote such characteristic(s) or circumstance(s). In the Regulation SBSR Adopting Release, the Commission noted several conditions that registered SDRs generally should consider including in their list of condition flags.[102] The fact that all three transactions in a prime brokerage arrangement are related, the Commission generally believes, is a special circumstance of the type that registered SDRs should consider in developing the condition flags required by Rule 907(a)(4). Absent such flags, market observers might interpret the three transaction reports as three separate pricing events and incorrectly infer the existence of more market activity than actually exists, which could distort their view of the market.

B. Example of Application of the Adopted Rules

The following example explains how Regulation SBSR, as adopted, would apply to the steps in a prime brokerage transaction described above. For purposes of this example, assume

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[102] See Regulation SBSR Adopting Release, Section VII(G).

that the customer is a private fund and both the executing dealer and the prime broker are registered security-based swap dealers.[103]

Transaction 1: The Customer/Executing Dealer Transaction

- The executing dealer would be the reporting side under Rule 901(a)(2)(ii) and would be required to report the customer/executing dealer transaction (Transaction 1) to a registered SDR.[104]
- The executing dealer would have up to 24 hours after the time of execution to report to the registered SDR the applicable primary and secondary trade information of Transaction 1.
- Immediately upon receiving the report of Transaction 1, the registered SDR would be required to publicly disseminate a transaction report with all the information required by Rule 902(a).
- When the customer and the executing dealer agree to the terms of Transaction 1, each party would typically report the terms to the prime broker. The Commission understands that, if the terms of Transaction 1 fall within the prime brokerage arrangement, the prime broker would be obligated to face the executing dealer

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103 One commenter requested that Regulation SBSR specify that the time of execution for the prime broker/executing dealer transaction is the time of commitment to economic terms with the prime broker's client, and that for the prime broker/customer transaction, the prime broker may use the time of acceptance as the time of execution for reporting purposes. See ISDA IV at 9. The Commission notes that the time of execution for all security-based swaps is defined in Rule 900(ii), as adopted, as the point at which the counterparties to a security-based swap become irrevocably bound under applicable law. See Regulation SBSR Adopting Release, Section II(A)(2)(c). The Commission sees no reason at this time to have a different standard for prime brokerage transactions.

104 See Rule 901(a)(2)(ii)(B) ("If only one side of the security-based swap includes a registered security-based swap dealer, that side shall be the reporting side").

with substantially the same terms agreed upon by the customer and the executing dealer in Transaction 1.

- If the prime broker determines that Transaction 1 meets the terms of the prime brokerage arrangement and accepts the transaction, Transaction 1 would terminate. The executing dealer, as the reporting side for Transaction 1, would be required to report this life cycle event pursuant to Rule 901(e), as adopted, to the same registered SDR that received the initial report of Transaction 1. Immediately upon receiving this report, the registered SDR would be required to publicly disseminate the termination information.
- If the prime broker does not accept the terms agreed to by the customer and executing dealer, the executing dealer, in its capacity as reporting side for Transaction 1, would notify the registered SDR that the prime broker had rejected the transaction pursuant to Rule 901(e)(1)(i), as adopted.

<u>Transaction 2: The Prime Broker/Executing Dealer Transaction</u>

- The executing dealer and prime broker would enter into a prime broker/executing dealer transaction (Transaction 2).
- The prime broker and executing dealer would be required by Rule 901(a)(2)(ii)(A), as adopted, to select the side that would be the reporting side for Transaction 2.
- The reporting side of Transaction 2 would have up to 24 hours after the time of execution to report to the registered SDR the applicable primary and secondary trade information of the transaction. Because Transaction 2 arises from the termination, novation, or assignment of Transaction 1, the reporting side of

Transaction 2 would need to report the transaction ID of Transaction 1 pursuant to Rule 901(d)(10), as adopted.[105]

- Immediately upon receiving the report of Transaction 2, the registered SDR would be required to publicly disseminate a transaction report with all the information required by Rule 902(a) and with any flags required by the registered SDR's policies and procedures under Rule 907.

Transaction 3: The Prime Broker/Customer Transaction

- The prime broker would execute the prime broker/customer transaction (Transaction 3) to "step into" the position that the executing dealer established against the customer in Transaction 1.
- The prime broker would be the reporting side for Transaction 3 under Rule 901(a)(2)(ii), as adopted.[106]
- The prime broker would have up to 24 hours after the time of execution to report to the registered SDR the applicable primary and secondary trade information of Transaction 3. Because Transaction 3 arises from the termination, novation, or assignment of Transaction 1, the prime broker would need to report the

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105 If the executing dealer is the reporting side for both Transaction 1 and Transaction 2, the executing dealer will know the transaction ID of Transaction 1 and can include it in the report of Transaction 2. However, if the prime broker is the reporting side for Transaction 2, the Commission anticipates that the prime broker will obtain from the executing dealer the transaction ID of Transaction 1, along with all of the other information regarding Transaction 1 that will permit the prime broker to determine whether to accept Transaction 1.

106 See Rule 901(a)(2)(ii)(B) ("If only one side of the security-based swap includes a registered security-based swap dealer, that side shall be the reporting side").

transaction ID of Transaction 1 as part of the report of Transaction 3, pursuant to Rule 901(d)(10), as adopted.[107]

- Immediately upon receiving the report of Transaction 3, the registered SDR would be required to publicly disseminate a transaction report with all the information required by Rule 902(a) and with any flags required by the registered SDR's policies and procedures under Rule 907.

C. Request for Comment

The Commission requests comment on its discussion above of the application of Regulation SBSR to security-based swaps that are part of a prime brokerage arrangement. In particular:

24. Does the description of prime brokerage arrangements above adequately describe prime brokerage arrangements in the security-based swap market? Do market participants employ other types of prime brokerage arrangements? If so, how do these prime brokerage arrangements differ from the arrangements discussed above?

25. Should the prime broker/customer and/or prime broker/executing dealer transactions be exempted from public dissemination? Why or why not?

26. Would market observers benefit from being able to observe any difference in price between the customer/executing dealer transaction and the prime broker/customer and prime broker/executing dealer transactions?

27. Should public reports of related prime brokerage transactions include condition

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[107] The Commission anticipates that the prime broker (the reporting side for Transaction 3) will obtain the transaction ID of Transaction 1 from the executing dealer. See supra note 104 and associated text.

flags to indicate a relationship between the transactions? Would a market participant receive a distorted view of the market if condition flags are not used? Why or why not?

28. Rule 901(e), as adopted, requires the executing dealer to report the termination of the customer/executing dealer transaction, because the executing dealer was the reporting side of that transaction. Should the duty to report the termination of the customer/executing dealer transaction be shifted to the prime broker? Why or why not? As between the executing dealer and the prime broker, which person do you believe is better placed to report the termination? Why?

29. Should the time of execution for any leg of a prime brokerage transaction be defined differently than as provided for in Rule 900(ii)? If so, why?

V. Additional Proposed Amendments

A. Amendments to Rule 905(a)

Rule 905(a), as adopted, establishes a mechanism for reporting corrections of previously submitted security-based swap transaction information. Rule 905(a) applies to any counterparty to a security-based swap that discovers an error in the information reported with respect to that security-based swap. Under Rule 905(a)(1), as adopted, if the non-reporting side discovers the error, the non-reporting side must promptly notify the reporting side of the error. Under Rule 905(a)(2), as adopted, once the reporting side receives notification of the error from the non-reporting side, or if the reporting side discovers the error on its own, the reporting side must promptly submit an amended report—containing the corrected information—to the registered SDR that received the erroneous transaction report. The reporting side must submit the report

required by Rule 905(a) in a manner consistent with the policies and procedures of the registered SDR.

As discussed in Section II, supra, the Commission is proposing to amend Rule 901(a) to require a platform to report a security-based swap that is executed on the platform and that will be submitted to clearing. Accordingly, to preserve the principle in adopted Rule 905(a) that the person responsible for reporting a security-based swap also should be responsible for submitting a correction if it discovers an error, the Commission is proposing a conforming amendment to Rule 905(a) to account for the possibility that a person who is not a counterparty and is thus not on either side[108] of the transaction (i.e., a platform) could have the original duty to report the transaction. Thus, under the proposed amendment to Rule 905(a)(1), a non-reporting side that discovers an error in the information reported with respect to a security-based swap would be required to promptly notify "the person having the duty to report" that security-based swap of the error. The Commission is proposing a similar change to Rule 905(a)(2). Under the proposed amendment to Rule 905(a)(2), the person having the duty to report a security-based swap, whether a side or a platform, would be required to correct previously reported erroneous information with respect to that security-based swap if it discovers an error or if it receives notification of an error from a counterparty.

B. Amendments to Rules 906(b) and 907(a)(6)

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108 Under Rule 900(hh), as adopted, a "side" is a direct counterparty and any guarantor of that direct counterparty's performance who meets the definition of "indirect counterparty" in connection with the security-based swap. Under the proposed amendments described above, there would be no "reporting side" for a security-based swap for a platform-executed security-based swap that is submitted to clearing. While the platform would have the duty to report, it would not be a counterparty to the security-based swap and thus would not be a side. Furthermore, neither side would have the duty to report, and thus both sides would be non-reporting sides.

Under the proposed amendment to Rule 900(u) described above,[109] the definition of "participant" would be expanded to include platforms that are required to report platform-executed security-based swaps that are submitted to clearing and registered clearing agencies that are required to report whether or not an alpha is accepted for clearing. Rule 906(b), as adopted, requires each participant of a registered SDR to provide the registered SDR information sufficient to identify any affiliate(s) of the participant that also are participants of the registered SDR and any ultimate parent(s) of the participant.[110] By itself, the proposed amendment to Rule 900(u) would subject platforms and registered clearing agencies that are required to report whether or not they accept alpha transactions for clearing to the requirements of Rule 906(b).[111]

The Commission preliminarily believes that the purposes of Rule 906(b)—namely, facilitating the Commission's ability to measure derivatives exposure within the same ownership group—would not be advanced by requiring platforms and registered clearing agencies to report parent and affiliate information to a registered SDR. To the extent that a platform has an affiliate that transacts in security-based swaps, the positions of any such affiliate can be derived from other transaction reports indicating that affiliate as a counterparty. There would be no need for the Commission to aggregate the platform's positions with those of its affiliates, because a

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109 See supra Section II(B)(3).

110 See Regulation SBSR Adopting Release, Section XIII(B).

111 The Commission notes that proposed Rule 901(a)(2)(i) and the proposed amendment to Rule 908(b) would have the effect of making a registered clearing agency a participant—under Rule 900(u), as adopted—of any registered SDR to which it reports clearing transactions. Under Rule 900(u), as adopted, a counterparty of a security-based swap that is reported to a registered SDR becomes a participant of that registered SDR (assuming that the counterparty also falls within Rule 908(b), as adopted). The proposed amendment to the definition of "participant" also would make a registered clearing agency a participant of any alpha SDR to which it would be required to report whether it had accepted the alpha for clearing.

platform would not assume any position in security-based swaps executed on its facilities. Furthermore, the risk management of a registered clearing agency is directly overseen by the Commission, and the Commission believes that it has adequate tools to carry out this function without subjecting the registered clearing agency to Rule 906(b). Accordingly, the Commission proposes to amend Rule 906(b) to state that reporting obligations under Rule 906(b) do not apply to participants that are platforms or registered clearing agencies.

The Commission proposes to make a similar amendment to Rule 907(a)(6). This rule, as adopted, requires a registered SDR to have policies and procedures "[f]or periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any participant(s) with which the participant is affiliated, using ultimate parent IDs and counterparty IDs." The Commission proposes to amend Rule 907(a)(6) to require a registered SDR to obtain this information only from a participant that is not a platform or a registered clearing agency. Thus, under the proposed amendment, Rule 907(a)(6) would require registered SDR to have policies and procedures "[f]or periodically obtaining from each participant other than a platform or a registered clearing agency information that identifies the participant's ultimate parent(s) and any participant(s) with which the participant is affiliated, using ultimate parent IDs and counterparty IDs."[112]

C. Extending the Applicability of Rule 906(c)

Rule 906(c), as adopted, requires each participant of a registered SDR that is a registered security-based swap dealer or registered major security-based swap participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that

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[112] The Commission notes that, once a participant reports parent and affiliate information to a registered SDR, Rule 906(b) requires the participant to "promptly notify the registered [SDR] of any changes" to its parent and affiliate information.

the participant complies with any obligations to report information to a registered SDR in a manner consistent with Regulation SBSR. As the Commission stated in the Regulation SBSR Adopting Release, the policies and procedures required by Rule 906(c) are intended to promote complete and accurate reporting of security-based swap information by SDR participants that are registered security-based swap dealers or registered major security-based swap participants.[113] Rule 906(c) also requires each registered security-based swap dealer and registered major security-based swap participant to review and update its policies and procedures at least annually.

Because the Commission is proposing amendments to Rule 901(a) to assign reporting obligations to platforms and registered clearing agencies, the Commission preliminarily believes that such registered clearing agencies and platforms, like registered security-based swap dealers and major security-based swap participants, should be required to establish and maintain written policies and procedures designed to promote compliance with their reporting obligations. Accordingly, the Commission proposes to amend Rule 906(c) to extend the requirements of Rule 906(c) to registered clearing agencies and platforms that are participants of a registered SDR.

The Commission preliminarily believes that the proposed amendment to Rule 906(c) should result in greater accuracy and completeness of the security-based swap transaction data reported to registered SDRs. Without written policies and procedures, compliance with reporting obligations might depend too heavily on key individuals or unreliable processes. For example, if knowledge of the reporting function was not reflected in written policies and procedures but existed solely in the memories of one or a few individuals, compliance with applicable reporting requirements by the firm might suffer if these key individuals depart the firm. The Commission

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[113] See Regulation SBSR Adopting Release, Section XIII(C).

preliminarily believes, therefore, that requiring participants that are platforms and registered clearing agencies to establish, maintain, and enforce written policies and procedures should promote clear, reliable reporting that can continue independent of any specific individuals. The Commission further believes that requiring such participants to establish, maintain, and enforce written policies and procedures relevant to their reporting responsibilities, as would be required by the proposed amendment to Rule 906(c), would help to improve the degree and quality of overall compliance with the reporting requirements of Regulation SBSR.

D. Rule 908(b)—Limitations on Counterparty Reporting Obligations

Rule 908(b) is designed to help further the cross-border application of Regulation SBSR by specifying what types of counterparties would and would not be subject to any duties under Regulation SBSR. Rule 908(b), as adopted, provides that "[n]otwithstanding any other provision of [Regulation SBSR], a person shall not incur any obligation under [Regulation SBSR] unless it is: (1) A U.S. person; or (2) A registered security-based swap dealer or registered major security-based swap participant." Thus, unregistered non-U.S. persons are not among the kinds of persons listed in Rule 908(b) as having any duties under Regulation SBSR.[114]

Under the proposed amendments described above, platforms and registered clearing agencies would have the duty to report security-based swap transactions to registered SDRs in certain circumstances. Under Rule 908(b), as adopted, U.S. persons are among the types of persons that may incur duties under Regulation SBSR. Therefore, platforms and registered

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[114] In the Regulation SBSR Adopting Release, however, the Commission stated that it anticipates soliciting additional public comment on whether regulatory reporting and/or public dissemination requirements should be extended to transactions occurring within the United States between non-U.S. persons and which non-U.S. persons should incur reporting duties under Regulation SBSR. See Regulation SBSR Adopting Release, Section XV(D).

clearing agencies that are U.S. persons already fall within Rule 908(b). The Commission preliminarily believes that all platforms and registered clearing agencies should incur the duties specified in the proposed amendments to Rule 901(a),[115] even if they are not U.S. persons. If the Commission does not propose to amend Rule 908(b) to include all platforms and registered clearing agencies, non-U.S.-person platforms and registered clearing agencies would be able to avoid duties to which U.S.-person platforms and registered clearing agencies would be subject. Therefore, the Commission proposes to amend Rule 908(b) to specifically include platforms and registered clearing agencies as entities that may incur duties under Regulation SBSR. Rule 908(b), as amended, would provide: "Notwithstanding any other provision of [Regulation SBSR], a person shall not incur any obligation under [Regulation SBSR] unless it is: (1) A U.S. person; (2) A registered security-based swap dealer or registered major security-based swap participant; (3) A platform; or (4) A registered clearing agency."

E. Request for Comment

The Commission requests comment on all aspects of the proposed amendments to Rules 905, 906(b), 906(c), 907(a)(6), and 908 described above. In particular:

30. Do you believe that Rule 905(a) should be amended to include platforms? Why or why not? Would any other conforming changes to Rule 905 be advisable on account of the proposal to extend reporting duties to platforms?

31. Do you agree with the Commission's proposal to exclude platforms and registered clearing agencies from Rule 906(b)? Why or why not?

32. Should Rule 906(c) be expanded to include platforms and registered clearing agencies? Why or why not?

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[115] See supra Section II(B).

33. Do you agree with the proposed conforming amendment to Rule 908(b) to include platforms and registered clearing agencies? Why or why not?

34. Do you believe any other conforming amendments to Regulation SBSR are necessary or desirable in light of the Commission's proposal to extend reporting duties to platforms and registered clearing agencies as discussed above? If so, please describe.

VI. Proposed Rule Prohibiting a Registered SDR from Charging Fees for or Imposing Usage Restrictions on Publicly Disseminated Data

A. Background

In addition to implementing the Title VII mandate for regulatory reporting of all security-based swaps, Regulation SBSR also implements the Title VII mandate for public dissemination of all security-based swaps. Section 13(m)(1)(B) of the Exchange Act[116] authorizes the Commission "to make security-based swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery." Section 13(m)(1)(C) of the Exchange Act[117] identifies four categories of security-based swaps and directs the Commission to require "real-time public reporting" of transaction, volume, and pricing data for each category. Section 13(m)(1)(D) of the Exchange Act[118] authorizes the Commission to require registered entities (such as registered SDRs) to publicly disseminate the security-based swap transaction and pricing data required to be reported under Section 13(m) of the Exchange Act. Finally, Section 13(n)(5)(D)(ii) of the Exchange Act[119]

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116 15 U.S.C. 78m(m)(1)(B).

117 15 U.S.C. 78m(m)(1)(C).

118 15 U.S.C. 78m(m)(1)(D).

119 15 U.S.C. 78m(n)(5)(D)(ii).

requires SDRs to provide security-based swap information "in such form and at such frequency as the Commission may require to comply with public reporting requirements."

Accordingly, Rule 902(a), as adopted, requires a registered SDR to publicly disseminate a transaction report of a security-based swap, or a life cycle event or adjustment due to a life cycle event, immediately upon receipt of information about the security-based swap, with certain exceptions noted in Rule 902(c). Rule 900(cc), as adopted, defines "publicly disseminate" to mean "to make available through the Internet or other electronic data feed that is widely accessible and in machine-readable electronic format."

Four commenters on Regulation SBSR, as originally proposed, raised issues that bear on whether—and, if so, under what terms—a registered SDR would be able to charge for the security-based swap data that Regulation SBSR requires it to publicly disseminate.[120] One of these commenters stated that security-based swap transaction data "should be made available on reasonable commercial terms."[121] Another commenter, which currently operates a trade repository, believed that registered SDRs should make "data available to value added providers on a non-discriminatory basis" and that the public utility function of an SDR should be separated from potential commercial use of the data.[122] A third commenter stated that, consistent with

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120 See Better Markets II at 2; DTCC II at 27; DTCC III at 2; Markit I at 2; WMBAA II at 8.

121 Markit I at 2.

122 DTCC II at 27 (also stating that it is "good public policy that the aggregating entity not itself use the data for commercial purposes, particularly where data is required to be reported to an aggregator serving a regulatory purpose, and make such data available to value added providers on a non-discriminatory basis, consistent with restrictions placed on the data by the data contributors themselves"); DTCC III at 2 (stating that the mandatory reporting regime "creates an opportunity for the SDR to improperly commercialize the information it receives" and that it is "important that regulators ensure that the public utility function of SDRs, which … support regulatory oversight and supervisory functions, as well as regulator-mandated public reporting, is separated from potential commercial uses of the data").

reporting practices in other markets, "the reporting of SBS transaction information to a registered SDR should not bestow the SDR with the authority to use the security-based swap transaction data for any purpose other than those explicitly enumerated in the Commission's regulations."[123] A fourth commenter believed that "market information must be made available… on an equal basis, in terms of time of availability and content, to all market participants."[124] Finally, a fifth commenter, responding to Regulation SBSR as re-proposed, stated that publicly disseminated data "should be freely available and readily accessible to the public."[125]

In adopting its own rules for public dissemination of swap transactions, the CFTC addressed the issue of whether a swap data repository could charge for its publicly disseminated data. In Section 43.2 of those rules,[126] the CFTC defined "public dissemination" and "publicly disseminate" to mean "to publish and make available swap transaction and pricing data in a non-discriminatory manner, through the Internet or other electronic data feed that is widely published and in machine-readable electronic format." The CFTC also defined "widely published" to mean "to publish and make available through electronic means and <u>in a manner that is freely available and readily accessible to the public</u>."[127] Furthermore, the CFTC adopted Section 43.3(d)(2), which provides: "Data that is publicly disseminated . . . shall be available from an Internet Web site in a format that is freely available and readily accessible to the public." In doing so, the CFTC noted that "implicit in this mandate [of public dissemination] is the requirement that the

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123 WMBAA II at 8. <u>See</u> <u>also</u> SDR Adopting Release, Section VI(D)(3) (discussing commercial use of information by SDRs).

124 Better Markets II at 2.

125 ISDA IV at 17.

126 17 CFR 43.2.

127 <u>Id.</u> (emphasis added).

data be made available to the public at no cost"[128] and that "Section 43.3(d)(2) reflects the [CFTC]'s belief that data must be made freely available to market participants and the public, on a nondiscriminatory basis."[129] However, the CFTC's rules permit a swap data repository to offer, for a fee, value-added data products derived from the freely available regulatorily mandated public data and to charge fair and reasonable fees to providers of swap transaction and pricing data.[130]

After consideration of the comments received and the CFTC's requirement that swap data repositories must publish and make available swap transaction data through electronic means and in a manner that is freely available and readily accessible to the public, the Commission now preliminarily believes that a registered SDR should not be permitted to charge fees for the security-based swap transaction data that it is required to publicly disseminate pursuant to Regulation SBSR. Therefore, the Commission is proposing new Rule 900(tt), which would define the term "widely accessible" as used in the definition of "publicly disseminate" in Rule 900(cc), as adopted, to mean "widely available to users of the information on a non-fee basis." As discussed below, this proposed definition would have the effect of prohibiting a registered SDR from charging fees for, or imposing usage restrictions on, the security-based swap transaction data that it is required to publicly disseminate under Regulation SBSR.

Title VII contains numerous provisions directing the Commission to establish a regime for post-trade transparency in the security-based swap market, which will allow the public to

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128 Commodity Futures Trading Commission, Real-Time Public Reporting of Swap Transaction Data (Final Rule), 77 FR 1182, 1207 (January 9, 2012) (emphasis added).

129 Id. at 1202.

130 See id.

obtain pricing, volume, and other relevant information about all executed transactions.[131] In the Commission's preliminary view, the statutory requirement to make this transaction information publicly available would be frustrated if third parties could charge members of the public for the right to access that disseminated data.

The Commission furthermore believes that Title VII's public dissemination requirements should be interpreted in light of the current structure of the security-based swap market, which developed as an over-the-counter market without transparent volume and pricing information.[132] In the current market, large dealers and certain other large market participants are able to observe their own order flow and executions to develop a better view of the market than smaller market participants. Because of this greater amount of private order flow, larger market participants are better able to assess current market values and have a negotiating advantage over smaller, less informed counterparties. The Commission is concerned that, to the extent that the amount or structure of the fee deters use by smaller market participants, information asymmetries in the security-based swap market would persist and there would be less efficiency and competition in the market than if pricing and volume data were available to all market participants for free.

The Commission has considered the alternative of allowing registered SDRs to charge users fees, on a cost-recovery basis, for receiving the security-based swap transaction data that the registered SDR is required to publicly disseminate. However, the Commission is not proposing that alternative. A person that registers with the Commission as an SDR is also likely to be registered with the CFTC as a swap data repository. A dually registered SDR would likely use the same infrastructure to support public dissemination of swap transaction data as well as

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131 See supra notes 116 to 119 and accompanying text.

132 See Cross-Border Proposing Release, 78 FR at 31126.

security-based swap transaction data. The Commission preliminarily believes that it would be difficult if not impossible to allocate the overhead and ongoing costs of a dually registered SDR to support mandated public dissemination between its swap-related functions and security-based-swap-related functions. As a result, it is unlikely that any such fee imposed on users by the SDR would go exclusively to offsetting the costs of publicly disseminating the regulatorily mandated security-based swap transaction data, rather than the costs associated with publicly disseminating swap data or other SDR functions. Therefore, the Commission preliminarily believes that permitting SEC-registered SDRs to impose fees on users for receiving the security-based swap transaction data that the SDR is required to publicly disseminate, even on a cost-recovery basis, while the CFTC prohibits swap data repositories from doing the same could result in a cross-subsidy for the public dissemination of swap data.

The Commission recognizes that establishing and operating registered SDRs so that they can carry out the duties assigned to them under Title VII entails various costs. However, the Commission preliminarily believes that prohibiting registered SDRs from imposing fees on users for receiving the security-based swap transaction data that the SDR is required to publicly disseminate would not impede their ability to carry out their functions. Another means exists for registered SDRs to obtain funds for their operations that the Commission preliminarily believes is more appropriate: imposing fees on those persons who are required to report transactions. Under such an approach, fees imposed by a registered SDR for reporting would increase in direct proportion to the number of transactions that a market participant is required to report. The Commission notes that CFTC-registered swap data repositories, some of which are likely to apply for registration with the Commission as SDRs for security-based swaps, currently disseminate regulatorily mandated public swap data for free pursuant to the CFTC's rules, and

obtain funds for their operations through other means, including reporting fees.[133] Thus, the Commission preliminarily believes that—the proposed definition of "widely accessible" notwithstanding—SEC-registered SDRs would have adequate sources for their funding even if they are prohibited from charging users fees for receiving the security-based swap transaction data that the SDR is required to publicly disseminate.

In addition, the Commission preliminarily believes that it is necessary to prohibit a registered SDR from charging users of regulatorily mandated security-based swap transaction data for public dissemination of the data to reinforce Rule 903(b), as adopted. Rule 903(b) provides that a registered SDR may disseminate information using UICs (such as product IDs or other codes—e.g., reference entity identifiers—embedded within the product IDs) or permit UICs to be used for reporting by its participants only if the information necessary to interpret such UICs is widely available on a non-fee basis. The Commission is concerned that a registered SDR that wished to charge (or allow others to charge) users for the information necessary to understand these UICs—but could not, because of Rule 903(b)—might seek to do so indirectly by recharacterizing the charge as being for public dissemination. Under these circumstances, the economic benefit to the registered SDR would be the same, but how the registered SDR characterizes the fee—i.e., whether as a charge to users for public dissemination or as a charge of accessing the UICs within the publicly disseminated data—would be the difference between the

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133 See BSDR Fee Schedule at http://www.bloombergsdr.com/assets/img/BSDR%20-%20Exhibit%20O%20(Fees).pdf (last visited on October 24, 2014); CME Swap Data Repository Fee Schedule at http://www.cmegroup.com/market-data/files/cme-repository-service-fee-schedule.pdf (last visited on October 24, 2014); DTCC Derivatives Repository US Fee Schedule at http://www.dtcc.com/~/media/Files/Downloads/Data-and-Repository-Services/GTR/US-DDR/DDR_Fees.pdf (last visited on October 24, 2014); ICE Trade Vault Service and Pricing Schedule at https://www.theice.com/publicdocs/ICE_Trade_Vault_Fee_Schedule.pdf (last visited on October 24 2014).

fee being permissible or impermissible under Rule 903(b). Thus, permitting a registered SDR to charge users for receiving the publicly disseminated transaction data could undermine the purpose of Rule 903(b). Accordingly, the Commission is proposing a definition of "widely accessible" to mean "widely available to users of the information on a non-fee basis." The language of the proposed definition echoes the language of Rule 903(b), as adopted, which requires a registered SDR to permit information to be reported or publicly disseminated using codes in place of certain data elements only if the information necessary to interpret such codes is "widely available to users of the information on a non-fee basis."

Similar to the Commission's statement regarding Rule 903(b) in the Regulation SBSR Adopting Release,[134] the proposed requirement that information be "widely available to users of the information on a non-fee basis" necessarily implies that a registered SDR would not be permitted to impose—or allow to be imposed—any usage restrictions on the security-based swap transaction information that it is required to publicly disseminate, including restrictions on access to or further distribution of the regulatorily mandated public security-based swap data. Market data usage restrictions typically take the form of an agreement between the provider and the users of the data. If a registered SDR could deny or limit access to a user based solely on the user's violation of a usage restriction, the registered SDR would not be in compliance with Rule 902(a), which requires the registered SDR to publicly disseminate the information in a manner that is "widely available." The Commission preliminarily believes that public dissemination would not satisfy the "widely available" standard if the registered SDR could deny access to

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[134] See Regulation SBSR Adopting Release, Section X(B)(3) (noting that the "Commission does not believe that access to [publicly disseminated] information should be impeded by having to pay fees or agree to usage restrictions in order to understand any coded information that might be contained in the transaction data").

users who do not agree to limit their use of the data in any manner directed by the registered SDR. Here, the Commission notes the asymmetric bargaining strength of the parties: a registered SDR might effectively have a monopoly position over the security-based swap transaction data that the registered SDR is required to publicly disseminate. If a registered SDR could impose usage restrictions with which a user does not wish to comply, there would be no other source from which the user could freely obtain these transaction data.

The proposed prohibition on usage restrictions would have the effect of prohibiting a restriction on bulk redistribution by third parties of the regulatorily mandated transaction data that the registered SDR publicly disseminates. The Commission preliminarily believes that it could prove useful to the public for intermediaries to collect, consolidate, and redistribute the regulatorily mandated transaction data to the public. Users of the data might, instead of obtaining data directly from each of several SDRs, find it preferable to obtain the data from a single person who itself obtains the data directly from the multiple registered SDRs and consolidates it. The Commission preliminarily believes that allowing unencumbered redistribution would be more consistent with the policy goals of wide availability of the data and minimization of information asymmetries in the security-based swap market. If the Commission prohibits registered SDRs from imposing a restriction on bulk redistribution, third parties would be able to take in the full data set and scrub, reconfigure, aggregate, analyze, repurpose, or otherwise add value to those data, and potentially sell that value-added product to others.

Rule 902(a), as adopted, and the proposed definition of "widely available" would not prohibit a registered SDR from creating and charging fees for a value-added data product that incorporates the regulatorily mandated transaction data, provided that the registered SDR has first satisfied its duty under Rule 902(a) and effected public dissemination of each security-based

swap transaction in accordance with the proposed definition of "widely available."[135] In other words, a registered SDR could make publicly available both a regulatorily mandated and value-added data product. However, to comply with Rule 902(a), as adopted, a registered SDR is required to publicly disseminate a transaction report of a security-based swap (assuming that the transaction does not fall within Rule 902(c), as adopted) immediately upon receipt of information about the security-based swap. Thus, the registered SDR could not make the value-added product available before it publicly disseminated the regulatorily mandated transaction report. If a registered SDR makes a fee-based, value-added product available more quickly than the required transaction report, the registered SDR would not be acting consistent with Rule 902(a) because it would not be disseminating the required transaction report immediately.

This approach is consistent with parallel requirements under CFTC rules that require regulatorily mandated data be freely available to the public, but do not prohibit a CFTC-registered swap data repository from making commercial use of such data subsequent to its public dissemination.[136] This approach also is designed to promote competition in the market for value-added security-based swap data products. Other potential competitors in this market will necessarily have to obtain the regulatorily mandated transaction information from a registered SDR, because the SDR has a monopoly on this information until it is made widely accessible to the public. Potential competitors could be at a disadvantage if, needing to obtain the raw material for their own services, they had to purchase a value-added data product from the registered SDR or could obtain the regulatorily mandated transaction data only on a delayed

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135 The SDR Adopting Release discusses generally the commercial use of security-based swap data. See SDR Adopting Release, Section VI(D)(3)(c)(iii).

136 See "Real-Time Public Reporting of Swap Transaction Data" (December 20, 2011), 77 FR at 1182, 1207 (January 9, 2012) (adopting rules for the public dissemination of swaps).

basis. The Commission believes that the transparency goals of Title VII will be furthered by reducing impediments to competition in the market for value-added post-trade data products relating to security-based swaps.

B. Request for Comment

The Commission requests comment on the proposed definition of "widely accessible" as applied to the public dissemination requirement of Rule 902(a), as adopted. In particular:

35. Do you believe that registered SDRs should be prohibited from charging users fees for or imposing usage restrictions on the security-based swap transaction information that registered SDRs are required to publicly disseminate under Rule 902(a)? Why or why not?

36. What effects would result if registered SDRs were permitted to charge users fees for regulatorily mandated public dissemination even though CFTC-registered SDRs are prohibited from doing so?

37. Do means exist for registered SDRs to recoup their operating costs other than by imposing fees on users for receiving and using the publicly disseminated transaction data? If so, please describe those means.

38. Should a registered SDR be prohibited from imposing any usage restrictions on the regulatorily mandated security-based swap transaction data that it publicly disseminates? Why or why not? What kinds of usage restrictions are typically included in user agreements for other types of market data? What would be the effect of prohibiting such usage restrictions from being imposed on the regulatorily mandated security-based swap transaction information that is publicly disseminated by registered SDRs?

39. Should a registered SDR be permitted to impose a prohibition against bulk re-

dissemination of the regulatorily mandated transaction data that it publicly disseminates? Why or why not?

40. Do you believe that the proposed definition of "widely accessible" as applied to the public dissemination requirement of Rule 902(a), as adopted, would impact the market for value-added post-trade data products in the security-based swap market? Why or why not? If so, how would it affect the market?

VII. Proposed Compliance Schedule for Regulation SBSR

In the Regulation SBSR Proposing Release, the Commission proposed Rule 910, which would have set forth various compliance dates under Regulation SBSR and, in general, was designed to clarify the implementation process. The Commission did not adopt Rule 910 in the Regulation SBSR Adopting Release. Although the Commission received comment on its proposed compliance schedule, the Commission now believes that a new compliance schedule for most of the rules in Regulation SBSR should be proposed in light of the fact that industry infrastructure and capabilities have changed since the initial proposal. Most notably, the CFTC regime for swap data reporting and dissemination is operational. The Commission understands that persons who are likely to apply for registration with the Commission as SDRs are already CFTC-registered swap data repositories, and many swap market participants are also active in the security-based swap market. Thus, these SDRs and many security-based swap market participants already have made substantial investments in compliance and reporting systems that will likely also be utilized to support Regulation SBSR compliance.

Finally, the Commission now believes that it is not necessary to include compliance dates within the text of Regulation SBSR.[137] Not including a compliance schedule in the text of Regulation SBSR would prevent portions of Regulation SBSR from becoming obsolete soon after adoption while still providing affected persons with guidance about when they are required to comply with the various provisions of Regulation SBSR.

A. Initial Proposal

1. Rule 910

In the Regulation SBSR Proposing Release, the Commission proposed Rule 910 to provide clarity as to security-based swap reporting and dissemination timelines and to establish a phased-in compliance schedule for Regulation SBSR.[138] As initially proposed, Rule 910 would have required reporting of pre-enactment security-based swaps by January 12, 2012, and would have implemented a compliance schedule for Regulation SBSR in four phases. Each registered SDR and its participants would have been required to comply with the requirements of each phase by set periods of time measured from the registration date of that registered SDR, as described in more detail below:

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137 Therefore, the Commission did not adopt the defined terms "effective reporting date," "phase-in period," and "registration date" that were included in Rule 900, as originally proposed, which terms appeared only in proposed Rule 910.

138 As part of the Cross-Border Proposing Release, the Commission re-proposed Rule 910 with only minor changes. Rule 910(b)(4) was re-proposed to reflect that certain cross-border security-based swaps would be subject to regulatory reporting but not public dissemination. See Cross-Border Proposing Release, 78 FR at 31067. As originally proposed, Rule 910(b)(4) would have provided that all security-based swaps reported to a registered SDR would be subject to real-time public dissemination as specified in Rule 902. See Regulation SBSR Proposing Release, 75 FR at 75244. The Commission also replaced the term "reporting party" with "reporting side" in re-proposed Rule 910.

- Phase 1, six months after the registration date: (1) reporting parties would have been required to report any transitional security-based swaps to the registered SDR; (2) reporting parties would have been required to report all newly executed security-based swaps to the registered SDR; (3) participants and the registered SDR would have been required to comply with the error reporting rule (except with respect to dissemination) and the requirements of Rules 906(a) and 906(b); and (4) security-based swap dealers and major security-based swap participants would have been required to comply with Rule 906(c).
- Phase 2, nine months after the registration date: the registered SDR would have been required to disseminate transaction reports and corrected transaction reports for 50 security-based swap instruments.
- Phase 3, 12 months after the registration date: the registered SDR would have been required to disseminate transaction reports and corrected transaction reports for an additional 200 security-based swap instruments.
- Phase 4, 18 months after the registration date: the registered SDR would have been required to disseminate transaction reports and corrected transaction reports for all security-based swaps reported to the registered SDR.

2. Rule 911

The Regulation SBSR Proposing Release included proposed Rule 911, which was designed to prevent evasion of the public dissemination requirement during a period when two or more SDRs had registered with the Commission but were operating under different compliance dates. Rule 911, as re-proposed, would have provided that a reporting side shall not report a security-based swap to a registered SDR in a phase-in period described in Rule 910 during which

the registered SDR is not yet required to publicly disseminate transaction reports for that security-based swap instrument unless: (1) the security-based swap also is reported to a registered SDR that is disseminating transaction reports for that security-based swap instrument, consistent with proposed Rule 902; or (2) no other registered SDR is able to receive, hold, and publicly disseminate transaction reports regarding that security-based swap instrument.

B. New Proposed Compliance Schedule

The Commission is proposing a new compliance schedule for Rules 901, 902, 903, 904, 905, 906, and 908 of Regulation SBSR[139] that is designed to provide affected persons, especially registered SDRs and persons with a duty to report security-based swap transactions to registered SDRs, with time to develop, test, and implement reporting and dissemination systems.[140] The proposed compliance schedule is tied to the commencement of operations of a registered SDR in

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139 For Rules 900, 907, and 909 of Regulation SBSR, the compliance date is the effective date of Regulation SBSR. See Regulation SBSR Adopting Release, Section I(F).

140 As discussed in the Cross-Border Proposing Release, re-proposed Rule 908(a) would have provided an exception to public dissemination for transactions executed by a non-U.S. person who is guaranteed by a U.S. person, where there is no U.S. person or security-based swap dealer on the other side and the transaction is not cleared through a clearing agency having its principal place of business in the United States. As discussed in the Regulation SBSR Adopting Release, the Commission did not adopt this proposed exception. Rather, Rule 908(a)(1), as adopted, requires public dissemination of a security-based swap if one side consists of a non-U.S.-person direct counterparty and a U.S.-person guarantor, where neither is a registered security-based swap dealer or registered major security-based swap participant, and the other side includes no counterparties that are U.S. persons, registered security-based swap dealers, or registered major security-based swap participants (a "covered cross-border transaction"). See Cross-Border Proposing Release, 78 FR at 31062-63. The Commission anticipates seeking additional comment on whether or not to except covered cross-border transactions from public dissemination. Therefore, the Commission also is proposing to defer the compliance date for Rule 908(a)(1)(i) with respect to the public dissemination of covered cross-border transactions until such time as the Commission receives and considers public comment on such an exception or establishes a separate compliance date for these transactions.

an asset class.[141] Registered SDRs will need time to make the necessary technological and other preparations needed, including implementing policies and procedures,[142] to begin receiving and disseminating security-based swap information. Persons with a duty to report transactions will need time to analyze the policies and procedures of registered SDRs to which they wish to connect, make necessary changes to their internal systems, policies and procedures, and processes to conform to the requirements of the SDR's policies and procedures, and establish and test their linkages to the SDRs.

In light of these activities that must occur before full compliance with Regulation SBSR can be expected, the Commission is proposing the following phased-in compliance schedule for Regulation SBSR:

1. Proposed Compliance Date 1

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141 Rule 13n-1(c)(3) under the Exchange Act provides that the Commission shall grant registration of an SDR if "the Commission finds that such security-based swap data repository is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as a security-based swap data repository, comply with any applicable provision of the federal securities laws and the rules and regulations thereunder, and carry out its functions in a manner consistent with the purposes of Section 13(n) of the Act (15 U.S.C. 78m(n)) and the rules and regulations thereunder." Although a registered SDR will have demonstrated its operational capability during the registration process, a registered SDR is not required to and likely will not formally commence operations as a registered SDR on the same day that it is approved for registration.

142 As part of the SDR registration process, a potential registrant must provide all of the policies and procedures required by Rule 907; the Commission will review those policies and procedures in assessing whether to approve the registration. See Form SDR (requiring applicants to attach as Exhibit GG all of the policies and procedures required under Regulation SBSR). In connection with its registration as an SDR, the potential registrant also must register as a securities information processor ("SIP") as required by Rule 909. Rule 907 provides, among other things, that a registered SDR must establish certain policies and procedures relating to the receipt, reporting, and dissemination of security-based swap data. Rule 909, as adopted, provides that a registered SDR must also register with the Commission as a SIP. The compliance date for Rules 907 and 909 will be 60 days after publication of the Regulation SBSR Adopting Release in the Federal Register. See Regulation SBSR Adopting Release, Section I(F).

Proposed Compliance Date 1 relates to the regulatory reporting of newly executed security-based swaps as well pre-enactment and transitional security-based swaps. On the date six months after the first registered SDR that accepts reports of security-based swaps in a particular asset class commences operations as a registered SDR, persons with a duty to report security-based swaps under Regulation SBSR would be required to report all newly executed security-based swaps in that asset class to a registered SDR. Furthermore, after Compliance Date 1, persons with a duty to report security-based swaps also would have a duty to report any life cycle events of any security-based swaps that previously had been required to be reported.

The Commission recognizes that market participants will need adequate time to analyze and understand the policies and procedures of registered SDRs, to establish reporting connections to registered SDRs, and to develop new systems for capturing and reporting transaction information. The Commission preliminarily believes that this time period is an appropriate amount of time for market participants to do so. Any registered SDR that has commenced operations will have established policies and procedures that are consistent with Rule 907. Therefore, six months should allow adequate time for market participants to make the preparations necessary to connect with and report to a registered SDR, including analyzing and complying with the policies and procedures of the registered SDR and performing systems testing.

Also, by proposed Compliance Date 1, to the extent the information is available, persons with a duty to report pre-enactment security-based swaps and transitional security-based swaps in the relevant asset class would be required to report these transactions, in accordance with Rule 901(i), to a registered SDR that accepts reports of security-based swap transactions in that asset

class.[143] The Commission is proposing to require that all historical security-based swaps in that asset class be reported by Compliance Date 1, not on Compliance Date 1. Thus, a registered SDR that has commenced operations and that accepts reports of transactions in that asset class could allow persons with a duty to report to report such transactions on a rolling basis before Compliance Date 1. However, if it does so, the registered SDR would then be required to comply with the requirements of Regulation SBSR that are not subject to the phased compliance (i.e., those requirements that are immediately effective). Therefore, a registered SDR would need to comply with Rule 901(f) and time stamp, to the second, any security-based swap data that it receives pursuant to Rule 901(i). The registered SDR also would be required to comply with Rule 901(g) and assign a transaction ID to each historical security-based swap that is reported to it on or before proposed Compliance Date 1.

As participants begin reporting historical security-based swaps to a registered SDR in the days leading up to Compliance Date 1, participants and registered SDRs would be required to comply with Rules 901(e) and 905 (except with respect to public dissemination) regarding any historical security-based swaps that are so reported. Thus, if historical security-based swap X is reported to a registered SDR 30 days before Compliance Date 1, the counterparties to transaction X and the registered SDR that holds the mandatory report of transaction X would immediately become subject to the life cycle event reporting and error-correction requirements of Rules 901(e) and 905, respectively with respect to transaction X. However, if transaction Y has not yet

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143 The Commission notes that, for some transitional security-based swaps, there might be only a short period between the date of execution and the date on which they must be reported to a registered SDR. For example, assume that Compliance Date 1 with respect to a particular asset class is July 14, 2016; if a security-based swap in that asset class is executed on July 10, 2016, the person with the duty to report that transaction would be required to report it to a registered SDR within four days of execution (i.e., on or before July 14, 2016).

been reported to a registered SDR (and assuming that Compliance Date 1 has not yet arrived), the counterparties and the registered SDR would not yet incur any duties under Rules 901(e) or 905 with respect to transaction Y.

Finally, by proposed Compliance Date 1, registered security-based swap dealers, registered major security-based swap participants, registered clearing agencies, and platforms would be required to comply with Rule 906(c); participants (except for platforms and registered clearing agencies) would be required to comply with Rules 906(a) and 906(b); and registered SDRs also would be required to comply with Rule 906(a).

The Commission preliminarily believes that a six-month compliance phase-in would provide sufficient time for registered security-based swap dealers, registered major security-based swap participants, registered clearing agencies, and platforms to establish their own policies and procedures for reporting transactions in a particular asset class and to implement the systems changes needed to comply with Regulation SBSR. Participants would not be required to report to the first SDR that accepts security-based swaps in that asset class that registers with the Commission; participants could report to any SDR that accepts transactions in that asset class that has been registered by the Commission and has commenced operations by Compliance Date 1. Registered SDRs would not be required to publicly disseminate any transaction reports until Compliance Date 2, as described below.

Registered SDRs also would be required to comply with Rule 904 beginning on proposed Compliance Date 1, with the exception of Rule 904(d). Rule 904 requires a registered SDR to have systems in place to continuously receive and disseminate security-based swap information, with certain exceptions. Under final Rule 904(a), a "registered SDR may establish normal closing hours when, in its estimation, the U.S. market and major foreign markets are inactive."

Under final Rule 904(b), a registered SDR "may declare, on an ad hoc basis, special closing hours to perform system maintenance that cannot wait until normal closing hours." In each case, the registered SDR must provide participants and the public with reasonable advance notice of its normal closing hours and special closing hours. Rule 904 also requires a registered SDR to have the ability to hold in queue any transaction data that it receives during normal and special closing hours or, if the registered SDR does not have the ability to received and hold data in queue, the registered SDR must immediately notify participants that it has resumed operations and any participant with a duty to report would be required to promptly re-report security-based swap information to the registered SDR.

Also beginning on proposed Compliance Date 1, registered SDRs would be required to comply with the requirement in Rule 906(a) to provide to each participant a report of any missing UICs, and any participant receiving such a report would be required to comply with the requirement in Rule 906(a) to provide the missing UICs to the registered SDR. The registered SDR and its participants also would be subject to the error correction requirements of Rule 905, except that the registered SDR would not yet be required to publicly disseminate any corrected transaction reports (because it would not yet be required to publicly disseminate a report of the initial transaction). Participants (except for platforms and registered clearing agencies) also would be required to comply with the requirement in Rule 906(b) to provide the registered SDR information sufficient to identity its ultimate parent(s) and any affiliate(s) that also are participants of the registered SDR. The Commission preliminarily believes that these requirements will facilitate accurate and complete reporting of transaction information.

2. Proposed Compliance Date 2

Proposed Compliance Date 2 relates to the public dissemination of security-based swap transaction data. Within nine months after the first registered SDR that accepts security-based swaps in a particular asset class commences operations as a registered SDR (i.e., three months after Compliance Date 1), each registered SDR in that asset class that has registered and commenced operation would be required to comply with Rules 902 (regarding public dissemination), 904(d) (requiring dissemination of transaction reports held in queue during normal or special closing hours), and 905 (with respect to public dissemination of corrected transaction reports) for all security-based swaps in that asset class—except for "covered cross-border transactions," as that term is described in the immediately following section. The Commission preliminarily believes that nine months after the first registered SDR that accepts security-based swaps in a particular asset class commences operations as a registered SDR is a sufficient amount of time for registered SDRs to begin disseminating security-based swap transaction data, including corrected transaction reports. This will allow registered SDRs a period of three months after they begin receiving reports of individual security-based swap transactions to identify and resolve any issues related to trade-by-trade reporting by participants and further test their data dissemination systems.

3. Effect of Registration of Additional SDRs

As discussed immediately above, the first SDR that is registered by the Commission and commences operations as a registered SDR starts the countdown to proposed Compliance Dates 1 and 2 for any asset class in which that SDR chooses to accept transaction reports. A subsequent SDR that is approved by the Commission, can accept reports of security-based swaps in that asset class, and commences operations would be subject to the same proposed Compliance Dates, as shown in the following examples:

- Example 1. SDR A registers with the Commission and, subsequently, commences operations as a registered SDR on June 1, 2015. Therefore, Compliance Date 1 (with respect to transactions in any asset class that can be accepted by SDR A) is December 1, 2015. SDR B, which accepts security-based swaps in the same asset class, registers and subsequently commences operations as a registered SDR on November 2, 2015. Mandatory transaction-by-transaction reporting pursuant to Rule 901 still begins on December 1, 2015. However, persons with the duty to report may report to either SDR A or SDR B, even though SDR B would have been registered for less than one month.
- Example 2. Again, SDR A registers with the Commission and, subsequently, commences operations as a registered SDR on June 1, 2015. Therefore, Compliance Date 1 (with respect to transactions in any asset class that can be accepted by SDR A) is December 1, 2015, and Compliance Date 2 is March 1, 2016. SDR C registers and, subsequently, commences operations as a registered SDR on February 15, 2016. (There is no SDR B in this example.) Mandatory transaction-by-transaction reporting pursuant to Rule 901 began on December 1, 2015. As of the first day on which it operates, SDR C must be prepared to accept transaction-by-transaction reports, as required by Rule 901. Both SDR A and SDR C must begin publicly disseminating last-sale reports, as required by Rule 902, on March 1, 2016.
- Example 3. Again, SDR A registers with the Commission and, subsequently, commences operations as a registered SDR on June 1, 2015. Therefore, Compliance Date 1 (with respect to transactions in any asset class that can be

accepted by SDR A) is December 1, 2015, and Compliance Date 2 is March 1, 2016. SDR D registers and, subsequently, commences operations as a registered SDR on June 15, 2017. SDR D must be prepared to accept transaction-by-transaction reports, as required by Rule 901, and to publicly disseminate last-sale reports, as required by Rule 902, as of the first day on which it operates as a registered SDR. SDR D's registration would not create a new set of compliance timeframes.

4. Proposed Changes to Certain Exemptions Related to the Proposed Compliance Schedule

In connection with Compliance Date 1, the Commission is also proposing to extend its exemption related to the reporting of pre-enactment security-based swaps in order to ensure consistency between the proposed compliance schedule and the exemption. In June 2011, the Commission exercised its authority under Section 36 of the Exchange Act[144] to exempt any person from having to report any pre-enactment security-based swaps pursuant to Section 3C(e)(1) of the Exchange Act[145] until six months after an SDR that is capable of receiving security-based swaps in that asset class is registered by the Commission.[146] At the time, the Commission noted that the exemption was consistent with Rule 910, as proposed.[147] Because Compliance Date 1 is tied to the commencement of operations of a registered SDR and because some time may elapse between the date on which the Commission approves an SDR's

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144 15 U.S.C. 78mm.

145 15 U.S.C. 78c-3(e)(1).

146 See Securities Exchange Act Release No. 64678 (June 15, 2011), 76 FR 36287, 36291 (June 22, 2011) (Temporary Exemptions and Other Temporary Relief, Together With Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps) ("Effective Date Release").

147 See id.

registration and the date on which it commences operations as a registered SDR, the Commission is proposing to modify the reporting exemption to harmonize it with the proposed compliance schedule. The Commission is therefore proposing to exercise its authority under Section 36 of the Exchange Act to exempt any person from having to report any pre-enactment security-based swaps pursuant to Section 3C(e)(1) of the Exchange Act until six months after an SDR that is capable of receiving security-based swaps in that asset class is registered by the Commission and has commenced operations as a registered SDR.[148] The Commission preliminarily believes that this exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors because such action would prevent the existing exemption from expiring before persons with a duty to report pre-enactment security-based swaps can report them to a registered SDR, taking into account that an SDR may require some time between the date on which the Commission approves its registration and the date on which it is able to commence operations as a registered SDR with respect to a particular asset class.

In addition, in the Effective Date Release, the Commission also exercised its authority under Section 36 of the Exchange Act to temporarily exempt any security-based swap contract entered into on or after July 16, 2011, from being void or considered voidable by reason of Section 29(b) of the Exchange Act,[149] because any person that is a party to the security-based swap contract violated a provision of the Exchange Act that was amended or added by Subtitle B

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148 Thus, as proposed, this exemption would expire on proposed Compliance Date 1 with respect to persons having a duty to report pre-enactment security-based swap transactions in the asset class of the first SDR to register with the Commission and commence operations as a registered SDR with respect to that asset class. For persons having a duty to report pre-enactment security-based swaps in any other asset class, the exemption would remain in force until six months after the first registered SDR that can accept reports of security-based swaps in that asset class has commenced operations as a registered SDR with respect to that asset class.

149 15 U.S.C. 78cc(b).

of Title VII of the Dodd Frank Act and for which the Commission has taken the view that compliance will be triggered by registration of a person or by adoption of final rules by the Commission, or for which the Commission has provided an exception or exemptive relief, until such date as the Commission specifies.[150] In relevant part, Section 29(b) of the Exchange Act provides that "[e]very contract made in violation of any provision of this title or of any rule or regulation thereunder, and every contract . . . heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this title or any rule or regulation thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, or regulation, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of much the making or performance of such contract was in violation of any such provision rule or regulation . . ."[151] The Commission is proposing that, with respect to security-based swaps in a particular asset class, the exemption from Section 29(b) of the Exchange Act, in connection with Section 3C(e)(1), would terminate on proposed Compliance Date 1 (i.e., six months after the first registered SDR in that asset class commences operations with respect to that asset class).

C. Discussion of Comments Received in Response to the Initial Proposal

Commenters responding to the Regulation SBSR Proposing Release generally recommended that the Commission implement Regulation SBSR in phases, but their detailed

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150 See Effective Date Release, 76 FR at 36305.

151 15 U.S.C. 78cc(b).

suggestions varied.[152] Several commenters emphasized the need to provide adequate time for the development and implementation of reporting and compliance systems and procedures.[153] One of these commenters stated, for example, that "virtually all existing systems would have to be significantly overhauled to satisfy the real-time reporting obligations" of Regulation SBSR.[154] Another commenter emphasized that "market infrastructure must be in place prior to requiring market participant compliance" and that many financial entities that are not swap dealers or major swap participants may need additional time to comply.[155] A third commenter noted that requiring reporting prior to the registration of security-based swap dealers and major security-based swap participants would complicate reporting and the determination of the reporting counterparty because "parties entering into security-based swaps . . . may be expected . . . to report ahead of the point their obligation becomes certain."[156] A fourth commenter stated that any implementation timeline "must recognize the practical challenges that security-based swap data repositories and market participants will face in defining and implementing industry-wide collection and dissemination mechanisms and internal data collection systems, respectively."[157]

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152 See Bachus/Lucas Letter at 3; Barnard I at 4; CCMR I at 2; Cleary I at 17-21; DTCC I at 24-25; DTCC III at 8-9; DTCC IV at 8; FINRA Letter at 4-5; Institutional Investors Letter at 3; ISDA III at 2 (suggesting a phase-in for reporting of historical security-based swaps); ISDA/SIFMA I at 9-10; ISDA/SIFMA Block Trade Study at 2; MarkitSERV I at 10; MFA I at 6; MFA Recommended Timeline at 1; Morgan Stanley Letter at 6; Roundtable Letter at 4-9; UBS Letter at 2-3; ISDA IV at 2-3.

153 See CCMR I at 2; Cleary I at 19-21; DTCC II at 24-25; ISDA/SIFMA I at 9.

154 ISDA/SIFMA I at 9.

155 Institutional Investors Letter at 3.

156 See ISDA IV at 2.

157 Cleary I at 19. See also WMBAA II at 4 (stating that "[i]t is necessary that any compliance period or registration deadline provides sufficient opportunity for existing trade execution systems or platforms to modify and test systems, policies and procedures to ensure that its operations are in compliance with the final rules").

A fifth commenter stated that, although much of the existing infrastructure of DTCC's Trade Information Warehouse could form the core of the processes required by Regulation SBSR, substantial new industry-wide processes requiring significant coordination, testing, and development would have to be implemented, particularly around real-time reporting.[158] One commenter believed that, given the complexity and novelty of the proposed reporting framework, a pilot program would allow the Commissions to evaluate the operational integrity of the infrastructure implementing the reporting rules.[159] One commenter recommended a "relatively thorough phase-in period" during which only regulators would receive security-based swap information because of the potential for disseminating misleading real-time pricing information, which potentially could result in market disruptions and economic damage.[160]

One commenter also noted that a phased-in implementation would allow regulators to assess the impact of transparency on the security-based swap market and make adjustments, if necessary, to the timing of dissemination and the data that is disseminated.[161] Other commenters echoed the belief that a phased-in approach would allow the Commission to assess the impact of public dissemination on liquidity in the security-based swap market, monitor changes in the market, and adjust the reporting rules, if necessary.[162] One of these commenters believed that,

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158 See DTCC II at 25.

159 See Cleary I at 20.

160 DTCC IV at 9. This commenter also stated that a phased-in implementation of Regulation SBSR would allow time for extensive testing and preparation needed to avoid systemic risk and the dissemination of inaccurate information. See DTCC I at 2.

161 See FINRA Letter at 5. See also ISDA/SIFMA Block Trade Study at 2 (stating that phased-in implementation would provide regulators with time to test and refine preliminary standards).

162 See CCMR I at 2; Cleary I at 19; ISDA/SIFMA Block Trade Study at 2; UBS Letter at 2. Another commenter believed that the reporting requirements could apply first to products that are cleared and executed on a trading platform, then to products that are cleared, but

without staged implementation, the new security-based swap transparency requirements could cause market disruptions if some dealers withhold capital until they were able to determine whether the reporting requirements would adversely impact their ability to manage risk.[163] Another commenter agreed with the phased-in approach initially proposed by the Commission and believed that the obligations on affected parties were clear, sufficient, and achievable.[164] Another commenter recommended the adoption of an incremental approach to reporting that would begin with "macro" reporting followed by more comprehensive reporting at a later time.[165]

Several commenters also recommended that the Commission utilize a gradual implementation approach similar to that of the TRACE trade reporting system. One commenter—the Financial Industry Regulatory Association ("FINRA"), which operates the TRACE trade reporting system for fixed income securities—supported proposed Rule 910's approach of staggered implementation of various requirements under Regulation SBSR, noting that it had implemented TRACE reporting in phases based on product liquidity, beginning with the largest and most liquid issues.[166] FINRA stated that phased-in implementation would facilitate a more orderly transition that minimizes the likelihood of market disruptions and an

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not executed on a trading platform, and finally to uncleared products. See Morgan Stanley Letter at 6.

163 See CCMR I at 2.

164 See Barnard I at 4. The commenter also believed that the suggested numbers of security-based swaps included in each of the initially proposed phases of implementation were reasonable. See id.

165 See Roundtable Letter at 4 (stating that market participants could prepare reports indicating the aggregate notional amount of swaps outstanding, subdivided by major category, and the identity of any counterparty representing 5% or more of their open positions by notional amount in that major category).

166 See FINRA Letter at 4.

unintended loss of liquidity, and would provide market participants with time to adjust to a market in which security-based swap transaction data were publicly known.[167] Other commenters also expressed the view that TRACE is a useful model of a phased-in approach to implementation.[168] One of these commenters stated, for example, that the "TRACE experience demonstrates the length of time required to study, review and assess the effects of real-time reporting on market liquidity, as well as the need to provide adequate lead time for market participants to build a common infrastructure for reporting."[169] Another commenter believed that Regulation SBSR would require, at a minimum, an implementation period similar to the four years required to implement TRACE, "given that the swap markets are significantly more complex and varied and less developed infrastructurally than the corporate bond markets."[170]

While one participant at the Implementation Roundtable suggested that certain asset classes could need less than six months for implementation,[171] several others stated that the time needed for implementation depended on the complexity of the asset class and believed that more time than the implementation schedule in Regulation SBSR, as initially proposed, would likely be necessary.[172] Another participant believed that it could take up to two years following the

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167 See id. at 5.

168 See CCMR I at 2; Cleary I at 19-20; DTCC II at 10; ISDA/SIFMA I at 10; UBS Letter at 2-3.

169 UBS Letter at 3.

170 Cleary I at 20. See also ISDA/SIFMA I at 10 (stating that the reporting requirements for security-based swaps are significantly more complex than for TRACE, and the phase-in should reflect this degree of complexity); CCMR I at 2 (noting that TRACE took a "cautious approach" to implementation, even though it was implemented initially for a single asset class, corporate bonds).

171 See Implementation Roundtable, Day 2 at 170-71 (Cummings).

172 See Implementation Roundtable, Day 1 at 299, 301 (Gooch); Implementation Roundtable, Day 2 at 177-8 (Joachim).

adoption of final rules to implement the new rules because of "the substantial effort required to conduct the renegotiation of tens of thousands of contracts between customers and counterparties."[173] However, several participants at the Implementation Roundtable suggested that six to nine months would be needed for implementation following adoption of final rules by the SEC and CFTC.[174] Similarly, two commenters indicated that market participants would require an implementation period of at least six months following the adoption of final rules.[175]

Several commenters also discussed general and specific implementation issues that might arise in the context of implementing Regulation SBSR. Some commenters,[176] along with several participants at the Implementation Roundtable,[177] supported phasing in implementation by asset class. Because different asset classes use different and often incompatible booking systems, one commenter recommended that both reporting to SDRs and public dissemination be phased in by

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173 Institutional Investors Letter at 3. See also Roundtable Letter at 4 (stating that there could be a "'bottleneck' both in the document negotiation process and in the move to clearing").

174 See Implementation Roundtable, Day 1 at 264 (Levi), 298 (Gooch); Implementation Roundtable, Day 2 at 174-8 (Collazo, Cummings, Joachim).

175 See DTCC II at 24 ("A six month period seems appropriate"); ISDA IV at 2 (expressing support for a six-month implementation period, provided that Regulation SBSR aligns closely with the CFTC's swap data reporting rules and requesting a nine-month implementation period if Regulation SBSR deviates from the CFTC's swap data reporting rules).

176 See DTCC II at 25 (noting that because credit products' operational processes are more highly automated, credit products are more reporting-ready than equities products); SIFMA II at 5; UBS Letter at 2 (stating that the initial phase of public security-based swap reporting for single-name CDS be limited to CDS on the top 125 most actively traded reference entities).

177 See Implementation Roundtable, Day 1 at 32 (unidentified speaker), 43 (Thompson). See also Implementation Roundtable, Day 2 at 168, 173 (Collazo) (suggesting implementation in the following order: CDS, interest rate swaps, FX swaps, equity swaps, then commodity-based swaps).

asset class to allow market participants to work within the current market set-up.[178] Other Roundtable participants did not specify the amount of time that they believed would be required for implementation and instead noted various implementation concerns.[179] One commenter stated that the CFTC and SEC should synchronize compliance dates for their respective reporting rules as much as possible.[180] Another commenter, noting that the CFTC and the Commission are undertaking a Dodd-Frank mandated study regarding the feasibility of standardized computer-readable algorithmic descriptions for derivatives, believed that it would be premature to adopt reporting rules before the completion of this study and consideration of its results.[181] One Roundtable participant recommended setting an implementation date and establishing consequences for failure to meet the implementation date.[182]

The Commission notes the concerns about implementation expressed by commenters. However, it is the Commission's understanding that the industry has made considerable progress in improving reporting capability, which will facilitate compliance with Regulation SBSR. The CFTC already has adopted final rules for swap data repository registration, regulatory reporting,

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178 See Barclays I at 4.

179 See Implementation Roundtable, Day 2 at 159 (Okochi) (stating that implementation will vary based on clearing of trades, customization of trades based on the business segment they are in, asset class, and volume); 183-84 (Thum) (stating that reporting by non-dealers will require additional work), 192-94 (Gooch) (stating that inclusion of timestamps, place of execution, subfund allocations will require additional configurations to existing systems and processes to support real-time reporting).

180 See Implementation Roundtable, Day 1 at 77 (Olesky).

181 See Cleary I at 20. The Commission notes that the referenced study was completed on April 7, 2011. See Securities Exchange Act Release No. 63423 (December 2, 2010), 75 FR 76706 (December 9, 2010). See also http://www.sec.gov/news/studies/2011/719b-study.pdf (noting that current technology is capable of representing derivatives using a common set of computer-readable descriptions).

182 See Implementation Roundtable, Day 1 at 51 (Cawley).

and public dissemination of swaps, and market participants have been reporting to CFTC-registered SDRs since year-end 2012.[183] The Commission preliminarily believes that much of the established infrastructure that supports swap reporting and dissemination can be modified to support security-based swap reporting and dissemination. At the same time, the Commission recognizes that there are certain differences in the reporting requirements of the SEC and the CFTC; therefore, entities subject to Regulation SBSR will need time to meet the regulation's specific requirements.

The Commission preliminarily agrees with those commenters who suggested that the Commission generally model the implementation of Regulation SBSR after the implementation of TRACE, and has designed the newly proposed compliance schedule to allow participants and registered SDRs the benefit of phased-in compliance. The Commission also is aware of the need for extensive testing and preparation in the implementation of the systems necessary to meet the requirements of Regulation SBSR and has developed the proposed compliance schedule with such needs in mind. The proposed schedule, discussed above, provides for a six-month period from the date on which the first registered SDR that accepts security-based swaps in a particular asset class commences operations as a registered SDR. By the end of that six-month period, to the extent such information is available, all pre-enactment and transitional security-based swaps in that asset class would be required to be reported.[184] Furthermore, market participants would

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183 The CFTC phased in compliance requirements for swap data reporting (depending on the reporting party and asset class) beginning on December 31, 2012. See CFTC Division of Market Oversight Advisory (March 8, 2013) at 2-3, available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/dmoadvisory030813.pdf (last visited on October 30, 2014).

184 One commenter recommended that pre-enactment and transitional security-based swaps should be reported on the same timeline, as firms' systems cannot easily distinguish between the two categories. See ISDA IV at 18. The Commission notes that the

have six months from the commencement of operations of the first registered SDR that can accept security-based swaps in a particular asset class as a registered SDR before reporting of newly executed transactions in that asset class would be required. Although a registered SDR may already be operational as swap data repository under CFTC rules, to the extent there is a gap between the Commission's grant of registration and the SDR's commencement of operations as a registered SDR, the Commission wants to ensure that reporting parties have six months after a registered SDR commences operations as a registered SDR in a particular asset class to further test and implement processes for reporting security-based swap transaction information in that asset class. The Commission preliminarily believes that six months would provide affected persons with sufficient time to resolve any potential issues related to the reporting of security-based swap transactions on an individual basis. Under the proposed compliance schedule, there would then be an additional three months before transactions must be publicly disseminated. This period is designed to give registered SDRs and persons having a duty to report an opportunity to resolve any reporting issues before transactions must be publicly disseminated.

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proposed compliance schedule would provide for this outcome. This commenter further stated that reporting entities have found it practical to report "live" historical security-based swaps in advance of the effective reporting date applicable to new transactions and life cycle reporting, and recommended an aligned reporting effective date for historical security-based swaps that are still live, or expected to be live, as of the reporting effective date. However, the commenter recommended that historical security-based swaps that are no longer live should have a later reporting effective date than reporting for other security-based swaps, and recommends a year delay. See id. Under the proposed compliance schedule, all historical security-based swaps in an asset class would be required to be reported in the same timeframe as for new security-based swaps going forward—i.e., by six months from the date of operation of the first registered SDR that can accept security-based swaps in the asset class. The Commission is not proposing a longer reporting period for historical security-based swaps that are not "live," but requests comment on the issue.

Although several commenters advocated for longer timeframes, the Commission preliminarily believes that six months between the commencement of operations of the first registered SDR in an asset class as a registered SDR and the commencement of mandated trade-by-trade reporting is sufficient. The Commission bases this view on the existence of market infrastructure that supports swap data reporting pursuant to CFTC rules. Several commenters noted that challenges related to the implementation of the reporting and dissemination requirements of proposed Regulation SBSR were related to lack of appropriate industry infrastructure and processes.[185] As noted above, the Commission understands that persons seeking to register as SDRs are likely to be registered and operating as swap data repositories under CFTC rules, and that many swap market participants subject to CFTC reporting rules may also be security-based swap market participants. Therefore, the Commission preliminarily believes that these persons and market participants would be able to leverage existing infrastructure to report and disseminate security-based swap data.

The Commission also preliminarily believes that it is unnecessary to delay the implementation of Regulation SBSR until registration requirements take effect for security-based swap dealers and major security-based swap participants, as suggested by one commenter.[186] As described in Section V(B)(1) of the Regulation SBSR Adopting Release, the Commission has

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185 See Institutional Investors Letter at 3 ("market infrastructure must be in place prior to requiring market participant compliance"); Cleary I at 19 (any implementation timeline "must recognize the practical challenges that security-based swap data repositories and market participants will face in defining and implementing industry-wide collection and dissemination mechanisms and internal data collection systems, respectively."); DTCC II at 25 (noting that although much of the existing infrastructure of DTCC's Trade Information Warehouse could form the core of the processes required by Regulation SBSR, substantial new industry-wide processes requiring significant coordination, testing, and development would have to be implemented, particularly around real-time reporting).

186 See ISDA IV at 2-3.

adopted a modified version of the security-based swap reporting hierarchy in Rule 901(a)(2) to ensure that no person will need to evaluate whether it meets the definition of "security-based swap dealer" or "major security-based swap participant" solely in connection with identifying which counterparty must report a security-based swap under Regulation SBSR.[187] Under the reporting hierarchy as adopted, until registration requirements come into effect, there will be no registered security-based swap dealers or major security-based swap participants, so the sides will be required to select the reporting side. The Commission preliminarily believes that having the sides choose who reports should not complicate reporting.

The Commission preliminarily believes that it is not necessary or appropriate to establish multiple or phased compliance dates for reporting security-based swaps within the same asset class to registered SDRs.[188] Preliminarily, the Commission seeks to have all regulatory reports of security-based swaps reported to registered SDRs in the manner set forth in Regulation SBSR at the earliest practicable date. This information would greatly increase relevant authorities' understanding of the security-based swap market, help them perform their regulatory duties, and provide more and better data to support the Commission's additional Title VII rulemakings. For example, with required regulatory reporting of all security-based swaps in an asset class, the

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187 In the Cross-Border Adopting Release, the Commission estimated the assessment costs for making such evaluations. See Cross-Border Adopting Release, 79 FR at 47330-34. The Commission's approach in Regulation SBSR is consistent with the approach described in the Cross-Border Adopting Release, where the Commission noted that security-based swap dealers and major security-based swap participants "will not be subject to the requirements applicable to those dealers and major participants until the dates provided in the applicable final rules." 79 FR at 47368. See also Intermediary Definitions Adopting Release, 77 FR at 30700.

188 See Roundtable Letter at 4 (stating that market participants could initially prepare reports indicating the aggregate notional amount of swaps outstanding, subdivided by major category, and the identity of any counterparty representing 5% or more of their open positions by notional amount in that major category).

Commission and other relevant authorities would be able to more easily determine the positions of security-based swap dealers, giving them greater visibility into possible systemic risks. Phased compliance within a security-based swap class would not provide a holistic view of dealer positions until the final security-based swaps in that asset class were required to be reported.

However, the Commission is proposing a separate compliance date (proposed Compliance Date 2) for public dissemination. The three-month delay between the date on which persons with a duty to report must begin reporting new security-based swaps to a registered SDR and the date on which the registered SDR must publicly disseminate transaction reports is designed to provide ample time for registered SDRs and market participants to identify and address any problems with trade-by-trade reporting to registered SDRs before registered SDRs are required to publicly disseminate newly executed transactions.[189]

One commenter agreed with the requirements of proposed Rule 911[190] and believed that they were sufficient to prevent the evasion of reporting.[191] The Commission continues to be concerned with potential efforts to evade public dissemination, but believes that Rule 911 is not necessary in light of the proposed new compliance timeframes. Another commenter believed that the Commission should delay the implementation of Regulation SBSR until more than one

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189 This timeframe generally comports with the recommendation of several of the participants at the Implementation Roundtable, who suggested that six to nine months would be needed for implementation following adoption of final rules by the SEC and CFTC. See Implementation Roundtable, Day 1 at 264 (Levi), 298 (Gooch); Implementation Roundtable, Day 2 at 174-8 (Collazo, Cummings, Joachim).

190 Rule 911, as proposed, was designed to prevent evasion of the public dissemination requirement during a period when two or more SDRs had registered with the Commission and were operating under different compliance dates.

191 See Barnard I at 4.

SDR is registered because, absent such a delay, the first SDR to register would have a monopoly on security-based swap reporting and a competitive advantage over new entrants.[192] The Commission preliminarily believes instead that a delay in implementation to permit additional registrations would be inconsistent with the objectives of Title VII. Title VII closed major gaps in the regulation of security-based swaps and provided the Commission and other relevant authorities with new regulatory tools to oversee the OTC derivatives markets, which are large and are capable of affecting significant sectors of the U.S. economy. The primary goals of Title VII include increasing transparency in the security-based swap markets and reducing the potential for counterparty and systemic risk.[193]

Furthermore, other Commission rules are designed to minimize the potential that any a "first mover" or monopoly advantage that the first SDR might burden users of SDR services. All SDRs, even the only SDR that can accept transactions in a particular asset class, must offer fair, open, and not unreasonably discriminatory access to users of its services,[194] and any fees that it charges must be fair and reasonable and not unreasonably discriminatory.[195] The Commission

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192 See MFA I at 6 (also arguing that a diverse range of options for reporting security-based swap data would benefit the market and market participants). See also ISDA IV at 3 (recommending that the Commission have a single registration date for all SDRs that will be approved ahead of the effective reporting date to "ensure that all market participants have equal time to build to their chosen [SDR]").

193 See, e.g., S. Comm. on Banking, Hous., & Urban Affairs, The Restoring American Financial Stability Act of 2010, S. Rep. No. 111-176, at 32 ("As a key element of reducing systemic risk and protecting taxpayers in the future, protections must include comprehensive regulation and rules for how the OTC derivatives market operates. Increasing the use of central clearinghouses, exchanges, appropriate margining, capital requirements, and reporting will provide safeguards for American taxpayers and the financial system as a whole").

194 See Rule 13n-4(c)(1)(iii) under the Exchange Act, discussed in the SDR Adopting Release.

195 See Rule 13n-4(c)(1)(i) under the Exchange Act, discussed in the SDR Adopting Release.

preliminarily believes that basing the compliance schedule on the date that the first registered SDR commences operations as a registered SDR would encourage all potential SDRs to file complete applications for registration to the Commission and develop their systems and procedures for accepting and maintaining security-based swap data as expeditiously as possible, which will in turn more quickly allow regulators and the public the benefit of increased transparency in the security-based swap market and allow them to better monitor systemic risk.

Given these potential benefits, the Commission preliminarily believes that the compliance schedule should begin even if only one registered SDR that can receive reports of transactions in a particular asset class has commenced operations. The Commission preliminarily believes that it is not necessary or appropriate to wait for multiple SDRs to register and commence operations as registered SDRs before beginning the proposed six-month countdown to proposed Compliance Date 1.[196] The Commission seeks to ensure that registration of new SDRs not delay post-trade transparency for security-based swaps. This could occur if the Commission were to phase in compliance on an SDR-by-SDR basis. If each registered SDR had its own phase-in period, the first registered SDR could be in a phase where public dissemination was required where the second registered SDR may not be. This could create an incentive for persons with a duty to report to choose to report to later-registering SDRs in order to avoid having their transactions publicly disseminated.

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[196] However, as the Commission noted in the SDR Adopting Release: "In considering initial applications for registration on Form SDR filed contemporaneously with the Commission, the Commission intends to process such applications for multiple SDRs accepting [security-based swap] transaction data from the same asset classes within the same period of time so as to address competition concerns that could arise if such SDRs were granted registration at different times." SDR Adopting Release, Section VI(A)(2)(c). The Commission also noted that certain unexpected events that raise compliance concerns could affect the Commission's ability to process these applications within the same time period. See id.

D. Request for Comment

The Commission requests comment on all aspects of the proposed compliance dates for Regulation SBSR. In particular:

41. Would the proposed compliance timeline allow reporting parties and registered SDRs sufficient time to implement the requirements of Regulation SBSR? Why or why not? If not, why not and what alternative time period(s) of time would be sufficient?

42. Do you generally agree with the Commission's proposed approach to calculating the compliance dates based on the first registered SDR to accept security-based swaps in a particular asset class commencing operations as a registered SDR? If not, how should the Commission calculate compliance dates? If the Commission used an alternative method for calculating compliance dates, how could the Commission prevent or minimize evasion of the public dissemination requirement?

43. Do you believe that the proposed implementation schedule and SDR registration process would minimize potential "first mover" advantages for the first SDR to register? Why or why not? How could the Commission further minimize any potential "first mover" advantage?

44. Do you agree that the current infrastructure that supports swap reporting also can be used to support security-based swap reporting? Why or why not? If so, how much time would be necessary for participants and registered SDRs to make necessary changes to report security-based swaps to registered SDRs? If not, how much time would be needed to create the necessary infrastructure?

45. Do you believe that registered SDRs would be able to satisfy their obligations by proposed Compliance Date 1? Why or why not? If six months after the first registered SDR that accepts security-based swaps in a particular asset class commences operations as a registered SDR is not a sufficient amount of time to comply, what amount of time would be sufficient? In particular, do you believe that six months after the first registered SDR that accepts security-based swaps in an asset class commences operations is a sufficient amount of time to have reported all historical security-based swaps that are no longer "live," as discussed by one commenter?[197] Why or why not? If not, by when do you believe that such security-based swaps should be reported, and why?

46. Do you believe that persons with the duty to report would be able to satisfy their obligations by proposed Compliance Date 1? Why or why not? If six months after the first registered SDR that accepts security-based swaps in a particular asset class commences operations as a registered SDR is not a sufficient amount of time to comply, what amount of time would be sufficient? Would persons with the duty to report require additional time to comply with certain requirements by proposed Compliance Date 1? If so, which requirement(s), and what additional amount of time would be necessary?

47. Do you agree with the Commission's proposal to extend the exemption for the reporting of pre-enactment security-based swaps until six months after an SDR that is capable of receiving security-based swaps in that asset class is registered by the Commission and has commenced operations as a registered SDR? Why or

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[197] See ISDA IV at 18 and supra note 184.

why not?

48. Do you agree with the Commission's proposal to terminate the exemption from Section 29(b) of the Exchange Act in connection with Section 3C(e)(1) on proposed Compliance Date 1? Why or why not? If not, when should the Section 29(b) exemption terminate?

49. Do you believe that registered SDRs will be able to time stamp and assign transaction IDs to pre-enactment and transitional security-based swaps even if they are reported prior to Compliance Date 1? Why or why not? If not, would registered SDRs require additional time to comply with the requirements to time stamp and/or assign transaction IDs?

50. Do you believe that registered security-based swap dealers, registered major security-based swap participants, registered clearing agencies, and platforms would be able to satisfy their obligations to establish policies and procedures for carrying out their reporting obligations by proposed Compliance Date 1? Why or why not? If six months after the first registered SDR that accepts security-based swaps in a particular asset class commences operations as a registered SDR is not a sufficient amount of time to comply, what amount of time would be sufficient?

51. Do you believe that registered SDRs would be able to satisfy their obligations by proposed Compliance Date 2? Why or why not? If nine months after the first registered SDR that accepts security-based swaps in a particular asset class commences operations as a registered SDR is not a sufficient amount of time to comply, what amount of time would be sufficient?

52. Do commenters agree with the Commission's preliminary belief that persons likely to apply for registration as SDRs with the Commission would already be registered with the CFTC as swap data repositories? If so, how easily and how quickly could the systems and processes that support swap data dissemination be configured to support security-based swap data dissemination? Would this process will take more or less than the 3 months that is proposed? Why or why not?

53. Registered clearing agencies may be required to modify their rules to address their reporting obligations under Regulation SBSR, as proposed to be modified in this release. Would the implementation timeframe described above provide registered clearing agencies sufficient time to implement any rule changes that may be required by Regulation SBSR? How would the timing be affected if the registered clearing agency also intends to register as an SDR or is affiliated with a person that intends to register as an SDR?

VIII. Economic Analysis

The Dodd-Frank Act amended the Exchange Act to require the reporting of security-based swap transactions to registered SDRs. Regulation SBSR, as adopted, implements this mandate and assigns the reporting obligation for covered transactions.[198] In addition, Regulation SBSR requires registered SDRs, with a handful of exceptions, to publicly disseminate a subset of the reported transaction information immediately upon receipt.

The proposed amendments to Rule 901(a) would assign to a platform the duty to report security-based swaps executed on its facilities and submitted for clearing, and would assign the

[198] See supra notes 15 and 16 and accompanying text.

duty to report any transactions to which a registered clearing agency is a counterparty to that clearing agency. In addition, this release proposes guidance for how Regulation SBSR would apply to security-based swaps executed in connection with prime brokerage arrangements, which involve an executing broker, a customer, and a prime broker who offers credit intermediation services to the customer. This release also proposes a definition of "widely accessible" in Rule 900(tt), which would have the effect of prohibiting registered SDRs from charging users fees or imposing usage restrictions on the security-based swap transaction data that they are required to publicly disseminate. Finally, this release proposes new compliance dates for the rules in Regulation SBSR for which the Commission has not specified a compliance date.

The Commission is sensitive to the economic consequences and effects, including costs and benefits, of its rules. Some of these costs and benefits stem from statutory mandates, while others are affected by the discretion exercised in implementing these mandates. The following economic analysis seeks to identify and consider the benefits and costs—including the effects on efficiency, competition, and capital formation—that would result from the proposed rules and rule amendments. The costs and benefits considered in relation to these proposed rules and rule amendments have informed the policy choices described throughout this release.

A. Broad Economic Considerations

In the Regulation SBSR Adopting Release, the Commission highlighted certain overarching effects on the security-based swap markets that it believes will result from the adoption of Regulation SBSR. These benefits could include, generally, improved market quality, improved risk management, greater efficiency, and improved oversight by the Commission and

other relevant authorities.[199] Regulation SBSR, as adopted, requires market participants to make infrastructure investments in order to report security-based swap transactions to registered SDRs and, as is most relevant for these proposed rules and amendments, for SDRs to make investments in order to receive transaction data from market participants and to publicly disseminate a subset of that transaction information.

The rules, amendments, and guidance proposed in this release are focused on the requirements relevant to the reporting of certain information regarding cleared security-based swaps, which will affect the platforms, registered clearing agencies, and registered SDRs that constitute an infrastructure for the security-based swap market and provide services to counterparties who participate in security-based swap transactions. In particular, the Commission preliminarily believes that the proposed rules and amendments could affect the manner in which firms that provide these services compete with one another and exercise market power over security-based swap counterparties. In turn, there could be implications for the counterparties who are customers of these infrastructure providers and the security-based swap market generally.

1. Security-Based Swap Market Infrastructure

Title VII requires the Commission to create a new regulatory regime for the security-based swap market that includes trade execution, central clearing, and reporting requirements aimed at increasing transparency and customer protection as well as mitigating the risk of financial contagion.[200] These new requirements, once implemented, will oblige market participants, who may have previously engaged in bilateral transaction activity without any need

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199 See Regulation SBSR Adopting Release, Section XXII.

200 See Cross-Border Adopting Release, 79 FR at 47285.

to engage third-party service providers, to interface with platforms, registered clearing agencies, and registered SDRs.

As a general matter, rules that require regulated parties to obtain services can have a material impact on the prices of those services in the absence of a competitive market for those services. In particular, if service providers are monopolists or otherwise have market power, requiring market participants to obtain their services can potentially allow the service providers to increase the profits they earn from providing the required services.[201] Because Title VII requires the Commission to implement rules requiring market participants to use the services provided by platforms, registered clearing agencies, and registered SDRs, these requirements could reduce the sensitivity of demand to changes in prices or quality of the services of firms that create and develop security-based swap market infrastructure.[202] As such, should security-based swap infrastructure providers—such as platforms, registered clearing agencies, and registered SDRs—enjoy market power, they might be able to change their prices or service quality without a significant effect on demand for their services. In turn, these changes in prices or quality could have effects on activity in the security-based swap market.

As discussed below, the proposed rules, amendments, and guidance proposed herein could have an impact on the level of competition among suppliers of trade reporting services and affect the relative bargaining power of suppliers and consumers in determining the prices of those services. In particular, when the supply of trade reporting services is concentrated among a small number of firms, consumers of these services have few alternative suppliers from which to

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201 These effects, as they relate specifically to the proposed rules and amendments, as well as alternative approaches, are discussed in in Section VIII(D), infra.

202 These requirements might reduce the price elasticity of demand for the services provided by platforms, registered clearing agencies, and registered SDRs.

choose. Such an outcome could limit the incentives to produce more efficient trade reporting processes and services and could, in certain circumstances, result in less security-based swap transaction activity than would otherwise be optimal. In the case of security-based swap transaction activity, these welfare losses could result from higher costs to counterparties for hedging financial or commercial risks.

2. Competition Among Security-Based Swap Infrastructure Providers

The Commission's economic analysis of the proposed rules, amendments, and guidance considers how the competitive landscape for platforms, registered clearing agencies, and registered SDRs might affect the market power of these entities and hence the level and allocation of costs related to regulatory requirements. Some of the factors that may influence this competitive landscape have to do with the nature of the trade reporting and are unrelated to regulation, while others may be a result of, or influenced by, the rules that we are proposing. To the extent that the proposed rules inhibit competition among infrastructure providers, this could result in fees charged to counterparties that deviate from the underlying costs of providing the services.

As a general matter, and for reasons unrelated to the regulation of the security-based swap market, trade execution, clearing, and reporting services are likely to be concentrated among a small number of providers. For example, SDRs and clearing agencies must make significant infrastructure and human capital investments to enter their respective markets, but once these start-up costs are incurred, the addition of data management or transaction clearing services is likely to occur at low marginal costs. As a result, the average cost to provide infrastructure services quickly falls for SDRs and clearing agencies as their customer base grows, because they are able to amortize the fixed costs associated with serving counterparties over a

larger number of transactions. These economies of scale should favor incumbent service providers who can leverage their market position to discourage entry by potential new competitors that face significant fixed costs to enter the market. As a result, the markets for clearing services and SDR services are likely to be dominated by a small number of firms that each have large market share, which is borne out in the current security-based swap market.[203]

Competition among registered clearing agencies and registered SDRs could also be influenced by the fact that security-based swap market participants incur up-front costs for each connection that they establish with an SDR or clearing agency. If these costs are sufficiently high, an SDR or clearing agency could establish itself as an industry leader by "locking-in" customers who are unwilling or unable to make a similar investment for establishing a connection with a competitor.[204] An SDR or clearing agency attempting to enter the market or increase market share would have to provide services valuable enough, or set fees low enough, to offset the costs of switching from a competitor. In this way, costs to security-based swap market participants of interfacing with market infrastructure could serve as a barrier to entry for firms that would like to provide market infrastructure services provided by SDRs and clearing agencies.

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203 See infra Section IX(B).

204 See Joseph Farrell and Paul Klemperer, "Coordination and Lock-in: Competition with Switching Costs and Network Effects," in Handbook of Industrial Organization, Mark Armstrong and Robert Porter (ed.) (2007), at 1,972. The authors describe how switching costs affect entry, noting that, on one hand, "switching costs hamper forms of entry that must persuade customers to pay those costs" while, on the other hand, if incumbents must set a single price for both new and old customers, a large incumbent might focus on harvesting its existing customer base, ceding new customers to the entrant. In this case, a competitive market outcome would be characterized by prices for services that equal the marginal costs associated with providing services to market participants.

The proposed rules, amendments, and guidance might also influence the competitive landscape for firms that provide security-based swap market infrastructure. Fundamentally, requiring the reporting of security-based swap transactions creates an inelastic demand for the service that would not be present if not for regulation. This necessarily reduces a counterparty's ability to bargain with infrastructure service providers over price or service because the option of not reporting is unavailable. Moreover, infrastructure requirements imposed by Title VII regulation will increase the fixed costs of an SDR operating in the security-based swap market and increase the barriers to entry into the market, potentially discouraging firms from entering the market for SDR services. For example, under Rule 907, as adopted, registered SDRs are required to establish and maintain certain written policies and procedures. The Commission estimated that this requirement will impose initial costs on each registered SDR of approximately $12,250,000.[205]

The proposed rules, amendments, and guidance might also affect the competitive landscape by increasing the incentives for security-based swap infrastructure service providers to integrate horizontally or vertically. As a general matter, firms engage in horizontal integration when they expand their product offerings to include similar goods and services or acquire competitors. For example, SDRs that presently serve the swap market might horizontally integrate by offering similar services in the security-based swap market. Firms vertically integrate by entering into businesses that supply the market that they occupy ("backward vertical integration") or by entering into businesses that they supply ("forward vertical integration").

As discussed in more detail in Section VIII(D)(1), infra, while proposing a reporting methodology that assigns reporting responsibilities to registered clearing agencies, who will hold

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[205] See Regulation SBSR Adopting Release at note 1250.

the most complete and accurate information for cleared transactions, could minimize potential data discrepancies and errors, rules that give registered clearing agencies discretion over where to report transaction data could provide incentives for registered clearing agencies to create affiliate SDRs and compete with other registered SDRs for post-trade reporting services. The cost to a clearing agency of entering the market for SDR services is likely to be low, given that many of the infrastructure requirements for entrant SDRs are shared by clearing agencies. Clearing agencies already have the infrastructure necessary for capturing transaction records from clearing members and might be able to leverage that pre-existing infrastructure to provide services as an SDR at low incremental cost. Because all clearing transactions, like all other security-based swaps, must be reported to a registered SDR, there would be a set of potentially captive transactions that clearing agencies could initially use to vertically integrate into SDR services.[206]

Entry into the SDR market by registered clearing agencies could potentially lower the cost of SDR services if clearing agencies are able to transmit data to an affiliated SDR at a lower cost relative to transmitting the same data to an independent SDR. The Commission preliminarily believes that this is likely to be true for clearing transactions, given that the clearing agency and affiliate SDR would have greater control over the reporting process relative to sending to an unaffiliated SDR. Even if registered clearing agencies did not enter the market for SDR services, their ability to pursue a vertical integration strategy could motivate incumbent

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[206] A registered clearing agency expanding to provide SDR services is an example of forward vertical integration. In the context of these proposed rules and amendments, SDRs "consume" the data supplied by registered clearing agencies. Clearing agencies engage in forward vertical integration by creating or acquiring the SDRs that consume the data that they produce as a result of their clearing business.

SDRs to offer service models that are sufficiently competitive to discourage entry by registered clearing agencies.

However, the Commission recognizes that the entry of clearing agency-affiliated SDRs might not necessarily result in increased competition among SDRs or result in lower costs for SDR services. In an environment where registered clearing agencies with affiliated SDRs have discretion to send their clearing transaction data to their affiliates, security-based swap market participants who wish to submit their transactions to clearing may have reduced ability to direct the reporting of the clearing transaction to an unaffiliated SDR. As a result, clearing agency-affiliated SDRs would not directly compete with unaffiliated SDRs on the basis of price or quality, because they inherit their clearing agency affiliate's market share. This might allow clearing agency incumbents to exercise market power through their affiliate SDRs relative to stand-alone SDRs.

In summary, the Commission's economic analysis of these proposed rules and amendments considers the features of the market for infrastructure services that support security-based swap market participants. The Commission acknowledges that the allocation of reporting obligations that result from these proposed rules and amendments could affect the balance of competition between different providers of infrastructure. As discussed below, the effect of these proposed rules and amendments on competition between infrastructure providers could ultimately affect security-based swap counterparties.

B. Baseline

The Commission's analysis of the economic effects of the proposed rules, amendments, and guidance includes in its baseline the effects of Regulation SBSR, as adopted, and the SDR core principles and registration rules, as adopted in the SDR Adopting Release. Hence, the

Commission's analysis of the potential impacts of the proposed rules, amendments, and guidance takes into account the anticipated effects of the adoption of Regulation SBSR and the SDR rules as described in those releases.

Furthermore, the overall Title VII regulatory framework will have consequences for the transaction activity addressed by this proposal. For example, the scope of future mandatory clearing requirements will affect the overall costs borne by registered clearing agencies, which under the proposal would be obligated to report security-based swap transactions that arise as a consequence of clearing. Similarly, the scope of future mandatory trade execution requirements will affect the volume of transactions that take place on platforms, and ultimately the number of transactions that platforms would be obligated to report under this proposal. Finally, as noted in the Cross-Border Adopting Release,[207] the market for security-based swaps is global in nature and regulatory requirements may differ across jurisdictions. To the extent that the costs of regulatory requirements differ, certain market participants may have incentives to restructure their operations to avoid regulation under Title VII, which generally would reduce the number of transactions affected by this proposal.

The following sections provide an overview of aspects of the security-based swap market that are likely to be most affected by the proposal, as well as elements of the current market structure, such as central clearing and platform trading, that are likely to determine the scope of transactions that will be covered by the proposed rules, amendments, and guidance.[208]

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[207] See 79 FR at 47280.

[208] See Regulation SBSR Adopting Release, Section XXIII(B) (providing additional information regarding the OTC derivatives market generally, and counterparties specifically).

1. Current Security-Based Swap Market

The Commission's analysis of the current state of the security-based swap market is based on data obtained from DTCC-TIW, especially data regarding the activity of market participants in the single-name credit default swap ("CDS") market during the period 2008 to 2013.[209] While other trade repositories may collect data on equity security-based swaps, the Commission currently has no access to detailed data about these products (or other products that are security-based swaps). As such, the Commission is unable to analyze security-based swaps other than single-name CDS. However, the Commission believes that the single-name CDS data are representative of the overall security-based swap market and therefore can directly inform the Commission's analysis of the security-based swap market.[210]

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209 The data available from DTCC-TIW do not encompass CDS transactions (1) based on non-U.S. reference entities and (ii) where neither counterparty is a U.S. person. Commission staff quantified the proportion of transaction activity included in the DTCC-TIW transaction data. In 2013, DTCC-TIW reported on its website new trades in single-name CDSs with gross notional of $12.0 trillion. DTCC-TIW provided to the Commission data that included only transactions with a U.S. counterparty or a U.S. reference entity. During the same period, these data included new trades with gross notional equaling $9.3 trillion, or 77% of the total reported by DTCC-TIW. Hence, the Commission believes that the DTCC-TIW data provide sufficient information to identify the types of market participants active in the security-based swap market and the general pattern of dealing within that market.

210 According to data published by BIS, the global notional amount outstanding in equity forwards and swaps as of December 2013 was $2.28 trillion. The notional amount outstanding in single-name CDS was approximately $11.32 trillion, in multi-name index CDS was approximately $8.75 trillion, and in multi-name, non-index CDS was approximately $950 billion. See Semi-annual OTC derivatives statistics at end-December 2013 (June 2014), Table 19, available at http://www.bis.org/statistics/dt1920a.pdf. For the purposes of this analysis, the Commission assumes that multi-name index CDS are not narrow-based index CDS and, therefore, do not fall within the "security-based swap" definition. See Section 3(a)(68)(A) of the Exchange Act; Product Definitions Adopting Release, 77 FR 48208. The Commission also assumes that all instruments reported as equity forwards and swaps are security-based swaps, potentially resulting in underestimation of the proportion of the security-based swap market represented by single-name CDS. Based on those

2. Clearing Activity in Single-Name Credit Default Swaps

Currently, there is no regulatory requirement in the United States to clear security-based swaps. Clearing for certain single-name CDS products occurs on a voluntary basis. Voluntary clearing activity in single-name CDS has steadily increased alongside the Title VII rulemaking process. As a result, any rule that would allocate reporting obligations for clearing transactions would affect the accessibility of data related to a large number of security-based swap transactions. In addition, the size of this part of the market would affect the magnitude of the regulatory reporting burdens. As of the end of 2013, ICE Clear Credit accepted for clearing security-based swap products based on a total of 161 North American corporate reference entities, 121 European corporate reference entities, and six individual sovereign (nation-state) reference entities.

Figure 1, below, shows characteristics of new trades in single-name CDS that reference North American standard corporate ISDA documentation. In particular, the figure documents that about half of all clearable transactions are cleared. Moreover, over the sample period, transaction volume accepted for clearing increased as a fraction of total volume in these products. Analysis of trade activity from July 2012 to December 2013 indicates that, out of $938 billion of notional amount traded in North American corporate single-name CDS products that are accepted for clearing during the 18 months ending December 2013, approximately 71%, or $666 billion, had characteristics making them suitable for clearing by ICE Clear Credit and represented trades between two ICE Clear Credit clearing members. Approximately 79% of this

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assumptions, single-name CDS appear to constitute roughly 78% of the security-based swap market. Although the BIS data reflect the global OTC derivatives market and not just the U.S. market, the Commission has no reason to believe that these ratios differ significantly in the U.S. market.

notional value, or $525 billion, was cleared through ICE Clear Credit, or 56% of the total volume of new trade activity. As of the end of 2013, ICE Clear Europe accepted for clearing single-name CDS products referencing a total of 136 European corporate reference entities. Analysis of new trade activity from July 2012 to December 2013 indicates that, out of €531 billion of notional amount traded in European corporate single-name CDS products that are accepted for clearing during the 18 months ending December 2013, approximately 70%, or €372 billion had characteristics making them suitable for clearing by ICE Clear Europe and represented trades between two ICE Clear Europe clearing members. Approximately 51% of this notional amount, or €191 billion. was cleared through ICE Clear Europe, or 36% of the total volume of new trade activity.[211]

[211] These numbers do not include transactions in European corporate single-name CDS that were cleared by ICE Clear Credit. However, during the sample period, there was only one day (December 20, 2013) on which there were transactions in European corporate single-name CDS that were cleared by ICE Clear Credit, and the traded notional of these transactions was de minimis. For historical data, see https://www.theice.com/marketdata/reports/99.

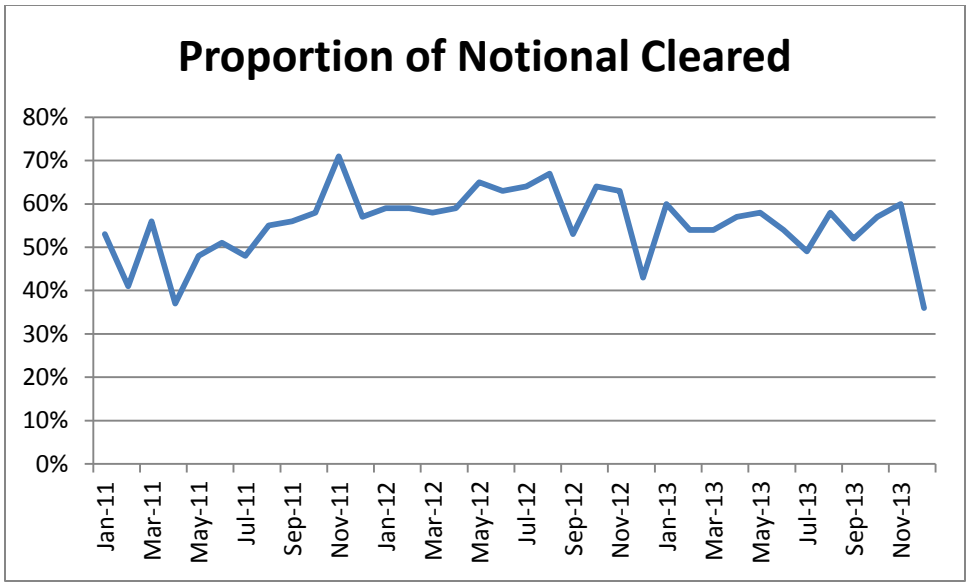

Figure 1: The fraction of total gross notional amount of new trades and assign-entries in North American single-name CDS products that were accepted for clearing by ICE Clear Credit and were cleared within 14 days of the initial transaction.[212]

3. Execution Methods in the Security-Based Swap Market

The proposed rules and amendments address regulatory reporting obligations for, among others, security-based swap transactions executed on platforms and submitted to clearing. While trading in security-based swaps is currently dominated by bilateral negotiation and the use of interdealer brokers, the Commission anticipates that future rulemaking will address mandatory trade execution requirements that will likely result in increased incidence of trading on platforms.[213]

4. Current Market Structure for Security-Based Swap Infrastructure

a. Exchanges and SB SEFs

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212 The Commission preliminarily believes that it is reasonable to assume that, when clearing occurs within 14 days of execution, counterparties made the decision to clear at the time of execution and not as a result of information arriving after execution.

213 See Securities Exchange Act Release No. 67177 (June 11, 2012), 77 FR at 35640 (June 14, 2012) ("General Policy on Sequencing").

The proposed rules and amendments would address how transactions conducted on platforms (i.e., national securities exchanges and SB SEFs) would be required to be reported under Regulation SBSR. Currently, there are no SB SEFs registered with the Commission, and as a result, there is no registered SB SEF trading activity to report. There are, however, currently 24 SEFs that are either temporarily registered with the CFTC or whose temporary registrations are pending with the CFTC and currently are exempt from registration with the Commission.[214] As the Commission noted in the Cross-Border Adopting Release, the cash flows of security-based swaps and other swaps are closely related and many participants in the swap market also participate in the security-based swap market.[215] Likewise, the Commission preliminarily believes that many entities that currently act as swap execution facilities are likely to also register with the Commission as SB SEFs. The Commission anticipates that, owing to the smaller size of the security-based swap market, there will be fewer platforms for executing transactions in security-based swaps than the 24 SEFs reported within the CFTC's jurisdiction. Under proposed Rule 901(a)(1), a platform would be required to report to a registered SDR any security-based swap transactions executed on its facilities and submitted to clearing.

b. Clearing Agencies

The market for clearing services and data reporting services in the security-based swap

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214 See Effective Date Release, 76 FR at 36306 (exempting persons that operate a facility for the trading or processing of security-based swaps that is not currently registered as a national securities exchange or that cannot yet register as an SB SEF because final rules for such registration have not yet been adopted from the requirements of Section 3D(a)(1) of the Exchange Act until the earliest compliance date set forth in any of the final rules regarding registration of SB SEFs). A list of SEFs that are either temporarily registered with the CFTC or whose temporary registrations are pending with the CFTC is available at http://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=SwapExecutionFacilities (last visited November 3, 2014).

215 See Cross-Border Adopting Release, 79 FR at 47300.

market is currently concentrated among a handful of firms. **Table 1** lists the firms that currently clear index and single-name CDS and identifies the segments of the market each firm serves. While there may be limited choices available to participants interested in cleared index CDS transactions, only two firms (albeit with the same parent) clear sovereign single-name CDS and only a single firm serves the market for North American single-name CDS. Concentration of clearing services within a limited set of clearing agencies can be explained, in part, by the existence of strong economies of scale in central clearing.[216]

Table 1: Clearing agencies currently clearing index and single-name CDS.

	North American	European	Sovereign	Index
ICE Clear Credit[217]	X	X	X	X
ICE Clear Europe[218]		X	X	X
CME[219]				X

216 See Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR at 66265 (November 2, 2012) (noting that economies of scale can result in natural monopolies). See also Craig Pirrong, "The Industrial Organization of Execution, Clearing and Settlement in Financial Markets," Working Paper (2007), available at http://www.bauer.uh.edu/spirrong/Clearing_silos.pdf (last visited November 2, 2014) (discussing the presence of economies of scale in central clearing).

217 A current list of single-name and index CDS cleared by ICE Clear Credit is available at: https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Clearing_Eligible_Products.xls (last visited November 3, 2014).

218 A current list of single-name and index CDS cleared by ICE Clear Europe is available at: https://www.theice.com/publicdocs/clear_europe/ICE_Clear_Europe_Cleared_Products_List.xls (last visited November 3, 2014).

219 A current list of products cleared by CME is available at: http://www.cmegroup.com/trading/otc/files/otc-cds-product-scope.pdf (last visited November 3, 2014).

LCH.Clearnet[220]		X		X

c. SDRs

The market for data services has evolved along similar lines. While there is currently no mandatory reporting requirement for the single-name CDS market, virtually all transactions are voluntarily reported to DTCC-TIW, which maintains a legal record of transactions.[221] That there currently is a single dominant provider of record-keeping services for security-based swaps is consistent with the presence of a natural monopoly for a service that involves a predominantly fixed cost investment with low marginal costs of operation.

There are currently no SDRs registered with the Commission. Registration requirements are part of the new rules discussed in the SDR Adopting Release. In the absence of SEC-registered SDRs, the analysis of the economic effects of the proposed rules and amendments discussed in this release on SDRs is informed by the experience of the CFTC-registered SDRs that operate in the swap market. The CFTC has provisionally registered four SDRs to accept transactions in swap credit derivatives.[222]

It is reasonable to estimate that a similar number of persons provisionally registered with the CFTC to service the equity and credit swap markets might seek to register with the Commission as SDRs, and that other persons could seek to register with both the CFTC and the

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220 A current list of single-name and index CDS cleared by LCH.Clearnet is available at: http://www.lchclearnet.com/documents/731485/762470/cdsclear+clearable+product+list+%28october+2014%29.xlsx/b0f514f2-d876-4aa4-9e6b-5b4c76985fb8 (last visited November 3, 2014).

221 See http://www.isdacdsmarketplace.com/exposures_and_activity (last visited September 22, 2014) (describing the function and coverage of DTCC-TIW).

222 A list of SDRs provisionally registered with the CFTC is available at http://sirt.cftc.gov/sirt/sirt.aspx?Topic=DataRepositories (last visited November 13, 2014).

Commission as SDRs. There are economic incentives for the dual registration attributed to the fact that many of the market participants in the security-based swap market also participate in the swap market. Moreover, once an SDR is registered with the CFTC and the required infrastructure for regulatory reporting and public dissemination is in place, the marginal costs for an SDR to also register with the Commission, adding products and databases and implementing modifications to account for difference between Commission and CFTC rules, will likely to be lower than the initial cost of registration with the CFTC.

d. Vertical Integration of Security-Based Swap Market Infrastructure

The Commission has already observed vertical integration of swap market infrastructure: clearing agencies have entered the market for record-keeping services for swaps by provisionally registering themselves, or their affiliates, as SDRs with the CFTC. Under the CFTC swap reporting regime, two provisionally registered SDRs are, or are affiliated with, clearing agencies that clear swaps. These clearing agencies have adopted rules providing that they will satisfy their CFTC swap reporting obligations by reporting to their own, or their affiliated, SDR.[223] As a result, beta and gamma transactions and subsequent netting transactions that arise from the clearing process are reported by each of these clearing agencies to their associated SDRs.

C. Programmatic Costs of Proposed Amendments to Regulation SBSR

1. Proposed Amendments to Rule 901

Proposed Rule 901(a)(2)(i) would provide that the reporting side for a clearing transaction is the clearing agency that is a counterparty to the clearing transaction. Rule 901(a)(3) would require any person that has a duty to report a security-based swap that has been

[223] See CME Clearing Rule 1001 (Regulatory Reporting of Swap Data); ICE Clear Credit Clearing Rule 211 (Regulatory Reporting of Swap Data).

submitted to clearing at a registered clearing agency to promptly provide that registered clearing agency with the transaction ID of the submitted security-based swap and the identity of the registered SDR to which the transaction will be reported or has been reported.

These proposed amendments to Rule 901 would impose initial and ongoing costs on platforms, clearing agencies, and reporting sides. The Commission preliminarily believes that certain of these costs would be a function of the number of reportable events and the data elements required to be submitted for each reportable event. The discussion below first highlights those burdens and costs related to proposed Rule 901(a)(2)(i), followed by burdens and costs related to proposed Rule 901(a)(3).

a. For Platforms and registered Clearing Agencies—Rule 901(a)(1) and Rule 901(a)(2)(i)

The Commission preliminarily believes that platforms and registered clearing agencies would face the same costs that reporting sides face. Specifically, platforms and registered clearing agencies would have to: (1) develop transaction processing systems; (2) implement a reporting mechanism; and (3) establish an appropriate compliance program and support for the operation of the transaction processing system. The Commission also preliminarily believes that, once a platform or registered clearing agency's reporting infrastructure and compliance systems are in place, the burden of reporting each individual reportable event would represent a small fraction of the burdens of establishing the reporting infrastructure and compliance systems. The Commission preliminarily believes that all reportable events, for which platforms and registered clearing agencies would be responsible for reporting, would be reported through electronic means. The Commission preliminarily believes that there would be ten platforms and four registered clearing agencies that would incur duties to report security-based swap transactions under the proposed amendments to Rule 901.

The Commission preliminarily estimates that transaction processing system related to Rule 901 and applicable to platforms and registered clearing agencies would result in initial one-time aggregate costs of approximately $1,428,000, which corresponds to $102,000 for each platform or registered clearing agency.[224] The Commission estimates that the cost to establish and maintain connectivity to a registered SDR to facilitate the reporting required by Rule 901 would impose an annual (first-year and ongoing) aggregate cost of approximately $2,800,000, which corresponds to $200,000 for each platform or registered clearing agency.[225] The Commission estimates, as a result of having to establish a reporting mechanism for security-based swap transactions, platforms and registered clearing agencies would experience certain development, testing, and supports costs. Such costs would amount to an initial one-time aggregate cost of approximately $686,000, which corresponds to an initial one-time cost of $49,000 for each platform or registered clearing agency.[226] The Commission preliminarily

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224 This estimate is based on the following: [((Sr. Programmer (160 hours) at $303 per hour) + (Sr. Systems Analyst (160 hours) at $260 per hour) + (Compliance Manager (10 hours) at $283 per hour) + (Director of Compliance (5 hours) at $446 per hour) + (Compliance Attorney (20 hours) at $334 per hour)) x 14 platforms and registered clearing agencies)] = approximately $1,428,000, or $102,000 per platform or registered clearing agency. All hourly cost figures are based upon data from SIFMA's Management & Professional Earnings in the Securities Industry 2013 (modified by Commission staff to account for an 1,800-hour-work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead). See also Regulation SBSR Adopting Release, Section XXII(C)(2)(b).

225 The Commission derived the total estimated expense from the following: ($100,000 hardware- and software-related expenses, including necessary backup and redundancy, per SDR connection) x (2 SDR connections per platform or registered clearing agency) x (14 platforms or registered clearing agencies) = $2,800,000, or $200,000 per platform or registered clearing agency. See also Regulation SBSR Adopting Release, Section XXII(C)(2)(b).

226 This figure is calculated as follows: [((Sr. Programmer (80 hours) at $303 per hour) + (Sr. Systems Analyst (80 hours) at $260 per hour) + (Compliance Manager (5 hours) at $283 per hour) + (Director of Compliance (2 hours) at $446 per hour) + (Compliance Attorney (5 hours) at $334 per hour) x (14 platforms or registered clearing agencies)] =

estimates that order management costs related to the proposed amendments to Rule 901 would impose ongoing annual aggregate costs of approximately $1,078,000, which corresponds to $77,000 per platform or registered clearing agency.[227] In addition, the Commission estimates that platforms and registered clearing agencies would incur an initial and ongoing aggregate annual cost of $14,000, which corresponds to $1,000 for each platform or registered clearing agency.[228] The Commission estimates that designing and implementing an appropriate compliance and support program will impose an initial one-time aggregate cost of approximately $756,000, which corresponds to a cost of approximately $54,000 for each platform or registered clearing agency.[229] The Commission estimates that maintaining its compliance and support program would impose an ongoing annual aggregate cost of approximately $539,000, which

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approximately $686,000, which equates to $49,000 per platform or registered clearing agency. See also Regulation SBSR Adopting Release, Section XXII(C)(2)(b).

227 This estimate is based on the following: [((Sr. Programmer (32 hours) at $303 per hour) + (Sr. Systems Analyst (32 hours) at $260 per hour) + (Compliance Manager (60 hours) at $283 per hour) + (Compliance Clerk (240 hours) at $64 per hour) + (Director of Compliance (24 hours) at $446 per hour) + (Compliance Attorney (48 hours) at $334 per hour)) x 14 platforms and registered clearing agencies)] = approximately $1,078,000, or $77,000 per platform or registered clearing agency. See also Regulation SBSR Adopting Release, Section XXII(C)(2)(b).

228 This estimate is calculated as follows: [$250/gigabyte of storage capacity x (4 gigabytes of storage) x (14 platforms or registered clearing agencies)] = $14,000, or $1,000 per platform or registered clearing agency. See also Regulation SBSR Adopting Release, Section XXII(C)(2)(b).

229 This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer (100 hours) at $303 per hour) + (Sr. Systems Analyst (40 hours) at $260 per hour) + (Compliance Manager (20 hours) at $283 per hour) + (Director of Compliance (10 hours) at $446 per hour) + (Compliance Attorney (10 hours) at $334 per hour) x (14 platforms and registered clearing agencies)] = approximately $756,000, or $54,000 per platform or registered clearing agency.

corresponds to a cost of approximately $38,500 for each platform or registered clearing agency.[230]

In the Regulation SBSR Adopting Release, the Commission revised its previous estimates of the number of reportable events associated with security-based swap transactions per year.[231] These revised estimates were a result of the Commission obtaining additional, more recent, and more granular data regarding participation in the security-based swap market from DTCC-TIW. In the Regulation SBSR Adopting Release, the Commission estimated that there will be approximately 3 million reportable events per year under Rule 901, an estimate that the Commission continues to believe is valid for the purposes of this release.[232] The Commission estimated in the Regulation SBSR Adopting Release that Rule 901(a), as adopted, will result in approximately 2 million reportable events related to covered transactions.[233]

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230 This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer (16 hours) at $303 per hour) + (Sr. Systems Analyst (16 hours) at $260 per hour) + (Compliance Manager (30 hours) at $283 per hour) + (Compliance Clerk (120 hours) at $64 per hour) + (Director of Compliance (12 hours) at $446 per hour) + (Compliance Attorney (24 hours) at $334 per hour) x (14 platforms and registered clearing agencies)] = approximately $539,000, or $38,500 per platform or registered clearing agency. See also Regulation SBSR Adopting Release, Section XXII(C)(2)(b).

231 See Regulation SBSR Adopting Release, Section XXI.

232 The Commission originally estimated that there would be 15.5 million reportable events per year under Regulation SBSR. See Regulation SBSR Proposing Release, 75 FR at 75247-48. In the Cross-Border Proposing Release, the Commission updated its estimate of the number of reportable events to approximately 5 million per year. The Commission noted that the change in the estimate of the number of reportable events per year was due to better and more precise data available from the industry on the scope, size, and composition of the security-based swap market. See Cross-Border Proposing Release, 78 FR at 31114-15. For these same reasons, the Commission has further updated its estimate of the number of reportable events to approximately 3 million per year. See infra note 233.

233 The Commission now estimates that there were approximately 2.26 million single-name CDS transactions in 2013. The data studied by the Commission cover single-name CDS

The Commission preliminarily estimates that 1 million of the 3 million total reportable events would result from the proposed amendments to Rule 901.[234] This estimate of 1 million reportable events would include the initial reporting of the security-based swaps by platforms and registered clearing agencies as well as any life cycle events of such transactions. Specifically, the Commission preliminarily estimates that, of the 1 million reportable events, approximately 370,000 would involve the reporting of new security-based swap transactions and approximately 630,000 would involve the reporting of life cycle events under Rule 901(e).[235] As

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transactions, which the Commission continues to believe account for approximately 80-90% of the security-based swap market. The Commission continues to use 78% as its measure of CDS as a percentage of the entire security-based swap market, resulting in a revised estimate of 3 million security-based swap transactions (i.e., 2,260,000/0.78 = 2,897,436 reportable events). See Regulation SBSR Adopting Release, Section XXI(B)(4)(b).

234 The Commission is proposing to amend Rule 901(a)(2) to require a clearing agency to be the reporting side for clearing transactions to which it is a counterparty. The Commission is further proposing to amend Rule 901(e)(1) to provide that a "clearing agency shall report whether or not it has accepted a security-based swap for clearing." Pursuant to Rule 901(e)(1), a registered clearing agency would be required to report whether or not it has accepted a security-based swap for clearing. Proposed Rule 901(a)(2)(i), discussed above, would require clearing agencies to report security-based swap transaction information for clearing transactions. These reportable events have been included in the Commission's estimates of the number of reportable events for the purposes of Rule 901.

In arriving at the Commission's estimate of 1 million reportable events, the Commission has included the following: (1) the termination of the original or "alpha" security-based swap; (2) the creation of beta and gamma security-based swaps; (3) the termination of beta, gamma, and any previous open positions during each netting cycle; and (4) any other transactions that are entered into by the registered clearing agency, arriving at 645,000 observations. Inflating this figure by 0.78, the Commission's measure of CDS as a percentage of the entire security-based swap market, is 645,000/0.78 = 826,923 or approximately 1 million reportable events.

235 Commission staff arrived at this estimate by summing the number of beta and gamma transactions that would result from observed termination of alphas by a registered clearing agency (197,798) and the number of other betas and gammas for which terminations were not available due to same-day clearing (88,935) to arrive at 286,733 total transactions. Inflating this figure by 0.78, the Commission's measure of CDS as a

a result, the Commission preliminarily estimates that platforms would be responsible for the reporting of approximately 120,000 security-based swaps,[236] at an annual cost of approximately $45,300 or $4,530 per platform.[237] The Commission preliminarily estimates that registered clearing agencies would be responsible for the reporting of approximately 250,000 security-based swaps, at an annual cost of approximately $94,375 or $23,593.75 per registered clearing agency.[238] The Commission preliminarily estimates that the proposed amendments to Rule 901(a) would result in registered clearing agencies having to report a significant number of life cycle events under Rule 901(e) over the course of a year—consisting primarily of terminations of clearing transactions occurring as part of the netting process—at an annual cost of approximately

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percentage of the entire security-based swap market, results in an estimate of 286,733/0.78, or approximately 370,000 reportable events.

236 As discussed in Section II(C)(2), supra, proposed Rule 901(a)(1) would require a platform to report any security-based swap executed on its facilities that will be submitted to clearing. Platforms, however, would not be responsible for reporting life cycle events of such security-based swaps. The Commission preliminarily believes that the only life cycle event of a platform-executed security-based swap that is submitted to clearing will be whether the security-based swap is accepted for clearing. Proposed Rule 901(e)(1)(ii) would require the registered clearing agency to report that information, not the platform. The Commission estimates that platforms would be responsible only for the reporting of approximately one third of the 370,000 security-based swaps (or about 120,000 security-based swaps) and registered clearing agencies (as a result of the creation of new security-based swaps during the clearing process) would be responsible for the reporting of the remaining two-thirds of security-based swaps (or 250,000 security-based swaps).

237 The Commission estimates: ((120,000 x 0.005 hours per transaction) / (10 platforms)) = 60 hours per platform, or 600 total hours. The Commission further estimates the total cost to be: [((Compliance Clerk (30 hours) at $64 per hour) + (Sr. Computer Operator (30 hours) at $87 per hour)) x (10 platforms)] = approximately $45,300, or $4,530 per platform. See also Regulation SBSR Adopting Release, Section XXII(C)(2)(b).

238 The Commission estimates: ((250,000 x 0.005 hours per transaction) / (4 registered clearing agencies)) = 312.5 hours per registered clearing agency, or 1,250 total hours. The Commission further estimates the total cost to be: [((Compliance Clerk (156.25 hours) at $64 per hour) + (Sr. Computer Operator (156.25 hours) at $87 per hour)) x (4 registered clearing agencies)] = $94,375, or $23,593.75 per registered clearing agency. See also Regulation SBSR Adopting Release, Section XXII(C)(2)(b).

$237,825 or $59,456.25 per registered clearing agency.[239] The Commission preliminarily believes that all reportable events that would be reported by platforms and registered clearing agencies pursuant to these proposed amendments would be reported through electronic means.

In the Cross-Border Proposing Release, the Commission stated that, to the extent that security-based swaps become more standardized and trade more frequently on electronic platforms (rather than manually), the act of reporting transactions to a registered SDR should become less costly.[240] Together, these trends are likely to reduce the number of transactions that would necessitate the manual capture of bespoke data elements, which is likely to take more time and be more expensive than electronic capture.

b. For Platforms and Reporting Sides of Alphas—Rule 901(a)(3)

Pursuant to proposed Rule 901(a)(3), a person—either the platform upon which the security-based swap was executed or the reporting side for those security-based swaps other than clearing transactions—to report, for those security-based swaps submitted to a registered clearing agency, the transaction ID of the submitted security-based swap and the identity of the registered SDR to which the transaction will be or has been reported.

Rule 901(a)(3) requires certain information (transaction ID and the identity of the registered SDR) to be reported to a registered clearing agency only if such security-based swap has been submitted to a registered clearing agency for clearing. As a result, platforms and reporting sides required to report transaction IDs and the identity of a registered SDR will

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239 The Commission estimates: ((630,000 x 0.005 hours per transaction) / (4 registered clearing agencies)) = 787.5 hours per registered clearing agency, or 3,150 total hours. The Commission further estimates the total cost to be: [((Compliance Clerk (393.75 hours) at $64 per hour) + (Sr. Computer Operator (393.75 hours) at $87 per hour)) x (4 registered clearing agencies)] = approximately $237,825, or $59,456.25 per registered clearing agency. See also Regulation SBSR Adopting Release, Section XXII(C)(2)(b).

240 See Cross-Border Proposing Release, 78 FR at 31198.

already have put into place any infrastructure needed to report these security-based swaps to a registered clearing agency. However, requiring the person who has the duty to report the alpha transaction to a registered SDR to provide these data elements to the registered clearing agency to which the alpha has been submitted would result in certain additional development and maintenance costs. Specifically, the Commission preliminarily believes that the additional one-time cost related to the development of the ability to capture the relevant transaction information would be $2,815, and the additional one-time burden related to the implementation of a reporting mechanism for these two data elements would be $1,689 per platform or reporting side.[241] The Commission preliminarily believes that the additional ongoing cost related to the development of the ability to capture the relevant transaction information would be $2,815 and the additional ongoing burden related to the maintenance of the reporting mechanism would be $563, per platform or reporting side.[242]

c. Total Costs of Platforms, Registered Clearing Agencies, and Reporting Sides Relating to Proposed Amendments to Rule 901

Summing these costs, the Commission preliminarily estimates that the initial, first-year cost of complying with the proposed amendments to Rule 901 (including the initial reporting and

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241 The Commission estimates that the addition burdens would be: [(Sr. Programmer (5 hours at $303 per hour) + Sr. Systems Analyst (5 hours) at $260 per hour) = 10 burden hours (development of the ability to capture transaction information) = $2,815 per platform or reporting side; (Sr. Programmer (3 hours) at $303 per hour + Sr. Systems Analyst (3 hours) at $260 per hour) = $1689 per platform or reporting side (implementation of reporting mechanism)]. The total one-time cost associated with proposed Rule 901(a)(3) would be $4,504 per platform or reporting side for a total one-time cost $1,396,240 ($4,504 x 310 (300 reporting sides + 10 platforms)).

242 The Commission estimates that the additional burdens would be: [(Sr. Programmer (5 hours) + Sr. Systems Analyst (5 hours)) = 10 burden hours (maintenance of transaction capture system); (Sr. Programmer (1 hour) + Sr. Systems Analyst (1 hour)) = 2 burden hours (maintenance of reporting mechanism)]. The total ongoing burden associated with the amendments to 901(a) would be 12 burden hours per platform and reporting side for a total ongoing burden of 3720 hours (12 x 310 (300 reporting sides + 10 platforms)).

the reporting of any life cycle events) would be $5,288,450, which corresponds to 528,845 per platform.[243] The Commission estimates that the ongoing aggregate annual costs, after the first year, of complying with the proposed amendments to Rule 901 (including the initial reporting and the reporting of any life cycle events) would be $3,215,930, which corresponds to $321,593 per platform.[244] The Commission estimates that the initial, first-year cost of complying with the proposed amendments to Rule 901 (including the initial reporting and the reporting of any life cycle events) would be $2,418,200, which corresponds to $604,550 per registered clearing agency.[245] The Commission preliminarily estimates that the ongoing aggregate annual costs, after the first year, of complying with the proposed amendments to Rule 901 (including the initial reporting and the reporting of any life cycle events) would be $1,598,200, which corresponds to $399,550 per registered clearing agency.[246] The Commission estimates that the initial, first-year cost of complying with proposed Rule 901(a)(3) would be $844,500, which corresponds to $2,815 per reporting side.[247] The Commission preliminarily estimates that the

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243 This estimate is based on the following: (($102,000 + $200,000 + $49,000 +$77,000 + $54,000 + $1,000 + $38,500 + $4,530 + $2,815) x (10 platforms)) = $5,288,450, which corresponds to $528,845 per platform.

244 This estimate is based on the following: (($200,000 + $77,000 + $1,000 + $38,500 + $4,530 + $563) x (10 platforms)) = $3,215,930, or $321,593 per platform.

245 This estimate is based on the following: (($102,000 + $200,000 + $49,000 +$77,000 + $54,000 + $1,000 + $38,500 + $23,593.75 + $59,456.25) x (4 registered clearing agencies)) = $2,418,200, which corresponds to $604,550 per registered clearing agency.

246 This estimate is based on the following: (($200,000 + $77,000 + $1,000 + $38,500 + $23,593.75 + $59,456.25) x (4 registered clearing agencies)) = $1,598,200, or $399,550 per registered clearing agency.

247 This estimate is based on the following: ($2,815 x (300 reporting sides)) = $844,500, which corresponds to $2,815 per reporting side.

ongoing aggregate annual costs, after the first year, of complying with proposed Rule 901(a)(3) would be $168,900, which corresponds to $563 per reporting side.[248]

2. Proposed Amendment to Rule 905(a)

In the Regulation SBSR Adopting Release, the Commission estimated that Rule 905(a), as adopted, will impose an initial, one-time burden associated with designing and building a reporting side's reporting system to be capable of submitting amended security-based swap transaction information to a registered SDR.[249] The Commission stated its belief that designing and building appropriate reporting system functionality to comply with Rule 905(a)(2) will be a component of, and represent an incremental "add-on" to, the cost to build a reporting system and develop a compliance function as required under Rule 901, as adopted.[250] Specifically, the Commission estimated that, based on discussions with industry participants, the incremental burden would be equal to 5% of the one-time and annual burdens associated with designing and building a reporting system that is in compliance with Rule 901, plus 10% of the corresponding one-time and annual burdens associated with developing the reporting side's overall compliance program required under Rule 901.[251] This estimate was based on similar calculations contained in the Regulation SBSR Proposing Release,[252] updated to reflect new estimates relating to the number of reportable events and the number of reporting sides.[253]

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248 This estimate is based on the following: ($563 x 300 reporting sides) = $168,900, or $563 per reporting side.

249 See Regulation SBSR Adopting Release, Section XXII(C)(6).

250 See id.

251 See id.

252 See 75 FR at 75254.

253 See Regulation SBSR Adopting Release, Section XXII(C)(1).

The Commission preliminarily believes that the above methodology is applicable to error reporting by platforms under the proposed amendment to Rule 905(a). Thus, for platforms, the Commission preliminarily estimates that the proposed amendment to Rule 905(a) would impose an initial (first-year) aggregate cost of $118,250, or $11,825 per platform,[254] and an ongoing aggregate annualized cost of $39,750, which is $3,975 per platform.[255]

3. Proposed Amendments to Rule 906(c)

For Registered Clearing Agencies and Platforms. Rule 906(c), as adopted, requires each participant of a registered SDR that is a registered security-based swap dealer and registered major security-based swap participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any security-based swap transaction reporting obligations in a manner consistent with Regulation SBSR. Rule 906(c), as adopted, also requires such participants to review and update the required policies and procedures at least annually.

The proposed amendment to Rule 906(c) would extend these same requirements to participants of a registered SDR that are platforms or registered clearing agencies. The Commission preliminarily estimates that the one-time, initial burden for each registered clearing agency or platform to adopt written policies and procedures as required under the proposed amendment would be similar to the Rule 906(c) burdens discussed in the Regulation SBSR

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254 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) x (0.05)) + (($2,500 annual maintenance of reporting system) x (0.05)) + (($54,000 one-time compliance program development) x (0.1)) + (($38,500 annual support of compliance program) x (0.1))) x (10 platforms)] = $118,250, which is $11,825 per platform.

255 See Regulation SBSR Proposing Release, 75 FR at 75254-55. This figure is calculated as follows: [(($2,500 annual maintenance of reporting system) x (0.05)) + (($38,500 annual support of compliance program) x (0.1))) x (10 platforms)] = $39,750, which is $3,975 per platform.

Adopting Release for registered security-based swap dealers and registered major security-based swap participants. As a result, the Commission preliminarily estimates that the first year cost of complying with the proposed amendment to Rule 906(c) would be approximately $58,000 per registered clearing agency or platform.[256] As discussed in the Regulation SBSR Proposing Release,[257] this figure is based on the estimated cost to develop written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing. In addition, the Commission preliminarily estimates the cost of maintaining such policies and procedures, including a full review at least annually—as would be required by the proposed amendment to Rule 906(c)—would be approximately $34,000 per registered clearing agency or platform.[258] This figure includes an estimate of the cost related to reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining internal controls systems, and performing necessary testing.

D. Economic Effects and Effects on Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act[259] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act[260] requires the Commission, when making rules under the

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256 See Regulation SBSR Adopting Release, note 1238.

257 See Regulation SBSR Proposing Release, 75 FR at 75257.

258 See Regulation SBSR Adopting Release, note 1240.

259 15 U.S.C. 78c(f).

260 15 U.S.C. 78w(a)(2).

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 preliminarily believes that this proposal will result in further progress towards the goals identified in the Regulation SBSR Adopting Release: providing a means for the Commission and other relevant authorities to gain a better understanding of the aggregate risk exposures and trading behaviors of participants in the security-based swap market; facilitating public dissemination of security-based swap transaction information, thus promoting price discovery and competition by improving the level of information to all market participants; and improving risk management by security-based swap counterparties, which would need to capture and store their transactions in security-based swaps to facilitate reporting.[261]

The economic effects of the proposed rules, amendments, and guidance on firms that provide services to security-based swap counterparties and the security-based swap market are discussed in detail below. The Commission also considered the effects that the proposed rules, amendments, and guidance might have on competition, efficiency, and capital formation. The Commission preliminarily believes that the proposal is likely to affect competition between firms that provide services to security-based swap counterparties and affect efficiency as a result of the way that the proposed rules and amendments allocate regulatory burdens. The Commission preliminarily believes that most of the effects of the proposal on capital formation would be indirect and would be related to the way in which the proposed rules and amendments result in efficient delivery of services by registered clearing agencies and registered SDRs, reducing

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[261] See Regulation SBSR Adopting Release, Section XXII(D).

transactions costs and freeing resources for investment.[262]

This analysis has been informed by the relationships among regulation, competition, and market power discussed in Section VIII(A), supra. An environment in which there is limited competition in SDR services could impose certain costs on the security-based swap market, including higher prices or lower quality services from SDRs. For example, a registered SDR might be able to extract monopoly profits from reporting sides when there are few competitors, if reporting sides cannot identify a competing SDR offering prices close enough to marginal cost to make changing service providers privately efficient for the reporting side. However, it is also possible that limited competition in the market for SDR services could yield certain benefits for both regulatory authorities and the public. In particular, a small set of registered SDRs could make it simpler for relevant authorities to build a complete picture of transaction activity and outstanding risk exposures in the security-based swap market, and could limit the need for users of publicly disseminated transaction data to merge these data from multiple sources before using it as an input to economic decisions.

1. Reporting of Clearing Transactions

Proposed Rule 901(a)(2)(i) would assign the duty to report all security-based swaps that have a registered clearing agency as a direct counterparty to that registered clearing agency. Regulation SBSR, as adopted, does not assign reporting obligations for any clearing transactions; thus, in the absence of proposed Rule 901(a)(2)(i), these transactions would not be subject to any regulatory reporting requirement. Without these data, the ability of the Commission and other

[262] These transactions costs would include both implicit and explicit costs. Implicit transactions costs are the spread between transaction prices and the fundamental value of the assets being traded. Explicit transactions costs, by contrast, are commissions and other fees paid by counterparties to access the security-based swap market.

relevant authorities to carry out their market oversight functions would be limited. For example, while the Commission would have access to uncleared transactions that are reported to a registered SDR, the Commission—in the absence of proposed Rule 901(a)(2)(i)—would not be able to obtain from registered SDRs information about changes to the open positions of the relevant counterparties after alpha transactions are cleared. Without access to this information from registered SDRs, the Commission would be unable to easily observe risk exposures in the security-based swap market, because information about the net open positions in cleared security-based swaps would not be held in registered SDRs. Ensuring that clearing transactions are reported to registered SDRs and delineating reporting responsibilities for these transactions is particularly important given the level of voluntary clearing activity in the market as well as the mandatory clearing determinations required under Title VII.[263]

The Commission preliminarily believes that the costs associated with required reporting pursuant to the proposed amendments could represent a barrier to entry for new, smaller clearing agencies that might not have the ability to comply with the proposed reporting requirements or for whom the expected benefits of compliance might not justify the costs of compliance. To the extent that the proposed rules and amendments might deter new clearing agencies from entering the security-based swap market, this could negatively impact competition between registered clearing agencies.

A registered clearing agency is responsible for executing each of the clearing transactions to which it is a counterparty and, thus, is well-situated to report the resulting transaction information. By proposing to assign the reporting responsibility to registered clearing agencies, the Commission intends to eliminate additional steps in the reporting process that would be

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[263] See General Policy on Sequencing, 77 FR at 35636.

needed if another market participant were assigned the duty to report a clearing transaction or if the duty were to remain unassigned.[264] By proposing a reporting methodology with as few steps as possible, the Commission intends to minimize potential data discrepancies and errors by assigning reporting responsibilities to persons that hold the most complete and accurate information for cleared security-based swaps.[265] Inaccurate information would negatively impact the ability of the Commission and other relevant authorities to understand and act on the transaction information reported; accurate information should positively affect their ability to oversee the security-based swap market.

Proposed Rule 901(a)(1)(i) would place the obligation for reporting all clearing transactions on registered clearing agencies and allow them to choose the registered SDR to which they submit transaction data. As noted in Section VIII(A), supra, the Commission preliminarily believes that, because many of the infrastructure requirements for entrant SDRs are shared by registered clearing agencies, registered clearing agencies might pursue vertical integration into the market for SDR services at a lower cost relative to potential entrants from unrelated markets. If the costs of reporting to affiliated SDRs are lower than the costs of reporting to unaffiliated SDRs, then one likely response to the proposed rules and amendments is that registered clearing agencies will choose to report clearing transactions to an affiliated SDR. Such vertical integration of security-based swap clearing and reporting could be beneficial to other market participants if they ultimately share in these efficiency gains. For example,

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264 If, for example, the non-clearing agency counterparty had the duty to report a clearing transaction, the registered clearing agency would first have to convey the transaction information to the counterparty—and the counterparty might have to reconfigure the transaction data into the format required by a registered SDR—before the counterparty could report it to a registered SDR.

265 See CME/ICE Letter at 3-4.

efficiency gains due to straight-through processing from execution to reporting could lower transactions costs for market participants and reduce the likelihood of data discrepancies and delays.

The Commission is also aware of the potential costs of placing the duty on registered clearing agencies to report transactions and allowing them to choose the registered SDR to which they report, as such clearing agencies would likely select their affiliated SDRs. If proposed Rule 901(a)(1)(i) would encourage the formation of affiliate SDRs that would not otherwise emerge, then the aggregate number of registered SDRs might reflect an inefficient level of service provision. As noted in Section VIII(A)(2), supra, economies of scale exist in the market for SDR services from the ability to amortize the fixed costs associated with infrastructure over a large volume of transactions. As a result, the entry of clearing agency-affiliated SDRs could indicate that, in aggregate, transaction data is processed at a higher average cost than if there were fewer SDRs. Inefficiencies could be introduced by the Commission and the public receiving security-based swap transaction data from a larger number of registered SDRs. Connecting to a larger number of SDRs and merging transaction data with potentially different data formats and schema could be costly and could lead to losses in data integrity.

The potential for efficiency gains through vertical integration of registered clearing agencies and registered SDRs could foreclose entry into the market for SDR services except by those firms that are willing to simultaneously enter the market for clearing services. The Commission preliminarily believes that registered clearing agencies are more likely to benefit from these efficiencies in shared infrastructure than stand-alone SDRs, given that it is likely to be more difficult for a registered SDR to enter into clearing activity than for a registered clearing agency to enter into SDR activity. Moreover, to the extent that an affiliate SDR is not as cost-

effective as a competing unaffiliated SDR, the registered clearing agency could subsidize the operation of its affiliate SDR to provide a competitive advantage in its cost structure over SDRs unaffiliated with a registered clearing agency. Even if the registered clearing agency does not provide a subsidy to its affiliate SDR, and the resulting service is not as price competitive as an unaffiliated SDR, counterparties have less recourse in choosing alternative reporting venues because the duty to report would reside with the registered clearing agency.

Hence, providing registered clearing agencies with the discretion to report transaction information to the registered SDR of their choice could provide a competitive advantage for clearing agency-affiliated SDRs relative to unaffiliated SDRs. This could also have implications for the reporting of uncleared swaps. In particular, a clearing agency-affiliated SDR could leverage its repository activity for cleared transactions by offering SDR services to clearing members for uncleared swaps. If security-based swap counterparties who clear transactions prefer to have their transaction records consolidated in a single database, then a clearing agency-affiliated SDR would be able to offer these counterparties recordkeeping and cost saving benefits by also recording their uncleared transactions. By contrast, to the extent that an unaffiliated SDR is unable to compete with a clearing agency's affiliated SDR for cleared transactions, it would not be able to offer a consolidated record of a counterparty's trade activity. This then provides a unique advantage to clearing agency-affiliated SDRs.

Alternatively, a clearing member seeking to consolidate its transactions at an unaffiliated SDR might contract with the registered clearing agency, for a fee, to transmit data for clearing transactions to an SDR of the clearing member's choice, either as a duplicate report or as a required report by Regulation SBSR. This would allow the registered clearing agency to satisfy its obligations while permitting the clearing member to maintain access to centralized data.

However, in this case, the registered clearing agency could choose a fee schedule that encourages the clearing member to report its uncleared bilateral transactions to the affiliate SDR. Such a fee schedule might involve the clearing agency offering to terminate alpha transactions reported to its affiliate SDR for a lower price than alpha transactions at a third-party SDR.

As discussed in Section VIII(C)(1)(a), supra, the Commission has estimated the annual and on-going costs associated with requiring registered clearing agencies to establish connections to registered SDRs. The Commission preliminarily believes that, for a given registered clearing agency, these costs may be lower for connections to affiliate SDRs than for connections to unaffiliated SDRs. Because the registered clearing agency might have been involved in developing its affiliated SDR's systems, the clearing agency might, as a result, avoid costs related to translating or reformatting data due to incompatibilities between data reporting by the registered clearing agency and data intake by the SDR.

2. Reporting of Clearing Transactions Involving Allocation

This release explains the Commission's preliminary view of the application of Regulation SBSR to allocations of bunched order executions that are submitted to clearing. The final placement of risk of a bunched order alpha is the series of clearing transactions—the "gamma series"—that results from clearing the bunched order alpha and is economically relevant to risk monitoring and market surveillance. This proposed interpretation would not create any new duties under Regulation SBSR but rather would explain the application of Regulation SBSR to events that occur as part of the allocation process.[266] Additionally, because the proposed

[266] The Commission's estimates of events reportable under these proposed rules and amendments includes observable allocation by clearing agencies in the DTCC-TIW data. Therefore, the costs associated with clearing transactions involving allocation are

interpretation explains how Regulation SBSR, as adopted and as proposed to be amended by this release, would apply to a platform-executed bunched order that will be submitted to clearing, and the security-based swaps that result from the allocation of any bunched order execution, if the resulting security-based swaps are cleared, the Commission preliminarily believes that the proposed interpretation is not likely to have consequences for efficiency, competition, or capital formation beyond those stemming from allocating transaction reporting obligations to platforms and registered clearing agencies discussed in Section VIII(D)(1), supra, and in Section VIII(D)(4), infra.

The proposed interpretation discusses the manner in which the bunched order alpha and the security-based swaps resulting from its allocation would be reported to a registered SDR. This proposed interpretation is designed to accommodate the various workflows that market participants employ to execute and allocate bunched order alphas. For example, in a case where a registered clearing agency receives allocation instructions only subsequent to clearing, the registered clearing agency would decrement the size of the "intermediate gamma" until it eventually reached zero and would novate all of the security-based swaps in a "gamma series."[267] Under proposed Rule 901(a)(2)(i), the registered clearing agency would have the duty to report each new security-based swap that it creates as part of the gamma series. Pursuant to Rule 901(d)(10), as adopted, the registered clearing agency also would be responsible for including the transaction ID of the bunched order alpha in the transaction report of each new security-based swap in the gamma series that results from the termination of the bunched order alpha.

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included in our estimate of the programmatic costs of proposed Rules 901(a)(1) and 901(a)(2)(i).

[267] See supra Section III(A) (providing additional examples of workflows for allocation of security-based swaps that are cleared).

The benefit of regulatory reporting of clearing transactions is that relevant authorities would be able to observe allocations at the level of client accounts, facilitating more granular monitoring of risk and market abuse.[268]

3. Alternative Approaches to Reporting Clearing Transactions

As part of the economic analysis of these proposed rules and amendments, the Commission has considered the market power that providers of security-based swap market infrastructure might be able to exercise in pricing the services that they offer counterparties to security-based swaps and/or shifting regulatory burdens onto their customers. The Commission recognizes that the treatment of clearing transactions in this proposal might influence the market power of certain providers of these services by imposing the reporting duty on registered clearing agencies. The Commission considered three alternative allocations of reporting obligations for clearing transactions, each of which implies different allocations of costs across market participants along with different effects on efficiency and competition, and, indirectly, capital formation.

a. Apply the Re-Proposed Reporting Hierarchy

The first alternative to the proposed approach is to apply the reporting hierarchy in Regulation SBSR, as re-proposed. Under this approach, a registered clearing agency would occupy the lowest spot in the hierarchy, along with other persons who are neither registered security-based swap dealers nor registered major security-based swap participants. Under this alternative, when one of the sides of the transaction included a security-based swap dealer or major security-based swap participant and the other side did not, the side including the security-based swap dealer or major security-based swap participant would have the duty to report any

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[268] See Regulation SBSR Adopting Release, Section VIII.

resulting clearing transactions, as well as the choice of which registered SDR to which to report. As described in more detail below, placing the duty to report with non-clearing agency reporting sides would likely leave them in a position to either request transaction information from registered clearing agencies to re-transmit that information to registered SDRs, or request that the registered clearing agency report to a registered SDR on their behalf. To the extent that each transmission of data introduces some possibility for error or delay, the additional step of requesting data from a registered clearing agency could result in security-based swap data that are marginally less reliable than under our proposed approach. Alternatively, having the registered clearing agency report clearing transactions would require fewer processing steps and would result in the same outcome for data integrity as the proposed rules.

Under this alternative, one of the sides of the initial alpha transaction would report the resulting clearing transactions according to the hierarchy originally proposed in the Regulation SBSR Proposing Release. For the beta, gamma, and any subsequent clearing transactions (resulting from netting and compression of multiple betas and gammas), the non-clearing agency counterparties could obtain the information needed for regulatory reporting from the registered clearing agency and transmit this information to the registered SDR of its choice.

The Commission preliminarily believes that it is unlikely that non-clearing agency counterparties would be subject to significant additional costs associated with building infrastructure to support regulatory reporting for clearing transactions under this alternative. This is for two reasons. First, to the extent that market participants that submit security-based swaps to clearing also engage in uncleared transactions and fall high on the reporting hierarchy, they likely already have the required infrastructure in place to support regulatory reporting of alphas and uncleared transactions. The Commission anticipates that, as a result, there might be

only marginal additional costs for reporting sides to report clearing transactions, if the Commission selected this alternative. Moreover, the Commission anticipates that, once infrastructure is built, the per-transaction cost of data transmission would not vary substantially between registered clearing agencies, who would be required to report pursuant to proposed Rule 901(a)(1)(i), and reporting sides, who would be required to report under this alternative.

Second, counterparties (who are not themselves a registered clearing agency), particularly those who engage solely in cleared trades or who are not high on the Regulation SBSR reporting hierarchy, may enter into an agreement under which the registered clearing agency would submit the information to a registered SDR on their behalf. This service could be bundled as part of the other clearing services purchased, and would result in an outcome substantially similar to giving the registered clearing agency the duty to report. One difference, however, is that the customer of the registered clearing agency could, under this alternative, request that the information be submitted to a registered SDR unaffiliated with the registered clearing agency, a choice that would, under the proposed approach, be at the discretion of the registered clearing agency. Nevertheless, the Commission preliminarily believes that, to the extent that it is economically efficient for the registered clearing agency to report the details of cleared transactions on behalf of its counterparties, this alternative would likely result in ongoing costs of data transmission for market participants and infrastructure providers that are, in the aggregate, similar to the Commission's approach in proposed Rule 901(a)(2)(i).

If registered clearing agencies reporting to registered SDRs on behalf of counterparties is not available under this alternative, then some counterparties would be required to build infrastructure to support regulatory reporting for clearing transactions. Analysis of single-name CDS transactions in 2013 in which a clearing agency was a direct counterparty shows

approximately 10 market participants that are not likely to register as security-based swap dealers or major security-based swap participants, and therefore might be required to build infrastructure to support regulatory reporting for clearing transactions in order to maintain current trading practices in the security-based swap market.[269]

Under this alternative, non-clearing agency counterparties would have the ability to choose which registered SDR receives their reports. Because non-clearing agency counterparties would have this choice, registered SDRs under the alternative approach might have additional incentive to provide high levels of service to attract this reporting business by, for example, providing such counterparties with convenient access to reports submitted to the registered SDR or by supporting the counterparties' efforts at data validation and error correction. Additionally, ensuring that these counterparties have discretion over which registered SDR receives their data could allow them to consolidate their security-based swap transactions into a single SDR for record-keeping purposes, or for operational reasons, though only to the extent that they can identify a registered SDR that accepts reports for all relevant asset classes.

In assessing this alternative, the Commission recognizes that registered clearing agencies have a comparative advantage in processing and preparing data for reporting cleared transactions to a registered SDR. Registered clearing agencies terminate alpha transactions, as well as create beta and gamma transactions and all subsequent netting transactions, and so already possess all

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[269] To arrive at this estimate, Commission staff used single-name CDS transaction data for 2013 to produce a list of all direct counterparties to a clearing agency and removed those persons likely to register as security-based swap dealers or major security-based swap participants. The list of likely registrants was constructed using the methodology described in the Cross-Border Adopting Release. See Cross-Border Adopting Release, 79 FR at 47296, note 150 (describing the methodology employed by the Commission to estimate the number of potential security-based swap dealers); id. at 47297, note 153 (describing the methodology employed by the Commission to estimate the number of potential major security-based swap participants).

of the relevant information to report these transaction events to a registered SDR. Moreover, the volume of transactions at registered clearing agencies means that they can amortize the fixed costs of establishing and maintaining connections to a registered SDR over a large quantity of reportable activity, potentially allowing them to report transactions at a lower average cost per transaction than many other market participants, particularly non-registered persons.

The Commission preliminarily believes that, given this comparative advantage, applying to clearing transactions the same reporting hierarchy that it has adopted for uncleared transactions would result in registered clearing agencies reporting the transaction data to registered SDRs as a service to the non-clearing agency counterparties to clearing transactions. In this respect, the outcome would be the same as with proposed Rule 901(a)(2)(i), which would assign this duty to registered clearing agencies. The key difference is that the non-clearing agency counterparty would generate this responsibility through private contract and could terminate the agreement and assume the reporting responsibility, should it perceive the fee or service terms as unreasonable. The ability to terminate such an agreement could diminish the potential bargaining power that the registered clearing agency would otherwise have if the registered clearing agency were assigned the duty to report. However, because the non-clearing agency counterparty might still have to rely on assistance from the clearing agency to satisfy the reporting obligations—particularly for any subsequent clearing transactions resulting from netting and compression of multiple betas and gammas—the reduction in clearing agency bargaining power might not be substantial. A registered clearing agency that supplies this information and converts it into the formats prescribed by the counterparties' chosen SDRs so that a non-clearing agency counterparty can fulfill their reporting requirement could still have significant bargaining power with respect to providing that information.

The Commission preliminarily believes that the proposed rules are generally consistent with the outcome under this alternative in a number of key respects. Under both approaches to reporting—one in which the Commission assigns the reporting responsibility for clearing transactions to registered clearing agencies, and the other in which the market allocated the reporting responsibility in the same way—registered clearing agencies would report clearing transactions to their affiliated SDRs.[270] Under an approach in which the Commission does not assign any reporting duties to registered clearing agencies, counterparties would likely be assessed an explicit fee by registered clearing agencies for submitting reports on the counterparties' behalf. Under proposed Rule 901(a)(1)(i), the fees associated with these services would likely be part of the total fees associated with clearing security-based swaps. Under this alternative and under the proposed approach, efficiency gains stemming from consolidation of the reporting function within registered clearing agencies would be split between such clearing agencies and security-based swap counterparties. The difference between these two regulatory approaches turn on how these gains are split.

The Commission preliminarily believes that this alternative would not necessarily restrict the ability of registered clearing agencies to exercise market power in ways that may allow them to capture the bulk of any efficiency gains. First, while a counterparty to a registered clearing agency could contract with the clearing agency to receive the information about netting and compression transactions that would enable re-transmission to a registered SDR, depending on the policies and procedures of the registered clearing agency, these data might not be in the

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[270] Unless it preferred a particular registered SDR for operational reasons discussed above, a non-clearing agency counterparty to a clearing transaction would likely contract with the clearing agency to report clearing transactions to the registered SDR that offers the lowest price, most likely the clearing agency affiliate.

format that is required for submission to the counterparty's SDR of choice. As a result, counterparties to registered clearing agencies would bear the costs associated with restructuring the data that they receive from registered clearing agencies before submitting transaction reports to a registered SDR. Such costs could limit the feasibility of assuming the reporting responsibility rather than contracting to have the registered clearing agency to perform the duty.

Second, in an environment where reporting obligations for clearing transactions rest with counterparties and there is limited competition among registered clearing agencies, registered clearing agencies might be able to charge high fees to counterparties who must rely on them to provide information necessary to make required reports to registered SDRs. A registered clearing agency could otherwise impair the ability of its counterparties to perform their own reporting if the clearing agency does not provide sufficient support or access to clearing transaction data. In particular, the clearing agency might have incentives to underinvest in the infrastructure necessary to provide clearing transaction data to its counterparties unless the Commission, by rule, established minimum standards for communication of clearing transactions data from registered clearing agencies to their counterparties. The result could be greater difficulties faced by counterparties in reporting data and an increased likelihood of incomplete, inaccurate, or untimely data being submitted to registered SDRs.

Third, under this alternative the registered clearing agency that also is party to the transaction potentially has weaker incentives to provide high-quality regulatory data to the counterparty with a duty to report, which could reduce the quality of regulatory data collected by registered SDRs. The person with the duty to report a transaction has strong incentives to ensure that the transaction details are transmitted in a well-structured format with data fields clearly defined, and that contain data elements that are validated and free of errors because, pursuant to

Regulation SBSR, this person is responsible for making accurate reports and, if necessary, making corrections to previously submitted data. Not only would the registered clearing agency have no duty under Regulation SBSR to provide information to its counterparty, but additionally, market forces might not provide sufficient motivation to the registered clearing agency to provide data to the counterparty in a manner that would minimize the counterparty's reporting burden. If registered clearing agencies exercise their market power against counterparties, the counterparties might have limited ability to demand high-quality data reporting services from registered clearing agencies. The Commission notes, however, that it could, by imposing minimum standards on data services provided by registered clearing agencies and regulating the fees associated with data transmission by registered clearing agencies, mitigate some of the effects of market frictions under these alternatives.

The Commission preliminarily believes, however, that despite a similarity in ultimate outcomes, and any benefits that might flow from enabling registered SDRs to compete for clearing transaction business, this alternative does not compare favorably to the proposed approach.

b. Move Registered Clearing Agencies Within the Regulation SBSR Reporting Hierarchy

A second, closely related alternative would involve placing registered clearing agencies within the Regulation SBSR reporting hierarchy below registered security-based swap dealers and registered major security-based swap participants but above counterparties that are not registered with the Commission. This alternative would assign the reporting obligation to a registered security-based swap dealer or registered major security-based swap participant when it is a counterparty to a registered clearing agency, while avoiding the need for non-registered persons to negotiate reporting obligations with registered clearing agencies.

As with the previous alternative of maintaining the reporting hierarchy in Regulation SBSR, as adopted, this alternative potentially results in additional reporting steps and could marginally reduce the quality of regulatory data relative to the proposed approach. A key difference, however, is that this alternative would reduce the likelihood of reporting obligations falling on unregistered persons, who would likely have less market power in negotiations with registered clearing agencies over the terms of reporting to a registered SDR. Larger counterparties, i.e., those with greater transaction flow, are likely to be better able to negotiate the terms of reporting transactions on their behalf or access to the clearing data so that they can perform their own reporting.

Above, the Commission noted three particular ways in which limited competition among registered clearing agencies could result in poorer outcomes for non-clearing agency counterparties. First, when these counterparties obtain clearing data from a registered clearing agency, they would likely incur any costs related to reformatting the data for submission to a registered SDR. Second, registered clearing agencies might charge these counterparties high fees for access to regulatory data that counterparties are required to submit to registered SDRs. Third, registered clearing agencies might have weak incentives to ensure that the data that they supply to reporting sides are of high quality, since the non-clearing agency counterparties would bear the costs of error correction.

Limiting the extent to which registered clearing agencies can exercise the market power from limited competition over their counterparties may reduce some of the drawbacks to the first alternative. In particular, registered clearing agencies may be less likely to exercise market power in negotiations with larger market participants, particularly when these market participants are also clearing members. Clearing members play key roles in the governance and operation of

registered clearing agencies, often contributing members to the board of directors. Moreover, clearing members contribute to risk management at registered clearing agencies by, for example, contributing to clearing funds that mutualize counterparty risk.[271] Nevertheless, the Commission preliminarily believes that this alternative does not fully address frictions that arise from limited competition between registered clearing agencies, such as high clearing fees or low quality services. The Commission preliminarily believes that this alternative would be less efficient than requiring the registered clearing agency to report the transaction information directly to a registered SDR, because the registered clearing agency is the only person who has complete information about a clearing transaction immediately upon its creation.

c. Require the Reporting Side for an Alpha to Also Report the Beta and Gamma Transactions

The Commission also considered a third alternative that would make the reporting side for the alpha responsible for reporting both the beta and gamma. This alternative would require the reporting side for the alpha also to report information about a security-based swap—the clearing transaction between the registered clearing agency and the non-reporting side of the alpha—to which it is not a counterparty. The Commission could require the non-reporting side of the alpha to transmit information about its clearing transaction to the reporting side of the alpha. In theory, this would allow the reporting side of the alpha to report both the beta and the gamma. The Commission believes, however, that this result could be difficult to achieve operationally and, in any event, could create confidentiality concerns, as an alpha counterparty may not wish to reveal information about its clearing transactions except to the registered

[271] See Securities Exchange Act Release No. 34-68080 (October 22, 2013), 77 FR 66220, 66267 (November 2, 2012) ("Clearing Agency Standards Adopting Release") (discussing financial resources of clearing agencies).

clearing agency (and, if applicable, its clearing member). This alternative also would require reporting sides to negotiate with registered clearing agencies to obtain transaction data and to bear the costs of reformatting these data and correcting errors in these data, exposing them to the market power exercised by registered clearing agencies. Moreover, all other things being equal, having more steps in the reporting process—e.g., more data transfers between execution and reporting—introduces greater opportunity for data discrepancies and delays than having fewer steps. Also, because the reporting side of the alpha would report the beta and gamma, this alternative is premised on the view that the beta and gamma are life cycle events of the alpha. The Commission, however, considered and rejected this approach in the Regulation SBSR Adopting Release.[272]

In addition, this alternative could result in incomplete regulatory data because it could raise questions about who would report clearing transactions associated with the compression and netting of beta or gamma transactions. For example, suppose a non-dealer clears two standard contracts on the same reference entity using a single registered clearing agency, each contract having a different registered security-based swap dealer as counterparty. Under this alternative to the proposed approach, each dealer would be responsible for reporting a gamma security-based swap between the non-dealer and the registered clearing agency. However, this alternative does not specify which of four potential persons would be required to report the

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[272] See Regulation SBSR Adopting Release, Section V(B)(2) at note 267 ("Under Rule 900(g), a security-based swap that results from clearing is an independent security-based swap and not a life cycle event of a security-based swap that is submitted to clearing. Thus, Rule 901(e), which addresses the reporting of life cycle events, does not address what person has the duty to report the clearing transactions that arise when a security-based swap is accepted for clearing").

contract that results from netting of the two gamma security-based swaps between the non-dealer and the registered clearing agency.

4. Reporting by Platforms

With the ability to clear trades, it is possible for two counterparties to trade anonymously on an SB SEF or an exchange. In an anonymous trade, because neither counterparty would be aware of the name or registration status of the other, it might not be possible for either counterparty to use the reporting hierarchy in Rule 901(a)(1)(i), as adopted, to determine who must report this initial alpha transaction to a registered SDR.[273] Therefore, because the platform would be the only entity at the time of execution, before the transaction is submitted for clearing, who is certain to know the identity of both transaction sides, the Commission proposes to assign to the platform the duty to report all alpha transactions executed on the platform that will be submitted to clearing.

As discussed above in the context of reporting obligations for registered clearing agencies, the Commission preliminarily believes that the costs associated with required reporting pursuant to the proposed amendments could represent a barrier to entry for new, smaller trading platforms that might not have the ability to comply with the proposed reporting requirements or for whom the expected benefits of compliance might not justify the costs of compliance. To the extent that the proposed rules and amendments might deter new trading platforms from entering the security-based swap market, this could negatively impact competition.

Requiring the execution platform to report information associated with anonymous transactions, preserves counterparties' anonymity and reduces the number of data transmission

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[273] Some commenters specifically pointed out this fact and argued that SB SEFs and exchanges should therefore incur the duty to report. See supra note 55.

steps between execution and reporting to a registered SDR. The Commission, however, proposes having the platform report all alpha transactions that will be submitted to clearing, even those that are not anonymous.

Under proposed Rule 901(a)(1), platforms would be required to report all transactions occurring on their facilities that are submitted to clearing. A platform that matches orders and executes transactions will possess all of the primary and secondary trade information necessary to be reported to a registered SDR, and proposed Rule 901(a)(1) would make it unnecessary for counterparties to report these transactions. This approach is designed to result in a more efficient reporting process for platform-executed trades that are submitted to clearing. By reducing the number of steps between the generation of transaction data and reporting to a registered SDR, the Commission preliminarily believes that proposed Rule 901(a)(1) would minimize the possibility of data discrepancies and delays.

At the same time, the Commission recognizes that, because anonymous transactions executed on platforms must be cleared, the platforms that support anonymous trading will more than likely select the registered clearing agency at which to clear a trade. Moreover, because only platforms know the identities of counterparties to anonymous transactions, they will be responsible for submitting these transactions for clearing. If the infrastructure necessary for submitting transactions for clearing is similar to that required to report transactions to clearing agency-affiliated SDRs, then these platforms may prefer to use clearing-agency affiliated SDRs for all of their transaction reports. This is particularly true if the fixed costs to platforms of submitting transactions for clearing and regulatory reporting are high because platforms could avoid interfacing separately with clearing agencies and unaffiliated SDRs. As a result, the proposed rules for platform-executed trades subsequently submitted to clearing might

disadvantage registered SDRs that are not affiliated with registered clearing agencies.

While the level of security-based swap activity that currently takes place on platforms and is subsequently submitted for clearing is currently low, future rulemaking under Title VII could cause platform volumes to increase. The Commission has proposed, but not adopted, rules governing the registration and operation of SB SEFs and anticipates considering rules to determine which security-based swaps are subject to mandatory trade execution on national securities exchanges or registered or exempt SB SEFs.[274]

5. Alternative Approaches to Reporting Platform-Executed Transactions

For platform-executed transactions that are submitted to clearing but are not anonymous, a reasonable alternative would be for the Commission to require these transactions to be reported to a registered SDR using the reporting hierarchy in Rule 901(a)(2)(ii), as adopted. Under such an alternative, a platform would have to determine which of the trades it executed were anonymous and which were not, performing due diligence to ensure that transaction reports it sends to its participants do not violate the anonymity of counterparties.[275] The Commission preliminarily believes that it is likely that the platform would pass these costs to counterparties, or, alternatively, offer to report on behalf of the reporting side, for a fee. Counterparties who trade on a platform would have to determine who among them is responsible for reporting their trade and would incur the costs of reporting to a registered SDR. Moreover, such an alternative would exhibit many of the shortcomings of the alternative to proposed Rule 901(a)(1)(i) discussed in Section XI(C)(3), even though it would allow the reporting counterparty to choose

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274 See General Policy on Sequencing, 77 FR at 35640.

275 The Commission is aware that certain market structures could result in situations where a single security-based swap transaction results in a split trade where one portion is anonymously executed and another portion is not anonymously executed. This could complicate separation of anonymous and non-anonymous executions.

the SDR that receives transaction information.

A second alternative would be to assign the reporting duty for all platform-executed transactions that are submitted to clearing to the registered clearing agency. While the registered clearing agency receiving information about a platform-executed alpha will likely have the information necessary for reporting—because the registered clearing agency will need much of the same information about the alpha transaction to clear it—the Commission preliminarily believes that it would be more appropriate to assign the reporting duty to the platform. This approach would imply a more direct flow of information from the point of execution on the platform to the registered SDR, thus minimizing opportunities for data discrepancies or delays. This approach would also reduce the need for registered clearing agencies to invest resources in systems to receive data elements from platforms beyond what is already required for clearing.

6. Application of Regulation SBSR to Prime Brokerage Transactions

This release proposes interpretive guidance for how Regulation SBSR should be applied to prime brokerage transactions. As this guidance would not create any new duties—but instead would merely explain how the series of related transactions under a prime brokerage arrangement would have to be reported and publicly disseminated under Regulation SBSR, as adopted—there would be no additional costs or benefits beyond those already considered in the Regulation SBSR Adopting Release.[276]

Prime brokerage transactions involve a reallocation of counterparty risk when the prime broker interposes itself between the counterparties to the original transaction (a customer of the

[276] See Regulation SBSR Adopting Release, Section XXII(C)(1). The Commission's estimates in that release of the number of reportable events included all legs of prime brokerage transactions.

prime broker and a third-party executing dealer). Regulatory reporting of this activity would allow relevant authorities to more accurately conduct market surveillance and monitor counterparty risk. As a result of public dissemination of all three related transactions, market observers would have access to information of the transaction between the two original counterparties and the subsequent two transactions with the prime broker, thereby allowing them to compare the prices and conditions of these transactions. This would allow users of publicly disseminated data to infer from these disseminated reports the fees that the prime broker charges for its credit intermediation service and separate these fees from the transaction price of the security-based swap.

7. Proposed Prohibition on Fees for Public Dissemination

The Commission is proposing new Rule 900(tt), which would define the term "widely accessible" as used in the definition of "publicly disseminate" in Rule 900(cc), as adopted, to mean "widely available to users of the information on a non-fee basis." This proposed definition would have the effect of prohibiting a registered SDR from charging fees for or imposing usage restrictions on the security-based swap transaction data that it is required to publicly disseminate under Regulation SBSR.

Allowing access to transaction information without cost or restriction allows it to be quickly incorporated into security-based swap prices by market participants, leading to increased informational efficiency of these prices and prices in related financial markets. Free and unrestricted access to transaction prices and volumes facilitates a more level playing field for market participants, particularly those that otherwise have less access to security-based swap

order flow information, potentially enhancing competition between market participants..[277] Finally, unburdened access to security-based swap market data also could benefit non-security-based swap financial market participants who may use data from the security-based swap market as input for their decision making, potentially improving the efficiency of capital allocation and indirectly improving the environment for capital formation.[278] For instance, if a single-name CDS on a reference entity trades more often than the underlying bonds, single-name CDS transaction prices may help investors in evaluating whether the prices of the underlying bonds incorporate available information about the credit risk of the issuer.[279]

The proposed prohibition on a registered SDR charging fees for public dissemination of the regulatorily mandated security-based swap transaction data also is consistent with the CFTC's current prohibition on CFTC-registered SDRs charging for public dissemination of regulatorily mandated swap transaction data. Such consistency lessens the incentives for SDRs registered with the CFTC to enter the security-based swap market and also register with the

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277 See Regulation SBSR Adopting Release, Section XXII(D)(3).

278 See Philip Bond, Alex Edmans, and Itay Goldstein, "The Real Effects of Financial Markets," Annual Review of Financial Economics, Vol. 4 (October 2012) (reviewing the theoretical literature on the feedback between financial market price and the real economy).

279 See Sugato Chakravarty, Huseyin Gulen, and Stewart Mayhew, "Informed Trading in Stock and Option Markets," Journal of Finance, Vol. 59, No. 3 (2004) (estimating that the proportion of information about underlying stocks revealed first in option markets ranges from 10% to 20%); Gary Gorton, "Are Naked Credit Default Swaps Too Revealing?" (June 4, 2010), available at http://faculty.som.yale.edu/garygorton/documents/NakedCDSTooRevealingIDDJune2010.pdf (last visited October 2, 2014) (discussing how the introduction of CDS contracts may increase the information sensitivity of underlying bonds).

Commission and charge for public dissemination of security-based swap market data.[280] Entering the security-based swap market would allow them to charge for public dissemination of security-based swap market data and use those revenues from this business to subsidize their operations in the swap market, in which they are not permitted to charge for public dissemination of swap market data. If an SEC-registered SDR charges fees for security-based swap data in order to subsidize its reporting activity in the CFTC regime, then security-based swap market participants reporting to this SDR could face higher costs than those it would face if the SDR participated only in the security-based swap market.

The Commission notes two ways in which market forces may limit the extent of cross-subsidization by registered SDRs that also publicly disseminate swap data. First, if SDRs compete for customers of raw security-based swap data, then SDRs operating in both regimes who choose to subsidize their activities in the swap market by charging higher fees for security-based swap data will likely find themselves at a disadvantage relative to SDRs that operate only in the security-based swap regime who can afford to offer lower fees since they, by definition, do not cross-subsidize because they do not participate in both markets. However, this result depends significantly on the assumption of a competitive market for security-based swap data, which is less likely to exist when the number of registered of SDRs is small. Second, it is possible that there are synergies available to SDRs that operate in both regimes. These synergies would lower the average cost of public dissemination by these SDRs and reduce the level of subsidies needed to cover these costs. As a result, these synergies could limit the size of the subsidy that users of security-based swap data would pay to users of swap data.

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280 Dual registration is likely to occur independent of the ability to charge for public dissemination of data in the security-based swap market. However, the ability to charge for public dissemination would add an additional incentive to do so.

Additionally, the Commission preliminarily believes that requiring free and unrestricted access to publicly-disseminated data will reinforce the economic effects of Rule 903(b). Rule 903(b), as adopted, provides that a registered SDR may disseminate information using UICs (such as product IDs or other codes—e.g., reference entity identifiers—embedded within the product IDs) or permit UICs to be used for reporting by its participants only if the information necessary to interpret such UICs is widely available on a non-fee basis. In the absence of a prohibition on fees for or restricted access to publicly-disseminated data, the Commission is concerned that a registered SDR that wished to charge (or allow others to charge) users for the information necessary to understand these UICs—but could not, because of Rule 903(b)—might seek to do so indirectly by recharacterizing the charge as being for public dissemination. The Commission preliminarily believes that this could reduce the economic benefits of Rule 903(b).

The Commission acknowledges that receiving data from market participants; cleaning, processing, and storing these data; and making these data available to the Commission and the public are costly services for registered SDRs to provide. If charging fees for raw security-based swap data is prohibited, registered SDRs could employ a number of alternative measures to ensure they have sufficient resources to comply with the statutory and regulatory requirements imposed on registered SDRs. Some of these measures may have negative consequences for market participants, reducing the benefits of publicly-disseminated data. For example, registered SDRs could charge fees to recipients of value-added data and services. Registered SDRs that provide such data and services for a fee may have incentives to limit the usefulness of transaction information through free public feeds, particularly in form and manner in which it is made available, to push market participants towards the fee-based services. Such an outcome could hinder the transparency goals of the reporting regime because those market participants with

resources sufficient to buy value added data and services would continue to have an informational advantage over those without.

Registered SDRs also could pass the costs of publicly disseminating security-based swap data through to the reporting parties who report transaction data to the registered SDR. Direct fees imposed on market participants would likely be in proportion to the number of transactions they execute, with more active market participants, who contribute more to the production of transaction information, paying a larger share of the costs of disseminating that information. These costs of SDR reporting would likely be passed through to non-dealers as a component of transactions costs. Non-security-based swap market participants, by contrast, would not bear any of the costs. This could have the effect of security-based swap market participants subsidizing other users of the raw security-based swap data through free public feeds.

8. Proposed Compliance Schedule for Regulation SBSR

The compliance schedule proposed in this release is designed to provide affected persons, especially registered SDRs and persons with a duty to report security-based swap transactions to registered SDRs, with time to develop, test, and implement reporting and dissemination systems. The new proposed compliance schedule takes into consideration the fact that the CFTC's regulatory reporting and public dissemination rules are now in effect. As a result, several SDRs have registered and are operating under the CFTC regime in the swap market, and swap market participants have developed substantial infrastructure to support swap transaction reporting.[281] It is likely that much of the infrastructure implemented in the swap market can be repurposed for

[281] See Sec. Indus. & Fin. Mkts. Ass'n v. CFTC, Civil Action No. 13-1916 (PLF), slip op. at 89 (D.D.C., September 16, 2014) (noting that "the plaintiffs' associations' members' declarants have made clear that the members (or their foreign affiliates) already have come into compliance with the [CFTC] Rules as they apply extraterritorially").

the security-based swap market, and if so, would enable more efficient implementation of the Commission's regime for security-based swap reporting.

In the newly proposed compliance schedule, the two compliance dates, with respect to security-based swaps in a particular asset class, are based on the date that the first registered SDR that can accept security-based swaps in that asset class commences operations. This approach is designed to prevent regulatory reporting and public dissemination of security-based swap transaction data from being delayed while additional SDRs register with the Commission and commence operations, while still offering time for SDRs and market participants to develop the necessary policies, procedures, and infrastructure to become operational. For example, while reporting to a registered SDR on a transaction-by-transaction basis would be required on the date six months after the first registered SDR in an asset class commences operations (i.e., proposed Compliance Date 1), public dissemination would not be required for an additional three months (i.e., on proposed Compliance Date 2). This three-month period is designed to allow registered SDRs to evaluate compliance with the SDRs' requirements for transaction reports being submitted on a mandatory basis beginning on Compliance Date 1, and to allow persons having the duty to report—which, as a result of the amendments proposed herein, would include platforms, registered clearing agencies, and reporting sides—to make any necessary adjustments to the transaction records that they submit. Registered SDRs also would have time to test that the appropriate subset of information provided in the regulatory report will be publicly disseminated, with flags as required by the registered SDR's policies and procedures.[282]

There are potential drawbacks to the proposed compliance schedule as well. First, new entrants into the SDR market might be at a competitive disadvantage since they would have to

[282] See Rules 907(a)(3) and 907(a)(4), as adopted.

adhere to compliance dates that were set based on registration of the first SDR in that asset class that commences operations. This would be true particularly if persons with a duty to report face high switching costs between SDRs and could be locked in to the first registered SDR with which they engage. Second, the proposed compliance schedule hinges on a person registering and then commencing operations as an SDR. As a result, reporting to an SDR, and the associated public dissemination, might not occur for an extended period of time.

The Commission preliminarily believes, however, that most persons that have the desire and ability to operate as SEC-registered SDRs are already operational in the swaps market as CFTC-registered SDRs, and each should have a strong incentive to submit applications to register with the Commission quickly. Thus, there is less likelihood of multiple applications arriving over an extended period of time, which could have been the case when the Commission originally proposed Rules 910 and 911 in the Regulation SBSR Proposing Release in 2010, before the CFTC had finalized its rules and SDRs were registered by the CFTC. The newly proposed compliance schedule could give added incentive to avoid delaying the submission of an application for registration, and to commence operation as an SEC-registered SDR as quickly as possible. This result would help the Commission and other relevant authorities obtain more complete information about the security-based swap market for oversight purposes as quickly as possible, and also allow the public to obtain price, volume, and transaction information about all security-based swaps as quickly as possible.

IX. Paperwork Reduction Act

Certain provisions of these proposed amendments to Regulation SBSR contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of

1995 ("PRA").[283] As discussed in Section I, supra, these proposed amendments to Regulation SBSR would impact Rules 900, 901, 905, 906, and 908. This release also proposes guidance for complying with certain aspects of Regulation SBSR and proposes new compliance dates for the rules in Regulation SBSR for which the Commission has not specified a compliance date. The titles of the collections for Regulation SBSR are: (1) Rule 901—Reporting Obligations—For Reporting Sides; (2) Rule 901—Reporting Obligations—For Registered SDRs; (3) Rule 902—Public Dissemination of Transaction Reports; (4) Rule 904—Operating Hours of Registered Security-Based Swap Data Repositories; (5) Rule 905—Correction of Errors in Security-Based Swap Information—For Reporting Sides; (6) Rule 905—Correction of Errors in Security-Based Swap Information—Non-Reporting Sides; (7) Rule 906(a)—Other Duties of All Participants—For Registered SDRs; (8) Rule 906(a)—Other Duties of All Participants—For Non-Reporting Sides; (9) Rule 906(b)—Other Duties of All Participants—For All Participants; (10) Rule 906(c)—Other Duties of All Participants—For Covered Participants; (11) Rule 907—Policies and Procedures of Registered Security-Based Swap Data Repositories; and (12) Rule 908(c)—Substituted Compliance (OMB Control No. 3235-0718). The estimated collection of information burdens for Regulation SBSR are contained in the Regulation SBSR Adopting Release.[284] The estimated changes to these burdens and costs that would result from the proposed rules and amendments are discussed below. Compliance with these collections of information requirements is mandatory. The Commission is submitting these collections of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not

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[283] 44 U.S.C. 3501 et seq.

[284] See Regulation SBSR Adopting Release, Section XXI.

required to respond to, a collection of information unless the agency displays a currently valid control number.

A. Definitions—Rule 900

Rule 900 sets forth definitions of various terms used in Regulation SBSR. In this release, the Commission is proposing to amend the definition of "participant" in Rule 900(u) and to create a new defined term "widely accessible"—in proposed Rule 900(tt)—that is used in the definition of "publicly disseminate" in Rule 900(cc), as adopted. The proposed definition of "widely accessible" would have to effect of prohibiting a registered SDR from charging fees for or imposing usage restrictions on the security-based swap transaction data that it is required to publicly disseminate under Regulation SBSR.

Although the Commission discusses certain costs associated with these proposed definitions in this Section, the Commission does not believe that these changes themselves would result in a "collection of information" within the meaning of the PRA.

B. Reporting Obligations—Rule 901

1. Rule 901—As Adopted

Rule 901, as adopted, specifies, with respect to each reportable event pertaining to covered transactions, who is required to report, what data must be reported, when it must be reported, where it must be reported, and how it must be reported. Rule 901(a), as adopted, establishes a "reporting hierarchy" that specifies the side that has the duty to report a security-based swap that is a covered transaction. Pursuant to Rule 901(b), as adopted, if there is no registered SDR that will accept the report required by Rule 901(a), the person required to make the report must report the transaction to the Commission. Rule 901(c) sets forth the primary trade information and Rule 901(d) sets forth the secondary trade information that must be

reported. Rule 901(e) requires the reporting of life cycle events and adjustments due to life cycle events, which pursuant to Rule 901(j) must be reported within 24 hours of the time of occurrence, to the entity to which the original transaction was reported. Rule 901(f) requires a registered SDR to timestamp, to the second, any information submitted to it pursuant to Rule 901, and Rule 901(g) requires a registered SDR to assign a transaction ID to each security-based swap, or establish or endorse a methodology for transaction IDs to be assigned by third parties. Rule 901(h) requires reporting sides to electronically transmit the information required by Rule 901 in a format required by the registered SDR. Rule 901(i) requires reporting of pre-enactment security-based swaps and transitional security-based swaps to the extent that information about such transactions is available.

For Reporting Sides. The Commission estimated that Rule 901, as adopted, will impose an estimated total first-year burden of approximately 1,394 hours[285] per reporting side for a total first-year burden of 418,200 hours for all reporting sides.[286] The Commission estimated that Rule 901, as adopted, will impose ongoing annualized aggregate burdens of approximately 687

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285 See Regulation SBSR Adopting Release, Section XXI(B). The Commission derived its estimate from the following: (355 hours (one-time hourly burden for establishing and OMS) + 172 hours (one-time hourly burden for establishing security-based swap reporting mechanisms) + 180 hours (one-time hourly burden for compliance and ongoing support) = 707 hours (one-time total hourly burden). See Regulation SBSR Proposing Release, 75 FR at 75248-50, notes 186, 194, and 201. (436 hours (annual-ongoing hourly burden for internal order management) + 33.3 hours (revised annual-ongoing hourly burden for security-based swap reporting mechanisms) + 218 hours (annual-ongoing hourly burden for compliance and ongoing support) = 687.3 hours (one-time total hourly burden. See id. at 75248-50, notes 187 and 201 (707 one-time hourly burden + 687 revised annual-ongoing hourly burden = 1,394 total first-year hourly burden).

286 See Regulation SBSR Adopting Release, Section XXI(B). The Commission derived its estimate from the following: (1,394 hours per reporting side x 300 reporting sides) = 418,200 hours.

hours[287] per reporting side for a total aggregate annualized cost of 206,100 hours for all reporting sides.[288] The Commission further estimated that Rule 901, as adopted, will impose initial and ongoing annualized dollar cost burdens of $201,000 per reporting side, for total aggregate initial and ongoing annualized dollar cost burdens of $60,300,000.[289]

For Registered SDRs. The Commission estimated that the first-year aggregate annualized burden on registered SDRs associated with Rules 901(f) and 901(g) will be 2,820 burden hours, which corresponds to 282 burden hours per registered SDR.[290] The Commission also estimated that the ongoing aggregate annualized burden associated with Rules 901(f) and 901(g) will be 1,520 burden hours, which corresponds to 152 burden hours per registered SDR.[291]

2. Rule 901—Proposed Amendments

The proposed amendments to Rule 901 would establish certain requirements relating to the reporting of security-based swap transactions to a registered SDR. Rule 901 of Regulation SBSR, as adopted, contained "collection of information requirements" within the meaning of the

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287 See Regulation SBSR Adopting Release, Section XXI(B). See Cross-Border Proposing Release, 78 FR at 31112-15.

288 See Regulation SBSR Adopting Release, Section XXI(B). The Commission derived its estimate from the following: (687 hours per reporting side x 300 reporting sides) = 206,100 hours.

289 See Regulation SBSR Adopting Release, Section XXI(B). The Commission derived its estimate from the following: ($201,000 per reporting side x 300 reporting sides) = $60,300,000. See Cross-Border Proposing Release, 78 FR at 31113-15. The Commission originally estimated this burden based on discussions with various market participants. See Regulation SBSR Proposing Release, 75 FR at 75247-50.

290 See Regulation SBSR Adopting Release, Section XXI(B). See Regulation SBSR Proposing Release, 75 FR at 75250. This figure is based on the following: [(1,200) + (1,520)] = 2,720 burden hours, which corresponds to 272 burden hours per registered SDR.

291 See Regulation SBSR Adopting Release, Section XXI(B).

PRA, and the proposed amendments to Rule 901 contain additional "collection of information requirements" within the meaning of the PRA, which are discussed below. The title of this collection is "Rule 901—Reporting Obligations for Platforms and Clearing Agencies."

a. Summary of Collection of Information

The Commission is proposing reporting obligations for those security-based swaps that are clearing transactions or that are executed on a platform and will be submitted to clearing. In order to facilitate such reporting, the Commission is proposing Rules 901(a)(1), 901(a)(2)(i), and 901(a)(3). Pursuant to new subparagraph (1) of Rule 901(a), if a security-based swap is executed on a platform and will be submitted to clearing, the platform on which the transaction was executed shall have the duty to report the transaction to a registered SDR. The Commission also is proposing a new subparagraph (2)(i) of Rule 901(a) that would assign the reporting duty for a clearing transaction to the registered clearing agency that is a counterparty to the security-based swap.

The Commission also is proposing to add a new subparagraph (3) to Rule 901(a) that would require any person that has a duty to report a security-based swap that is submitted to clearing—which would be a platform or a reporting side—to provide the registered clearing agency with the transaction ID of the alpha and the identity of the registered SDR to which the alpha will be reported or has been reported.

b. Proposed Use of Information

The security-based swap transaction information that would be required by the proposed amendments to Rule 901 would be used by registered SDRs, market participants, the Commission, and other relevant authorities. The information reported by platforms and registered clearing agencies pursuant to Rule 901 would be used by registered SDRs to publicly

disseminate reports of security-based swap transactions, as well as to offer a resource for the Commission and other relevant authorities to obtain detailed information about the security-based swap market. Market participants also would use the information about these transactions that is publicly disseminated, among other things, to assess the current market for security-based swaps and any underlying securities and to assist in the valuation of their own positions. The Commission and other relevant authorities would use information about security-based swap transactions reported to and held by registered SDRs to monitor and assess systemic risks, as well as to examine for and consider whether to take enforcement action against potentially abusive trading behavior, as appropriate.

c. Respondents

In the Regulation SBSR Adopting Release, the Commission estimated 300 reporting side respondents and that, among the 300 reporting sides, approximately 50 are likely to be required to register with the Commission as security-based swap dealers and approximately five are likely to register as major security-based swap participants.[292] The Commission noted that these 55 reporting sides likely will account for the vast majority of recent security-based swap transactions and reports and that there are only a limited number of security-based swap transactions that do not include at least one of these larger counterparties on either side.[293] Finally, the Commission estimated that the number of registered SDRs would not exceed ten.[294]

Proposed Rules 901(a)(1) and 901(a)(2)(i) would assign reporting duties for security-based swap transactions, in certain enumerated cases set forth in these rules, to platforms and

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292 See Regulation SBSR Adopting Release, Section XXI(B)(3).

293 See id.

294 See id.

registered clearing agencies, respectively. The Commission preliminarily believes that these proposed amendments to Rule 901(a) would result in 14 additional respondents incurring the duty to report under Regulation SBSR. Specifically, the Commission believes that there would be ten platforms (exchanges and SB SEFs) and four registered clearing agencies that would incur such duties. Proposed Rule 901(a)(3) would require a person—either the platform upon which the security-based swap was executed or the reporting side for those security-based swaps other than clearing transactions—to report, for those security-bases swaps submitted to a registered clearing agency, the transaction ID of the submitted security-based swap and the identity of the registered SDR to which the transaction will be or has been reported. The Commission preliminarily believes that proposed Rule 901(a)(3) would place reporting obligations on 300 reporting sides and 10 platforms.

d. Total Initial and Annual Reporting and Recordkeeping Burdens

i. Platforms and Registered Clearing Agencies

Pursuant to Rule 901, all security-based swap transactions must be reported to a registered SDR or to the Commission. Together, paragraphs (a), (b), (c), (d), (e), (h), and (j) of Rule 901 set forth the parameters that reporting entities must follow to report security-based swap transactions. Because platforms and registered clearing agencies now would have the duty to report, initial and ongoing burdens would be placed on these entities. The Commission preliminarily believes that these burdens will be a function of, among other things, the number of reportable events and the data elements required to be reported for each such event.

In the Regulation SBSR Adopting Release, the Commission estimated that respondents would face three categories of burdens to comply with Rule 901.[295] The Commission preliminarily believes that platforms and registered clearing agencies would face the same categories of burdens as those identified in the Regulation SBSR Adopting Release for other types of respondents. First, each platform and registered clearing agency would likely have to develop the ability to capture the relevant transaction information.[296] Second, each platform and registered clearing agency would have to implement a reporting mechanism. Third, each platform and registered clearing agency would have to establish an appropriate compliance program and support for the operation of any system related to the capture and reporting of transaction information. The Commission preliminarily believes that platforms and registered clearing agencies would need to develop capabilities similar to those highlighted in the Regulation SBSR Adopting Release in order to be able to capture and report security-based swap transactions. The Commission also preliminarily believes that, once a platform or registered clearing agency's reporting infrastructure and compliance systems are in place, the burden of reporting each individual reportable event will be small when compared to the burdens of

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295 See Regulation SBSR Adopting Release, Section XXI(B)(4).

296 In the Regulation SBSR Adopting Release, the Commission discussed the development, by reporting sides, of an internal order and trade management system. The Commission believes that the costs of developing a transaction processing system are comparable to the costs discussed therein. Although the actual reporting infrastructure needed by platforms and registered clearing agencies could have some attributes that differ from the attributes of an internal order and trade management system, the Commission nonetheless preliminarily believes that the cost of implementing a transaction processing system, and establishing an appropriate compliance program and support for the operation of the system, will be similar to the costs for reporting sides discussed in the Regulation SBSR Adopting Release.

establishing the reporting infrastructure and compliance systems.[297] The Commission preliminarily believes that all of the reportable events, for which platforms and registered clearing agencies would be responsible for reporting, will be reported through electronic means.

The Commission estimates that the total burden placed upon reporting sides as a result of Rule 901 would be approximately 1,361 hours[298] per reporting side during the first year.[299] The Commission preliminarily believes that this per-entity cost would be the same for platforms and registered clearing agencies, resulting in a total first-year burden of 19,054 hours for all platforms and registered clearing agencies under the proposed amendments to Rule 901.[300] The Commission estimates that the proposed amendments to Rule 901 would impose ongoing annualized aggregate burdens of approximately 654 hours[301] per reporting entity for a total aggregate annualized cost of 9,156 hours for all platforms and registered clearing agencies.[302]

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297 In the Regulation SBSR Adopting Release, the Commission reiterated its belief that reporting specific security-based swap transactions to a registered SDR—separate from the establishing of infrastructure and compliance systems that support reporting—would impose an annual aggregate cost of approximately $5,400,000. See Regulation SBSR Adopting Release, Section XXI(B)(4).

298 The Commission derived its estimate from the following: (355 hours (one-time hourly burden for establishing and OMS) + 172 hours (one-time hourly burden for establishing security-based swap reporting mechanisms) + 180 hours (one-time hourly burden for compliance and ongoing support) = 707 hours (one-time total hourly burden). See Regulation SBSR Proposing Release, 75 FR at 75248-50, notes 186, 194, and 201. (436 hours (annual-ongoing hourly burden for order management) + 218 hours (annual-ongoing hourly burden for compliance and ongoing support) = 654 hours (one-time total hourly burden. See id. at 75248-50, notes 187 and 201 (707 one-time hourly burden + 654 revised annual-ongoing hourly burden = 1,361 total first-year hourly burden).

299 See Regulation SBSR Adopting Release, Section XXI(B)(4).

300 The Commission derived its estimate from the following: (1,361 hours per reporting entity x 14 platforms and registered clearing agencies) = 19,054 hours.

301 See supra note 298.

302 The Commission derived its estimate from the following: (654 hours per reporting entity x 14 platforms and registered clearing agencies) = 9,156 hours.

The Commission further preliminarily estimates that the proposed amendments to Rule 901 would impose initial and ongoing annualized dollar cost burdens of $201,000 per reporting entity,[303] for total aggregate initial and ongoing annualized dollar cost burdens of $2,814,000.[304]

In the Regulation SBSR Adopting Release, the Commission revised its previous estimates of the number of reportable events associated with security-based swap transactions to approximately 3 million reportable events per year under Rule 901, an estimate that the Commission continues to believe is valid for the purposes of the Regulation SBSR Proposed Amendments.[305] The Commission estimated in the Regulation SBSR Adopting Release that Rule 901(a), as adopted in that release, will result in approximately 2 million reportable events related to covered transactions.[306]

The Commission preliminarily estimates that 1 million of the 3 million total reportable events would be reported as a result of the proposed amendments to Rule 901.[307] The

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303 This figure is based on the sum of per-reporting entity estimates for connectivity to SDRs for data reporting, as follows: [($100,000 hardware- and software-related expenses, including necessary back-up and redundancy, per SDR connection) x (2 SDR connections per reporting entity)] + [($250/gigabyte of storage capacity) x (4 gigabytes of storage capacity)] = $201,000. See Regulation SBSR Proposing Release, 75 FR at 75248-49, notes 188 and 193.

304 The Commission derived its estimate from the following: ($201,000 per reporting side x 14 reporting sides) = $2,814,000. See also Cross-Border Proposing Release, 78 FR at 31112-15.

305 See Regulation SBSR Adopting Release, Section XXI(B)(4)(b).

306 See id.

307 The Commission is proposing to amend Rule 901(a)(2) to require a registered clearing agency to be the reporting side for clearing transactions to which it is a counterparty. The Commission is further proposing to amend Rule 901(e)(1) to provide that a "registered clearing agency shall report whether or not it has accepted a security-based swap for clearing." Proposed Rule 901(a)(2)(i), discussed above, would require registered clearing agencies to report security-based swap transaction information for clearing transactions. These reportable events have been included in the Commission's estimates of the number of reportable events for the purposes of Rule 901. In arriving at the of 1 million reporting

Commission believes that these 1 million reportable events would include the initial reporting of the security-based swap by platforms and clearing agencies as well as the reporting of any life cycle events. The Commission preliminarily estimates that of the 1 million reportable events, approximately 370,000 would involve the reporting of new security-based swap transactions, and approximately 630,000 would involve the reporting of life cycle events under Rule 901(e).[308] As a result, the Commission preliminarily estimates that platforms will be responsible for the reporting of approximately 120,000 security-based swaps.[309] The Commission preliminarily estimates that the proposed amendments to Rule 901(a) would result in platforms having a total burden of 600 hours attributable to the reporting of security-based swaps by platform to registered SDRs under Rules 901(c) and 901(d) over the course of a year.[310] The Commission preliminarily estimates that the proposed amendments to Rule 901(a) would result in registered

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events, the Commission has included the following: (1) the termination of the original or "alpha" security-based swap; (2) the creation of beta and gamma security-based swaps; (3) the termination of beta, gamma, and any previous open positions during each netting cycle; and (4) any other transactions that are entered into by the registered clearing agency.

308 See supra note 235.

309 The Commission preliminarily believes that platforms will be responsible only for the reporting of any initial security-based swaps that are executed on their facilities. Since only platform-executed security-based swaps that will be submitted to a registered clearing agency for clearing are subject to this proposal, platforms would not be responsible for any life cycle event reporting under Rule 901(e). The Commission estimates that platforms would be responsible for reporting only approximately one third of the 360,000 security-based swaps (or 120,000 security-based swaps) and registered clearing agencies (as a result of the creation of new security-based swaps during the clearing process) would be responsible for the reporting of the remaining two-thirds of security-based swaps (or 250,000 security-based swaps).

310 See Regulation SBSR Adopting Release, Section XXI(B)(4). In the Regulation SBSR Proposing Release, the Commission estimated that it would take approximately 0.005 hours for each security-based swap transaction to be reported. See 75 FR at 75249, note 195. The Commission calculates the following: ((120,000 x 0.005) / (10 platforms)) = 60 burden hours per platform or 600 total burden hours attributable to the reporting of security-based swaps.

clearing agencies having a total burden of 1,250 hours attributable to the reporting of security-based swaps to registered SDRs over the course of a year.[311] The Commission preliminarily estimates that the proposed amendments to Rule 901(a) would result in registered clearing agencies having a total burden of 3,150 hours attributable to the reporting of life cycle events to registered SDRs under Rule 901(e) over the course of a year.[312] The Commission preliminarily believes that the proposed amendments would result in a total reporting burden for registered clearing agencies under Rules 901(c) and (d) along with the reporting of life cycle events under Rule 901(e) of 4,400 burden hours.[313] The Commission believes that all reportable events that would be reported by platforms and registered clearing agencies pursuant to these proposed amendments would be reported through electronic means.

The Commission recognizes that some entities that would qualify as platforms or registered clearing agencies may have already spent time and resources building the

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311 See Regulation SBSR Adopting Release, Section XXI(B)(4). In the Regulation SBSR Proposing Release, the Commission estimated that it would take approximately 0.005 hours for each security-based swap transaction to be reported. See 75 FR at 75249, note 195. The Commission calculates the following: ((250,000 x 0.005) / (4 registered clearing agencies)) = 312.5 burden hours per registered clearing agency or 1,250 total burden hours attributable to the reporting of security-based swaps.

312 See Regulation SBSR Adopting Release, Section XXI(B)(4). In the Regulation SBSR Proposing Release, the Commission estimated that it would take approximately 0.005 hours for each security-based swap transaction to be reported. See 75 FR at 75249, note 195. The Commission calculates the following: ((630,000 x 0.005) / (4 registered clearing agencies)) = 787.5 burden hours per registered clearing agency or 3,150 total burden hours attributable to the reporting of life cycle events under Rule 901(e).

313 As is discussed immediately above, the Commission preliminarily believes that registered clearing agencies would incur a burden of 1,250 hours attributable to the reporting of security-based swaps pursuant to proposed Rule 901(a)(2)(i) along with a burden of 3,150 hours attributable to the reporting of life cycle events under Rule 901(e). As discussed in note 309, supra, platforms would not be responsible for the reporting of any life cycle events of any platform-executed security-based swap that will be submitted to clearing.

infrastructure that will support their eventual reporting of security-based swaps. The Commission notes that, as a result, the burdens and costs estimated herein could be greater than those actually incurred by affected parties as a result of compliance with the proposed amendments to Rule 901(a). Nonetheless, the Commission believes that its estimates represent a reasonable upper bound of the actual burdens and costs required to comply with the paperwork burdens associated with the proposed amendments to Rule 901(a).

ii. Platforms and Reporting Sides

Proposed Rule 901(a)(3) would require a person, either the platform upon which the security-based swap was executed or the reporting side for those security-based swaps other than clearing transactions, to report, for those security-bases swaps submitted to a registered clearing agency, the transaction ID of the submitted security-based swap and the identity of the registered SDR to which the transaction will be or has been reported.

Rule 901(a)(3) would require certain information (transaction ID and the identity of the registered SDR) to be reported to a registered clearing agency only if such security-based swap has been submitted to a registered clearing agency for clearing. As a result, platforms and reporting sides required to report transaction IDs and the identity of a registered SDR will already have put into place any infrastructure needed to report these security-based swaps to a registered clearing agency.[314] However, the Commission does believe that including these items would result in additional development and maintenance burdens. Specifically, the Commission

[314] The required infrastructure for platforms and related burdens and costs are discussed in Section IX(B)(2)(d)(i), supra. For reporting sides, the required infrastructure and related burdens and costs are already accounted for in the Regulation SBSR Adopting Release, Section XXI(B)(4). The additional burdens discussed in this paragraph related to the ability to capture the additional specific data elements, as would be required by proposed Rule 901(a)(3), would be incremental burdens that are in addition to the previously established infrastructure burdens and costs.

preliminarily believes that the additional one-time burden related to the development of the ability to capture the additional specific data elements required by proposed Rule 901(a)(3) would be 10 burden hours and the additional one-time burden related to the implementation of a reporting mechanism would be 6 burden hours, per platform and reporting side.[315] The Commission preliminarily believes that the additional ongoing burden related to the ability to capture the additional specific data elements required by proposed Rule 901(a)(3) would be 10 burden hours and the additional ongoing burden related to the maintenance of the reporting mechanism would be 2 burden hours, per platform and reporting side.[316]

iii. Bunched Order Executions and Allocations

As explained in Section VIII of the Regulation SBSR Adopting Release and Section III, supra, bunched order executions and allocations must be reported to a registered SDR pursuant to Rule 901(a). The Regulation SBSR Adopting Release explains how Regulation SBSR applies to executed bunched orders that are reported pursuant to the reporting hierarchy in Rule 901(a)(2)(ii), as adopted. That release also explains how Regulation SBSR applies to the security-based swaps that result from allocation of an executed bunched order, if the resulting

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315 The Commission preliminarily estimates that the additional burdens would be: [(Sr. Programmer (5 hours) + Sr. Systems Analyst (5 hours)) = 10 burden hours (development of the ability to capture transaction information); (Sr. Programmer (3 hours) + Sr. Systems Analyst (3 hours)) = 6 burden hours (implementation of reporting mechanism)]. The total one-time burden associated with the amendments to 901(a) would be 16 burden hours per platform and reporting side for a total one-time burden of 4960 hours (16 x 310 (300 reporting sides + 10 platforms)).

316 The Commission preliminarily estimates that the additional burdens would be: [(Sr. Programmer (5 hours) + Sr. Systems Analyst (5 hours)) = 10 burden hours (maintenance of transaction capture system); (Sr. Programmer (1 hour) + Sr. Systems Analyst (1 hour)) = 2 burden hours (maintenance of reporting mechanism)]. The total ongoing burden associated with the proposed amendments to Rule 901(a) would be 12 burden hours per platform and reporting side for a total ongoing burden of 3,720 hours (12 x 310 (300 reporting sides + 10 platforms)).

security-based swaps are uncleared. In Section III, supra, the Commission explained how Regulation SBSR, as adopted and as proposed to be amended by this release, would apply to a platform-executed bunched order that will be submitted to clearing, and the security-based swaps that result from the allocation of any bunched order execution, if the resulting security-based swaps are cleared. The Commission included in its estimates of the number of reportable events in the Regulation SBSR Adopting Release security-based swaps that result from the allocation of bunched order executions that would be submitted to clearing, if the resulting security-based swaps are cleared. Thus, there is no burden associated with bunched order executions and allocations that has not already been taken into account.

iv. Prime Brokerage Transactions

The Commission preliminarily believes that in a prime brokerage transaction the customer/executing dealer transaction is a security-based swap that must be reported pursuant to Rule 901(a)(2)(ii), as adopted. The Commission further preliminarily believes that the prime broker/customer and prime broker/executing dealer transactions also are security-based swaps that must be reported pursuant to Rule 901(a)(2)(ii). In this release, the Commission clarifies that prime brokerage transactions were included in the estimates of security-based swap transactions that are required to be reported, and as a result, do not represent any new burdens.[317]

e. Recordkeeping Requirements

[317] As is discussed in Section VIII(D)(6), supra, the Commission does not believe that the interpretive guidance would create any new duties. As a result, the Commission does not believe that there would be any burdens or any additional costs or benefits beyond those already considered in the Regulation SBSR Adopting Release. The Commission's estimates of the number of reportable events included all legs of prime brokerage transactions. See supra note 276.

Apart from the duty to report certain transaction information to a registered SDR, the Commission does not believe that Rule 901 would result in any recordkeeping requirement for platform and reporting sides. As is stated in the SDR Adopting Release, Rule 13n-5(b)(4) under the Exchange Act requires an SDR to maintain the transaction data and related identifying information that it collects for not less than five years after the applicable security-based swap expires, and historical positions for not less than five years.[318] Accordingly, security-based swap transaction reports received by a registered SDR pursuant to Rule 901 would be required to be retained by the registered SDR for not less than five years after the applicable security-based swap expires. The Commission does not believe that reporting of security-based swap transactions by platforms or registered clearing agencies—or the inclusion of two additional data elements—would have any impact on the PRA burdens of registered SDRs as detailed in the SDR Adopting Release.

f. Collection of Information is Mandatory

Each collection of information discussed above is mandatory.

g. Confidentiality of Responses to Collection of Information

A registered SDR, pursuant to Sections 13(n)(5) of the Exchange Act and Rules 13n-4(b)(8) and 13n-9 thereunder, is required to maintain the privacy of the security-based swap information it receives. For the majority of security-based swap transactions, the information collected pursuant to Rule 901(c) by a registered SDR will be publicly disseminated. However, certain security-based swaps are not subject to Rule 902's public dissemination requirement; therefore, information about these transactions will not be publicly available. In addition, for all security-based swaps, the information collected pursuant to Rule 901(d) is for regulatory

[318] See SDR Adopting Release, Section VI(E)(4).

purposes only and will not be widely available to the public. To the extent that the Commission receives confidential information pursuant to this collection of information, such information would be kept confidential, subject to the provisions of applicable law.

3. Rule 901—Aggregate Total PRA Burdens and Costs

Based on the foregoing, the Commission estimates the following aggregate total PRA burdens and costs, by category of entity, resulting from Rule 901, as adopted and as proposed to be amended herein.

a. For Platforms

As discussed above, the Regulation SBSR Adopting Release, the Commission estimated burdens and costs for reporting sides under Rule 901. The Commission estimated that Rule 901, as adopted, will impose an estimated total first-year burden of approximately 1,394 hours[319] per reporting side for a total first-year burden of 418,200 hours for all reporting sides.[320] The Commission estimated that Rule 901, as adopted, will impose ongoing annualized aggregate burdens of approximately 687 hours[321] per reporting side for a total aggregate annualized cost of 206,100 hours for all reporting sides.[322] The Commission further estimated that Rule 901, as adopted, will impose initial and ongoing annualized dollar cost burdens of $201,000 per reporting side, for total aggregate initial and ongoing annualized dollar cost burdens of $60,300,000.[323]

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319 See Regulation SBSR Adopting Release, Section XXI(B).

320 See id.

321 See id.

322 See id.

323 See id.

The Commission preliminarily believes that platforms would have a first-year burden of 1,361 hours per platform, for a total first-year burden of 13,610 hours under proposed Rule 901(a)(1).[324] The Commission also preliminarily estimates that proposed Rule 901(a)(1) would impose ongoing annualized aggregate burdens of approximately 654 hours[325] per platform for a total aggregate annualized burden of 6,540 hours for all platforms.[326] The Commission further preliminarily estimates that the proposed Rule 901(a)(1) would impose initial and ongoing annualized dollar cost burdens of $201,000 per platform,[327] for total aggregate initial and ongoing annualized dollar cost burdens of $2,010,000.[328]

The Commission preliminarily estimates that the proposed amendments to Rule 901(a) would result in platforms having a total burden of 600 hours attributable to the reporting of security-based swaps to registered SDRs over the course of a year, or 60 hours per platform.

The Commission preliminarily believes that the additional one-time burden related to the development of the ability to capture the relevant transaction information, required by proposed Rule 901(a)(3), would be 10 burden hours and the additional one-time burden related to the implementation of a reporting mechanism would be 6 burden hours, per platform. The

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324 The Commission derived its estimate from the following: (1,361 hours per platform x 10 platforms) = 13,610 hours.

325 See Cross-Border Proposing Release, 78 FR at 31112-15.

326 The Commission derived its estimate from the following: (654 hours per platform x 10 platforms) = 6,540 hours.

327 This figure is based on the sum of per-entity estimates for connectivity to SDRs for data reporting, as follows: [($100,000 hardware- and software-related expenses, including necessary back-up and redundancy, per SDR connection) x (2 SDR connections per platform)] + [($250/gigabyte of storage capacity) x (4 gigabytes of storage capacity)] = $201,000.

328 The Commission derived its estimate from the following: ($201,000 per platform x 10 platforms) = $2,010,000. See also Cross-Border Proposing Release, 78 FR at 31112-15.

Commission preliminarily believes that the additional ongoing burden related to the development of the ability to capture the relevant transaction information would be 10 burden hours and the additional ongoing burden related to the maintenance of the reporting mechanism would be 2 burden hours, per platform. As a result, the Commission estimates that the total first-year burden would be 28 hours and the ongoing annual burden would be 12 hours.

As a result of these proposed requirements, the Commission preliminarily estimates that platforms would have a total first-year burden of 14,490 hours, or 1,449 hours per platform.[329] In addition, the Commission preliminarily estimates that platforms would have an ongoing annual burden of 7,260 hours, or 726 hours per platform.[330] The Commission also preliminarily estimates that each platform would have connectivity costs of $201,000 in the first year and each year thereafter.

b. For Registered Clearing Agencies

The Commission preliminarily believes that registered clearing agencies would have a first-year burden of 1,361 hours per registered clearing agency, for a total first-year burden of 5,444 hours under Rule 901 (before including the burdens related to the reporting of individual security-based swap transactions).[331] The Commission also preliminarily estimates that Rule 901 would impose ongoing annualized aggregate burdens of approximately 654 hours[332] per registered clearing agency for a total aggregate annualized burden of 2,616 hours for all

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329 The Commission derived its estimate from the following: ((1,361 hours + 60 hours + 28) per platform x 10 platforms) = 14,490 hours.

330 The Commission derived its estimate from the following: ((654 hours + 60 hours + 12 hours) per platform x 10 platforms) = 7,260 hours.

331 The Commission derived its estimate from the following: (1,361 hours per registered clearing agency x 4 registered clearing agencies) = 5,444 hours.

332 See supra note 302

registered clearing agencies.[333] The Commission further preliminarily estimates that the proposed Rule 901(a)(2)(i) would impose initial and ongoing annualized dollar cost burdens of $201,000 per registered clearing agency,[334] for total aggregate initial and ongoing annualized dollar cost burdens of $804,000.[335]

The Commission preliminarily estimates that the proposed Rule 901(a)(2)(i) would result in registered clearing agencies having a total burden of 1,250 hours attributable to the initial reporting of security-based swaps to registered SDRs over the course of a year, or 312.5 hours per registered clearing agency. The Commission preliminarily estimates that the proposed amendments to Rule 901(a) would result in registered clearing agencies having a total burden of 3,150 hours attributable to the reporting of life cycle events by registered clearing agencies to registered SDRs under Rule 901(e) over the course of a year, or 787.5 hours per registered clearing agency. The Commission preliminarily believes that the proposed amendments would result in a total annual burden on registered clearing agencies to report security-based swaps and life cycle events of 4,400 burden hours, or 1,100 hours per registered clearing agency.

The Commission preliminarily estimates that, as a result of these proposed requirements, registered clearing agencies would have a total first-year burden of 9,844 hours, or 2,461 hours

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333 The Commission derived its estimate from the following: (654 hours per reporting entity x 4 registered clearing agencies) = 2,616 hours.

334 This figure is based on the sum of per-reporting entity estimates for connectivity to SDRs for data reporting, as follows: [($100,000 hardware- and software-related expenses, including necessary back-up and redundancy, per SDR connection) x (2 SDR connections per reporting entity)] + [($250/gigabyte of storage capacity) x (4 gigabytes of storage capacity)] = $201,000.

335 The Commission derived its estimate from the following: ($201,000 per reporting side x 4 registered clearing agencies) = $804,000. See also Cross-Border Proposing Release, 78 FR at 31112-15.

per registered clearing agency.[336] In addition, the Commission preliminarily estimates that registered clearing agencies would have an ongoing annual burden of 7,328 hours, or 1,754 hours per registered clearing agency.[337] The Commission also preliminarily estimates that each registered clearing agency would have connectivity costs of $201,000 in the first year and each year thereafter.[338]

c. For Reporting Sides

The Commission preliminarily believes that, as a result of proposed Rule 901(a)(3), reporting sides would have a first-year burden of 1,394 hours per reporting side, for a total first-year burden of 418,200 hours.[339] The Commission also preliminarily estimates that proposed Rule 901(a)(3) would impose ongoing annualized aggregate burdens of approximately 687 hours[340] per reporting side, for a total aggregate annualized burden of 206,100 hours for all reporting sides.[341] The Commission further preliminarily estimates that the proposed Rule 901(a)(3) would impose initial and ongoing annualized dollar cost burdens of $201,000 per

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336 The Commission derived its estimate from the following: ((1,361 hours + 312.5 hours + 787.5 hours) per registered clearing agency x 4 registered clearing agencies) = 9,844 hours.

337 The Commission derived its estimate from the following: ((654 hours + 312.5 hours + 787.5 hours) per registered clearing agency x 4 registered clearing agencies) = 7,016 hours.

338 See supra note 334.

339 The Commission derived its estimate from the following: (1,394 hours per reporting side x 300 reporting sides) = 418,200 hours.

340 See Cross-Border Proposing Release, 78 FR at 31112-15.

341 The Commission derived its estimate from the following: (687 hours per reporting side x 300 reporting sides) = 206,100 hours.

registered clearing agency,[342] for total aggregate initial and ongoing annualized dollar cost burdens of $60,300,000.[343]

As discussed above, the Commission estimated that Rule 901(a), as previously adopted, will result in reporting sides having a total burden of 2,500 hours attributable to the reporting of security-based swaps to registered SDRs under Rules 901(c) and 901(d) over the course of a year, or 8.33 hours per reporting side. The Commission further estimated that Rule 901(a), as previously adopted, would result in reporting sides having a total burden of 7,500 hours attributable to the reporting of life cycle events to registered SDRs under Rule 901(e) over the course of a year, or 25 hours per reporting side. As a result, the Commission stated its belief that the total burden associated with the reporting of security-based swaps under Rules 901(c) and 901(d), along with the reporting of life cycle events under Rule 901(e), would be 10,000 hours, or 33.33 hours per reporting side.

The Commission preliminarily believes that the additional one-time burden related to the development of the ability to capture the relevant transaction information, required by proposed Rule 901(a)(3), would be 10 burden hours and the additional one-time burden related to the implementation of a reporting mechanism would be 6 burden hours, per reporting side. The Commission preliminarily believes that the additional ongoing burden related to the development of the ability to capture the relevant transaction information would be 10 burden hours and the

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342 This figure is based on the sum of per-reporting side estimates for connectivity to SDRs for data reporting, as follows: [($100,000 hardware- and software-related expenses, including necessary back-up and redundancy, per SDR connection) x (2 SDR connections per reporting side)] + [($250/gigabyte of storage capacity) x (4 gigabytes of storage capacity)] = $201,000.

343 The Commission derived its estimate from the following: ($201,000 per reporting side x 300 reporting sides) = $60,300,000. See also Cross-Border Proposing Release, 78 FR at 31112-15.

additional ongoing burden related to the maintenance of the reporting mechanism would be 2 burden hours, per reporting side. As a result, the Commission estimates that the total first-year burden would be 28 hours and the ongoing annual burden would be 12 hours.

As a result of these proposed requirements, the Commission preliminarily estimates that reporting sides would have a total first-year burden of 436,599 hours, or 1,455.33 hours per reporting side.[344] In addition, the Commission preliminarily estimates that reporting sides would have an ongoing annual burden of 219,699 hours, or 732.33 hours per reporting side.[345] The Commission also preliminarily estimates that each reporting side would have connectivity costs of $201,000 in the first year and each year thereafter.

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

1. Rule 905—As Adopted

Rule 905, as adopted, establishes procedures for correcting errors in reported and disseminated security-based swap information. Under Rule 905(a)(1), where a side that was not the reporting side for a security-based swap transaction discovers an error in the information reported with respect to such security-based swap, the counterparty must promptly notify the reporting side of the error. Under Rule 905(a)(2), as adopted, where a reporting side for a security-based swap transaction discovers an error in the information reported with respect to a security-based swap, or receives notification from its counterparty of an error, the reporting side must promptly submit to the entity to which the security-based swap was originally reported an amended report pertaining to the original transaction. The amended report must be submitted to

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344 The Commission derived its estimate from the following: ((1,394 hours + 33.33 hours + 28) per reporting sides x 300 reporting sides) = 436,599 hours.

345 The Commission derived its estimate from the following: ((687 hours + 33.33 hours + 12 hours) per reporting side x 300 reporting sides) = 219,699 hours.

the registered SDR in a manner consistent with the policies and procedures of the registered SDR required pursuant to Rule 907(a)(3).

Rule 905(b), as adopted, sets forth the duties of a registered SDR relating to corrections. If the registered SDR either discovers an error in a transaction on its system or receives notice of an error from a reporting side, Rule 905(b)(1) requires the registered SDR to verify the accuracy of the terms of the security-based swap and, following such verification, promptly correct the erroneous information contained in its system. Rule 905(b)(2) further requires that, if such erroneous information relates to a security-based swap that the registered SDR previously disseminated and falls into any of the categories of information enumerated in Rule 901(c), the registered SDR must publicly disseminate a corrected transaction report of the security-based swap promptly following verification of the trade by the counterparties to the security-based swap, with an indication that the report relates to a previously disseminated transaction.

In the Regulation SBSR Adopting Release, the Commission stated its belief that, with respect to reporting sides, Rule 905(a) will impose an initial, one-time burden associated with designing and building the reporting side's reporting system to be capable of submitting amended security-based swap transactions to a registered SDR. In the Regulation SBSR Adopting Release, for reporting sides, the Commission estimated that Rule 905(a) will impose an initial (first-year) aggregate burden of 15,015 hours, which is 50.0 burden hours per reporting side,[346] and an ongoing aggregate annualized burden of 7,035 hours, which is 23.5 burden hours per reporting side.[347]

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346 See Regulation SBSR Adopting Release, Section XXI(F).

347 See id.

With respect to the actual submission of amended transaction reports required under Rule 905(a)(2), the Commission stated its belief that this will not result in a material burden because this will be done electronically though the reporting system that the reporting side must develop and maintain to comply with Rule 901. The overall burdens associated with such a reporting system are addressed in the Commission's analysis of Rule 901.

With regard to non-reporting-side participants, the Commission stated its belief that Rule 905(a) will impose an initial and ongoing burden associated with promptly notifying the relevant reporting entity after discovery of an error as required under Rule 905(a)(1). In the Regulation SBSR Adopting Release, the Commission estimated that the annual burden will be 998,640 hours, which corresponds to 208.05 burden hours per non-reporting-side participant.[348] This figure was based on the Commission's estimate of (1) 4,800 non-reporting-side participants; and (2) 1 transaction per day per non-reporting-side participant.[349] The burdens of Rule 905 on reporting sides and non-reporting-side participants will be reduced to the extent that complete and accurate information is reported to registered SDRs in the first instance pursuant to Rule 901.

Rule 905(b) requires a registered SDR to develop protocols regarding the reporting and correction of erroneous information. In the Regulation SBSR Adopting Release, however, the Commission stated its belief that this duty would represent only a minor extension of other duties for which the Commission is estimating burdens, and consequently, will not impose substantial additional burdens on a registered SDR. The Commission noted that a registered SDR will be required to have the ability to collect and maintain security-based swap transaction reports and

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348 See id.

349 See id.

update relevant records under the rules adopted in the SDR Adopting Release. Likewise, the Commission noted that a registered SDR must have the capacity to disseminate additional, corrected security-based swap transaction reports under Rule 902. The Commission concluded that the burdens associated with Rule 905—including systems development, support, and maintenance—are addressed in the Commission's analysis of those other rules and, thus, the Commission stated its belief that Rule 905(b) will impose only an incremental additional burden on registered SDRs. In the Regulation SBSR Adopting Release, the Commission estimated that developing and publicly providing the necessary procedures will impose on each registered SDR an initial one-time burden on each registered SDR of approximately 730 burden hours.[350] The Commission further estimated that to review and update such procedures on an ongoing basis will impose an annual burden on each SDR of approximately 1,460 burden hours.[351]

Accordingly, in the Regulation SBSR Adopting Release, the Commission estimated that the initial (first-year) aggregate annualized burden on registered SDRs under Rule 905 will be 21,900 burden hours, which corresponds to 2,190 burden hours for each registered SDR.[352] The Commission further estimated that the ongoing aggregate annualized burden on registered SDRs under Rule 905 will be 14,600 burden hours, which corresponds to 1,460 burden hours for each registered SDR.[353]

2. Rule 905—Proposed Amendments

Rule 905, as adopted, establishes a mechanism for reporting corrections of previously submitted security-based swap transaction information and assigns certain duties to the

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350 See id.

351 See id.

352 See id.

353 See id.

counterparties to a transaction and to the registered SDR that holds the transaction. In light of the Commission's proposed amendment to Rule 901(a) to require a platform to report a security-based swap that is executed on the platform and that will be submitted to clearing, the Commission is proposing to make conforming changes to Rule 905(a) to require the person having the duty to report the initial transaction to correct previously reported erroneous information if it discovers an error. Thus, under the proposed amendments to Rule 905(a), the person having the duty to report a security-based swap, whether a counterparty or a platform, would be required to correct previously reported erroneous information with respect to that security-based swap if it discovers an error.

Certain provisions of Rule 905 of Regulation SBSR contain "collection of information requirements" within the meaning of the PRA. The title of this collection is "Rule 905—Correction of Errors in Security-Based Swap Information."

a. Summary of Collection of Information

Rule 905 establishes duties for security-based swap counterparties and registered SDRs to correct errors in information that previously has been reported.

Duty to correct. Under the proposed amendment to Rule 905(a)(1), where a person that was not the reporting side for a security-based swap transaction discovers an error in the information reported with respect to such security-based swap, that person must promptly notify the person having the duty to report the security-based swap of the error. Under the proposed amendment to Rule 905(a)(2), where a person having the duty to report a security-based swap transaction discovers an error in the information reported with respect to a security-based swap, or receives notification from a counterparty of an error, such person must promptly submit to the entity to which the security-based swap was originally reported an amended report pertaining to

the original transaction. The amended report must be submitted to the registered SDR in a manner consistent with the policies and procedures of the registered SDR required pursuant to Rule 907(a)(3), as adopted. As a result the proposed amendments to Rule 905, a platform would have the duty to report if it discovers an error.

b. Proposed Use of Information

The security-based swap transaction information required to be reported under the proposed amendments to Rule 905 would be used by registered SDRs, its participants, the Commission, and other relevant authorities. Participants will be able to use such information to evaluate and manage their own risk positions and satisfy their duties to report corrected information to a registered SDR. A registered SDR will need the required information to correct security-based swap transaction records, in order to maintain an accurate record of a participant's positions as well as to disseminate corrected information. The Commission and other relevant authorities will need the corrected information to have an accurate understanding of the market for surveillance and oversight purposes.

c. Respondents

Rule 905, as proposed to be amended, would apply to platforms. As noted above, the Commission estimates that there will be approximately 10 platforms that incur a duty to report security-based swap transactions pursuant to Rule 901.

d. Total Initial and Annual Reporting and Recordkeeping Burdens

In the Regulation SBSR Adopting Release, the Commission estimated that Rule 905(a), as adopted, will impose an initial, one-time burden associated with designing and building the reporting side's reporting system to be capable of submitting amended security-based swap

transactions to a registered SDR.[354] The Commission stated its belief that designing and building appropriate reporting system functionality to comply with Rule 905(a)(2), as adopted, will be a component of, and represent an incremental "add-on" to, the cost to build a reporting system and develop a compliance function as required under Rule 901, as adopted.[355] Specifically, the Commission estimated that, based on discussions with industry participants, the incremental burden would be equal to 5% of the one-time and annual burdens associated with designing and building a reporting system that is in compliance with Rule 901, plus 10% of the corresponding one-time and annual burdens associated with developing the reporting side's overall compliance program required under Rule 901.[356]

The Commission preliminarily believes that the above methodology is applicable to error reporting by platforms under the proposed amendments to Rule 905(a). Thus, for platforms, the Commission estimates that the proposed amendments to Rule 905(a) would impose an initial (first-year) aggregate burden of 500.5 hours, which is 50.0 burden hours per platform,[357] and an ongoing aggregate annualized burden of 234.5 hours, which is 23.5 burden hours per platform.[358]

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354 See id.

355 See id.

356 See id.

357 See Regulation SBSR Proposing Release, 75 FR at 75254-55. This figure is calculated as follows: [(((172 burden hours for one-time development of reporting system) x (0.05)) + ((33 burden hours annual maintenance of reporting system) x (0.05)) + ((180 burden hours one-time compliance program development) x (0.1)) + ((218 burden hours annual support of compliance program) x (0.1))) x (10 platforms)] = 500.5 burden hours, which is 50 burden hours per reporting side. See also Regulation SBSR Adopting Release, Section XXI(F).

358 See Regulation SBSR Proposing Release, 75 FR at 75254-55. This figure is calculated as follows: [(((33 burden hours annual maintenance of reporting system) x (0.05)) + ((218 burden hours annual support of compliance program) x (0.1))) x (10 platforms)] = 234.5 burden hours, which is 23.5 burden hours per platform.

e. Recordkeeping Requirements

Security-based swap transaction reports received pursuant to Rule 905 are subject to Rule 13n-5(b)(4) under the Exchange Act. This rule requires an SDR to maintain the transaction data and related identifying information for not less than five years after the applicable security-based swap expires and historical positions for not less than five years.

With respect to corrected information that is disseminated by a registered SDR in compliance with Rule 905(b)(2), Rule 13n-7(b) under the Exchange Act requires an SDR to keep and preserve at least one copy of all documents, including all policies and procedures required by the Exchange Act and the rules or regulations thereunder, for a period of not less than five years, the first two years in a place that is immediately available. This requirement encompasses amended security-based swap transaction reports disseminated by the registered SDR. The amendments to Rule 905(a) clarify the duties of counterparties and other persons to report corrected information to a registered SDR. The requirement that a registered SDR disseminate corrected information would not change. The Commission preliminarily believes that the number of corrections reported to the registered SDR would not be impacted by the proposed amendments. As a result, the Commission preliminarily believes that the burdens under Rule 905(b)(2) would not be impacted by the proposed amendments to Rule 905(a).

f. Collection of Information is Mandatory

Each collection of information discussed above is mandatory.

g. Confidentiality of Responses to Collection of Information

Information collected pursuant to the proposed amendments to Rule 905 would be widely available to the extent that it corrects information previously reported pursuant to Rule 901(c) and incorporated into security-based swap transaction reports that are publicly disseminated by a

registered SDR pursuant to Rule 902. Most of the information required under Rule 902 will be widely available to the public to the extent it is incorporated into security-based swap transaction reports that are publicly disseminated by a registered SDR pursuant to Rule 902. However, Rule 902(c) prohibits public dissemination of certain kinds of transactions and certain kinds of transaction information. An SDR, pursuant to Sections 13(n)(5) of the Exchange Act and Rules 13n-4(b)(8) and Rule 13n-9 thereunder, is required to maintain the privacy of this security-based swap information. To the extent that the Commission receives confidential information pursuant to this collection of information, such information will be kept confidential, subject to the provisions of applicable law.

3. Rule 905—Aggregate Total PRA Burdens and Costs

The Commission estimates the following aggregate total PRA burdens and costs, by category of entity, resulting from the proposed amendments to Rule 905.

a. For Platforms

For platforms, the Commission estimates that the proposed amendments to Rule 905(a) would impose an initial (first-year) aggregate burden of 500.5 hours, which is 50.0 burden hours per platform,[359] and an ongoing aggregate annualized burden of 234.5 hours, which is 23.5 burden hours per platform.[360]

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[359] This figure is calculated as follows: [(((172 burden hours for one-time development of reporting system) x (0.05)) + ((33 burden hours annual maintenance of reporting system) x (0.05)) + ((180 burden hours one-time compliance program development) x (0.1)) + ((218 burden hours annual support of compliance program) x (0.1))) x (10 platforms)] = 500.5 burden hours, which is 50 burden hours per reporting side.

[360] This figure is calculated as follows: [(((33 burden hours annual maintenance of reporting system) x (0.05)) + ((218 burden hours annual support of compliance program) x (0.1))) x (10 platforms)] = 234.5 burden hours, which is 23.5 burden hours per platform.

For reporting sides, the Commission estimates that Rule 905(a), as adopted, will impose an initial (first-year) aggregate burden of 15,015 hours, which is 50.0 burden hours per reporting side,[361] and an ongoing aggregate annualized burden of 7,035 hours, which is 23.5 burden hours per reporting side.[362]

b. For Non-Reporting Sides

For non-reporting sides, the Commission estimates that the annual burden will be 998,640 hours, which corresponds to 208.05 burden hours per non-reporting-side participant.[363]

c. For Registered SDRs

For registered SDRs, the Commission estimates that the initial (first-year) aggregate annualized burden on registered SDRs under Rule 905, as adopted and as proposed to be amended herein, would be 21,900 burden hours, which corresponds to 2,190 burden hours for each registered SDR.[364] The Commission further estimates that the ongoing aggregate

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361 This figure is calculated as follows: [(((172 burden hours for one-time development of reporting system) x (0.05)) + ((33 burden hours annual maintenance of reporting system) x (0.05)) + ((180 burden hours one-time compliance program development) x (0.1)) + ((218 burden hours annual support of compliance program) x (0.1))) x (300 reporting sides)] = 15,015 burden hours, which is 50 burden hours per reporting side. The burden hours for annual maintenance of the reporting system has been updated to reflect new information on the number of reportable events.

362 This figure is calculated as follows: [(((33 burden hours annual maintenance of reporting system) x (0.05)) + ((218 burden hours annual support of compliance program) x (0.1))) x (300 reporting sides)] = 7,035 burden hours, which is 23.5 burden hours per reporting side. The burden hours for annual maintenance of the reporting system has been updated to reflect new information on the number of reportable events.

363 This figure is based on the following: [(1.14 error notifications per non-reporting-side participant per day) x (365 days/year) x (Compliance Clerk at 0.5 hours/report) x (4,800 non-reporting-side participants)] = 998,640 burden hours, which corresponds to 208.05 burden hours per non-reporting-side participant.

364 This figure is based on the following: [(730 burden hours to develop protocols) + (1,460 burden hours annual support)) x (10 registered SDRs)] = 21,900 burden hours, which corresponds to 2,190 burden hours per registered SDR.

annualized burden on registered SDRs under Rule 905, as adopted and as proposed to be amended herein, would be 14,600 burden hours, which corresponds to 1,460 burden hours for each registered SDR.[365]

D. Other Duties of Participants—Rule 906

1. Rule 906—As Adopted

Rule 906(a), as adopted, sets forth a procedure designed to ensure that a registered SDR obtains relevant UICs for both sides of a security-based swap, not just of the reporting side. Rule 906(a) requires a registered SDR to identify any security-based swap reported to it for which the registered SDR does not have a counterparty ID and (if applicable) broker ID, trading desk ID, and trader ID of each counterparty. Rule 906(a) further requires the registered SDR, once a day, to send a report to each participant identifying, for each security-based swap to which that participant is a counterparty, the security-based swap(s) for which the registered SDR lacks counterparty ID and (if applicable) broker ID, trading desk ID, and trader ID. A participant that receives such a report must provide the missing ID information to the registered SDR within 24 hours.

Rule 906(b) requires each participant of a registered SDR to provide the registered SDR with information sufficient to identify the participant's ultimate parent(s) and any affiliate(s) of the participant that are also participants of the registered SDR.

Rule 906(c) requires each participant that is a registered security-based swap dealer or registered major security-based swap participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any security-

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365 This figure is based on the following: [(1,460 burden hours annual support) x (10 registered SDRs)] = 14,600 burden hours, which corresponds to 1,460 burden hours per registered SDR.

based swap transaction reporting obligations in a manner consistent with Regulation SBSR. In addition, Rule 906(c) requires each such participant to review and update its policies and procedures at least annually.

For Registered SDRs. Rule 906(a) requires a registered SDR, once a day, to send a report to each of its participants identifying, for each security-based swap to which that participant is a counterparty, any security-based swap(s) for which the registered SDR lacks counterparty ID and (if applicable) broker ID, trading desk ID, and trader ID. In the Regulation SBSR Adopting Release, the Commission estimated that there will be a one-time, initial burden of 112 burden hours for a registered SDR to create a report template and develop the necessary systems and processes to produce a daily report required by Rule 906(a).[366] Further, the Commission estimated that there will be an ongoing annualized burden of 308 burden hours for a registered SDR to generate and issue the daily reports, and to enter into its systems the ID information supplied by participants in response to the daily reports.[367]

Accordingly, in the Regulation SBSR Adopting Release, the Commission estimated that the initial aggregate annualized burden for registered SDRs under Rule 906(a) will be 4,200 burden hours for all SDR respondents, which corresponds to 420 burden hours per registered SDR.[368] The Commission estimated that the ongoing aggregate annualized burden for registered SDRs under Rule 906(a) will be 3,080 burden hours, which corresponds to 308 burden hours per registered SDR.[369]

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366 See Regulation SBSR Adopting Release, Section XXI(G).

367 See id.

368 See id.

369 See id.

For Participants. Rule 906(a) requires any participant of a registered SDR that receives a report from that registered SDR to provide the missing UICs to the registered SDR within 24 hours. Because all SDR participants will likely be the non-reporting side for at least some transactions to which they are counterparties, in the Regulation SBSR Adopting Release, the Commission stated its belief that all participants will be impacted by Rule 906(a). In the Regulation SBSR Adopting Release, the Commission estimated that the initial and ongoing annualized burden under Rule 906(a) for all participants will be 199,728 burden hours, which corresponds to 41.6 burden hours per participant.[370] This figure is based on the Commission's estimates of (1) 4,800 participants; and (2) approximately 1.14 transactions per day per participant.[371]

Rule 906(b) requires every participant to provide the registered SDR an initial parent/affiliate report and subsequent reports, as needed. In the Regulation SBSR Adopting Release, the Commission estimated that there will be 4,800 participants, that each participant will connect to two registered SDRs on average, and that each participant will submit two reports each year.[372] Accordingly, the Commission estimated that the initial and ongoing aggregate annualized burden associated with Rule 906(b) will be 9,600 burden hours, which corresponds to 2 burden hours per participant.[373] The aggregate burden represents an upper estimate for all participants; the actual burden will likely decrease because certain larger participants are likely

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370 See id.

371 See id.

372 See id. The Commission estimates that, during the first year, each participant will submit an initial report and one update report and, in subsequent years, will submit two update reports.

373 See id.

to have multiple affiliates, and one member of the group could report ultimate parent and affiliate information on behalf of all of its affiliates at the same time.

Rule 906(c) requires each participant that is a registered security-based swap dealer or registered major security-based swap participant (each, a "covered participant") to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with applicable security-based swap transaction reporting obligations. Rule 906(c) also requires the review and updating of such policies and procedures at least annually. In the Regulation SBSR Adopting Release, the Commission estimated that the one-time, initial burden for each covered participant to adopt written policies and procedures as required under Rule 906(c) will be approximately 216 burden hours.[374] As discussed in the Regulation SBSR Adopting Release,[375] this figure is based on the estimated number of hours to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing. In addition, in the Regulation SBSR Adopting Release, the Commission estimated the burden of maintaining such policies and procedures, including a full review at least annually, as required by Rule 906(c), will be approximately 120 burden hours for each covered participant.[376] This figure includes an estimate of hours related to reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining internal controls systems, and performing necessary testing. Accordingly, the Commission estimated that the initial aggregate annualized burden associated with Rule 906(c) will be 18,480 burden hours, which corresponds to 336 burden hours

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374 See id.

375 See id.

376 See id.

per covered participant.[377] In the Regulation SBSR Adopting Release, the Commission estimated that the ongoing aggregate annualized burden associated with Rule 906(c) will be 6,600 burden hours, which corresponds to 120 burden hours per covered participant.[378]

Therefore, in the Regulation SBSR Adopting Release, the Commission estimated that the total initial aggregate annualized burden associated with Rule 906 will be 230,370 burden hours,[379] and the total ongoing aggregate annualized burden will be 217,370 burden hours for all participants.[380]

2. Rule 906—Proposed Amendments

a. Rule 906(b)—Proposed Amendments

The Commission is proposing to revise Rule 906(b) to indicate that reporting obligations under Rule 906(b) would not attach to participants that are platforms or registered clearing agencies. Under the proposed amendments to Rule 901(a) and 901(e), platforms and registered clearing agencies would have the duty to report certain security-based swaps and therefore would become participants of registered SDRs. Rule 906(b), as adopted, requires each participant of a registered SDR to provide the registered SDR information sufficient to identify its ultimate parent(s) and any affiliate(s) of the participant that also are participants of the registered SDR, using ultimate parent IDs and participant IDs. The Commission does not believe that this change, which would relieve platforms and registered clearing agencies of the requirement to provide ultimate parent IDs and participant IDs, would affect the existing burdens being placed on platforms and registered clearing agencies.

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377 See id.

378 See id.

379 See id.

380 See id.

b. Rule 906(c)—Proposed Amendments

i. Summary of Collection of Information

The proposed amendments to Rule 906(c) would require each participant that is a registered clearing agency or platform to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with applicable security-based swap transaction reporting obligations. Each such participant also would be required to review and update its policies and procedures at least annually.

ii. Proposed Use of Information

The policies and procedures required under the proposed amendments to Rule 906(c) would be used by participants to aid in their compliance with Regulation SBSR, and also used by the Commission as part of its ongoing efforts to monitor and enforce compliance with the federal securities laws, including Regulation SBSR, through, among other things, examinations and inspections.

iii. Respondents

The proposed amendments to Rule 906(c) would result in the rule applying to registered clearing agencies and platforms. The Commission estimates that there will be 4 registered clearing agencies and 10 platforms.

iv. Total Initial and Annual Reporting and Recordkeeping Burdens

For Registered Clearing Agencies and Platforms. The proposed amendment to Rule 906(c) would require each registered clearing agency or platform to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with

applicable security-based swap transaction reporting obligations. The proposed amendment to Rule 906(c) also would require each registered clearing agency and platform to review and update such policies and procedures at least annually. The Commission estimates that the one-time, initial burden for each registered clearing agency or platform to adopt written policies and procedures as required under the proposed amendments to Rule 906(c) would be similar to the Rule 906(c) burdens discussed in the Regulation SBSR Adopting Release for covered participants, and would be approximately 216 burden hours per registered clearing agency or platform.[381] As discussed in the Regulation SBSR Proposing Release,[382] this figure is based on the estimated number of hours to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing. In addition, the Commission estimates the burden of maintaining such policies and procedures, including a full review at least annually will be approximately 120 burden hours for each registered clearing agency or platform.[383] This figure includes an estimate of hours related to reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining internal controls systems, and performing necessary testing. Accordingly, the Commission estimates that the initial aggregate annualized burden associated with the proposed amendments to Rule 906(c) would be 4,704 burden hours, which corresponds

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381 See Regulation SBSR Proposing Release, 75 FR at 75257. This figure is based on the following: [(Sr. Programmer at 40 hours) + (Compliance Manager at 40 hours) + (Compliance Attorney at 40 hours) + (Compliance Clerk at 40 hours) + (Sr. Systems Analyst at 32 hours) + (Director of Compliance at 24 hours)] = 216 burden hours per registered clearing agency or platform.

382 See Regulation SBSR Proposing Release, 75 FR at 75257.

383 See id. This figure is based on the following: [(Sr. Programmer at 8 hours) + (Compliance Manager at 24 hours) + (Compliance Attorney at 24 hours) + (Compliance Clerk at 24 hours) + (Sr. Systems Analyst at 16 hours) + (Director of Compliance at 24 hours)] = 120 burden hours per registered clearing agency or platform.

to 336 burden hours per registered clearing agency or platform.[384] The Commission estimates that the ongoing aggregate annualized burden associated with the proposed amendments to Rule 906(c) will be 1,680 burden hours, which corresponds to 120 burden hours per registered clearing agency or platform.[385]

v. Recordkeeping Requirements

The Commission has adopted recordkeeping rules for registered clearing agencies[386] and proposed recordkeeping rules for platforms.[387]

vi. Collection of Information is Mandatory

Each collection of information discussed above is mandatory.

vii. Confidentiality of Responses to Collection of Information

The collection of information required by the proposed amendments to Rule 906 would not be widely available. To the extent that the Commission receives confidential information pursuant this collection of information, such information will be kept confidential, subject to applicable law.

3. Rule 906—Aggregate Total PRA Burdens and Costs

Based on the foregoing, the Commission estimates the following aggregate total PRA burdens and costs, by category of entity, resulting from Rule 906, as adopted and as proposed to be amended herein.

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384 This figure is based on the following: [(216 + 120 burden hours) x (14 registered clearing agencies and platforms)] = 4,704 burden hours.

385 This figure is based on the following: [(120 burden hours) x (14 registered clearing agencies and platforms)] = 1,680 burden hours.

386 See Clearing Agency Standards Adopting Release.

387 See Securities Exchange Act Release No. 63825 (February 2, 2011), 76 FR 10948 (February 29, 2011) ("SB SEF Proposing Release").

a. For Platforms and Registered Clearing Agencies

The Commission estimates that the one-time, initial burden for each registered clearing agency or platform to adopt written policies and procedures as required under Rule 906(c), as adopted and as proposed to be amended herein, would be similar to the Rule 906(c) burdens discussed in the Regulation SBSR Adopting Release for covered participants, and would be approximately 216 burden hours per registered clearing agency or platform.[388] This figure is based on the estimated number of hours to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing. In addition, the Commission estimates the burden of maintaining such policies and procedures, including a full review at least annually, as required by Rule 906(c), would be approximately 120 burden hours for each registered clearing agency or platform.[389] This figure includes an estimate of hours related to reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining internal controls systems, and performing necessary testing. Accordingly, the Commission estimates that the initial aggregate annualized burden associated with Rule 906(c), as adopted and as proposed to be amended herein, would be 4,704 burden hours, which corresponds to 336 burden hours per registered clearing agency or platform.[390] The Commission estimates that the ongoing aggregate

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388 This figure is based on the following: [(Sr. Programmer at 40 hours) + (Compliance Manager at 40 hours) + (Compliance Attorney at 40 hours) + (Compliance Clerk at 40 hours) + (Sr. Systems Analyst at 32 hours) + (Director of Compliance at 24 hours)] = 216 burden hours per registered clearing agency or platform.

389 This figure is based on the following: [(Sr. Programmer at 8 hours) + (Compliance Manager at 24 hours) + (Compliance Attorney at 24 hours) + (Compliance Clerk at 24 hours) + (Sr. Systems Analyst at 16 hours) + (Director of Compliance at 24 hours)] = 120 burden hours per registered clearing agency or platform.

390 This figure is based on the following: [(216 + 120 burden hours) x (14 registered clearing agencies and platforms)] = 4,704 burden hours.

annualized burden associated with Rule 906(c), as adopted and as proposed to be amended herein, would be 1,680 burden hours, which corresponds to 120 burden hours per registered clearing agency or platform.[391]

b. For Registered SDRs

The proposed amendments to Regulation SBSR discussed in this release would not modify any requirements in Rule 906(a), as adopted. Therefore, the Commission is not modifying its analysis of the burden that Rule 906(a), as adopted, will impose on registered SDRs.

c. For Participants

The Commission estimates that the initial and ongoing annualized burden under Rule 906(a) for all participants will be 199,728 burden hours, which corresponds to 41.6 burden hours per participant.[392] This figure is based on the Commission's estimates of (1) 4,800 participants; and (2) approximately 1.14 transactions per day per participant.[393]

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391 This figure is based on the following: [(120 burden hours) x (14 registered clearing agencies and platforms)] = 1,680 burden hours.

392 See Regulation SBSR Adopting Release, Section XXI(G). This burden was calculated using the same methodology as was used in the Regulation SBSR Proposing Release, updated to account for new estimates of the number of missing information reports resulting from updates in the number of reportable events. See Regulation SBSR Proposing Release, 75 FR at 75256-57. This figure is based on the following: [(1.14 missing information reports per participant per day) x (365 days/year) x (Compliance Clerk at 0.1 hours/report) x (4,800 participants) = 199,728 burden hours, which corresponds to 47.5 burden hours per participant.

393 This figure is based on the following: [((2,000,000 estimated annual security-based swap transactions) / 4,800 participants)) / (365 days/year)] = 1.14, or approximately 1 transaction per day.

The Commission estimates that the initial and ongoing aggregate annualized burden associated with Rule 906(b), as adopted and as proposed to be amended herein, would be 9,600 burden hours, which corresponds to 2 burden hours per participant.[394]

The Commission estimates that the one-time, initial burden for each covered participant to adopt written policies and procedures as required under Rule 906(c), as adopted and as proposed to be amended herein, would be approximately 216 burden hours.[395] This figure is based on the estimated number of hours to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing. In addition, the Commission estimates the burden of maintaining such policies and procedures, including a full review at least annually, as required by Rule 906(c), as adopted and as proposed to be amended herein, would be approximately 120 burden hours for each covered participant.[396] This figure includes an estimate of hours related to reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining internal controls systems, and performing necessary testing. Accordingly,

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394 See Regulation SBSR Adopting Release, Section XXI(G). See also Regulation SBSR Proposing Release, 75 FR at 75257. This figure is based on the following: [(Compliance Clerk at 0.5 hours per report) x (2 reports/year/SDR connection) x (2 SDR connections/participant) x (4,800 participants)] = 9,600 burden hours, which corresponds to 2 burden hours per participant.

395 See Regulation SBSR Adopting Release, Section XXI(G). See also Regulation SBSR Proposing Release, 75 FR at 75257. This figure is based on the following: [(Sr. Programmer at 40 hours) + (Compliance Manager at 40 hours) + (Compliance Attorney at 40 hours) + (Compliance Clerk at 40 hours) + (Sr. Systems Analyst at 32 hours) + (Director of Compliance at 24 hours)] = 216 burden hours per covered participant.

396 See Regulation SBSR Adopting Release, Section XXI(G). See also Regulation SBSR Proposing Release, 75 FR at 75257. This figure is based on the following: [(Sr. Programmer at 8 hours) + (Compliance Manager at 24 hours) + (Compliance Attorney at 24 hours) + (Compliance Clerk at 24 hours) + (Sr. Systems Analyst at 16 hours) + (Director of Compliance at 24 hours)] = 120 burden hours per covered participant.

the Commission estimates that the initial aggregate annualized burden associated with Rule 906(c), as adopted and as proposed to be amended herein, would be 18,480 burden hours, which corresponds to 336 burden hours per covered participant.[397] The Commission estimates that the ongoing aggregate annualized burden associated with Rule 906(c), as adopted and as proposed to be amended herein, would be 6,600 burden hours, which corresponds to 120 burden hours per covered participant.[398]

Therefore, the Commission estimates that the total initial aggregate annualized burden associated with Rule 906, as adopted and as proposed to be amended herein, would be 232,008 burden hours,[399] and the total ongoing aggregate annualized burden would be 219,008 burden hours for all participants.[400]

E. Policies and Procedures of Registered SDRs—Rule 907

1. Rule 907—As Adopted

Rule 907(a), as adopted, requires a registered SDR to establish and maintain written policies and procedures that detail how it will receive and publicly disseminate security-based

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397 See Regulation SBSR Adopting Release, Section XXI(G). This figure is based on the following: [(216 + 120 burden hours) x (55 covered participants)] = 18,480 burden hours.

398 See Regulation SBSR Adopting Release, Section XXI(G). This figure is based on the following: [(120 burden hours) x (55 covered participants)] = 6,600 burden hours.

399 See Regulation SBSR Adopting Release, Section XXI(G). This figure is based on the following: [(4,200 burden hours for registered SDRs under Rule 906(a)) + (199,728 burden hours for participants under Rule 906(a)) + (9,600 burden hours for participants under Rule 906(b)) + (18,480 burden hours for covered participants under Rule 906(c))] = 232,008 burden hours.

400 See Regulation SBSR Adopting Release, Section XXI(G). This figure is based on the following: [(3,080 burden hours for registered SDRs under the proposed amendment to Rule 906(a)) + (199,728 burden hours for participants under the proposed amendment to Rule 906(a)) + (9,600 burden hours for participants under the proposed amendment to Rule 906(b)) + (6,600 burden hours for covered participants under the proposed amendment to Rule 906(c))] = 219,008 burden hours.

swap transaction information. Rule 907(a)(4) requires policies and procedures for assigning "special circumstances" flags to the necessary transaction reports.

Rule 907(c), as adopted, requires a registered SDR to make its policies and procedures available on its website. Rule 907(d), as adopted, requires a registered SDR to review, and update as necessary, the policies and procedures that it is required to have by Regulation SBSR at least annually. Rule 907(e), as adopted, requires a registered SDR to have the capacity to provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to Regulation SBSR and the registered SDR's policies and procedures established thereunder.

In the Regulation SBSR Adopting Release, the Commission estimated that the one-time, initial burden for a registered SDR to adopt written policies and procedures as required under Rule 907 will be approximately 15,000 hours.[401] In the Regulation SBSR Adopting Release, the Commission stated that, drawing on the Commission's experience with other rules that require entities to establish and maintain policies and procedures,[402] this figure is based on the estimated number of hours to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing.[403] In addition, in the Regulation SBSR Adopting Release, the Commission estimated the annual burden of maintaining such policies and procedures, including a full review at least

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401 See Regulation SBSR Adopting Release, Section XXI(H). These burdens are the result of Rule 907 only and do not account for any burdens that result from the SDR Rules. Such burdens are addressed in a separate release. See SDR Adopting Release, Section VIII(D).

402 See supra note 382.

403 See Regulation SBSR Adopting Release, Section XXI(H). This figure also includes time necessary to design and program systems and implement policies and procedures to assign certain UICs, as required by Rule 907(a)(5).

annually, making available its policies and procedures on the registered SDR's website, and information or reports on non-compliance, as required under Rule 907(e), will be approximately 30,000 hours for each registered SDR.[404] As discussed in the Regulation SBSR Proposing Release, this figure includes an estimate of hours related to reviewing existing policies and procedures, making necessary updates, conducting ongoing training, maintaining relevant systems and internal controls systems, performing necessary testing, monitoring participants, and compiling data.

In the Regulation SBSR Adopting Release, the Commission estimated that the initial annualized burden associated with Rule 907 will be approximately 45,000 hours per registered SDR, which corresponds to an initial annualized aggregate burden of approximately 450,000 hours.[405] The Commission further estimated that the ongoing annualized burden associated with Rule 907 will be approximately 30,000 hours per registered SDR,[406] which corresponds to an ongoing annualized aggregate burden of approximately 300,000 hours.[407]

2. Rule 907—Proposed Amendments

The Commission is proposing to revise Rule 907(a)(6) to indicate that a registered SDR's policies and procedures need not contain provisions for obtaining ultimate parent IDs and participant IDs from participants that are platforms or registered clearing agencies. Under the proposed amendments to Rule 901(a) and 901(e), platforms and registered clearing agencies would have the duty to report certain security-based swaps and become participants of registered

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404 See Regulation SBSR Adopting Release, Section XXI(H).

405 This figure is based on the following: [((15,000 burden hours per registered SDR) + (30,000 burden hours per registered SDR)) x (10 registered SDRs)] = 450,000 initial annualized aggregate burden hours during the first year.

406 See Regulation SBSR Adopting Release, Section XXI(H).

407 See id.

SDRs to which they report. Rule 907(a)(6), as adopted, requires a registered SDR to establish and maintain written policies and procedures "[f]or periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any participant(s) with which the participant is affiliated, using ultimate parent IDs and participant IDs." The Commission preliminarily believes that requiring a platform or registered clearing agency to report parent and affiliate information to a registered SDR would not serve any regulatory purpose and, therefore, has proposed to amend Rule 907(a)(6) to indicate that the obligations under Rule 907(a)(6) do not attach to participants that are platforms or a registered clearing agencies. This proposed amendment would not result in any burdens being placed on platforms and registered clearing agencies.

3. Rule 907—Aggregate Total PRA Burdens and Costs

Based on the foregoing, the Commission estimates that the one-time, initial burden for a registered SDR to adopt written policies and procedures as required under Rule 907 will be approximately 15,000 hours. In addition, the Commission estimated the annual burden of maintaining such policies and procedures, including a full review at least annually, making available its policies and procedures on the registered SDR's website, and information or reports on non-compliance, as required under Rule 907(e), will be approximately 30,000 hours for each registered SDR. The Commission therefor estimates that the initial annualized burden associated with Rule 907 will be approximately 45,000 hours per registered SDR, which corresponds to an initial annualized aggregate burden of approximately 450,000 hours.[408] The Commission further estimated that the ongoing annualized burden associated with Rule 907 will be approximately

[408] This figure is based on the following: [((15,000 burden hours per registered SDR) + (30,000 burden hours per registered SDR)) x (10 registered SDRs)] = 450,000 initial annualized aggregate burden hours during the first year.

30,000 hours per registered SDR,[409] which corresponds to an ongoing annualized aggregate burden of approximately 300,000 hours.[410]

F. Cross-Border Matters—Rule 908

1. Rule 908—As Adopted

Rule 908(a), as adopted, defines when a security-based swap transaction is subject to regulatory reporting and/or public dissemination. Specifically, Rule 908(a)(1)(i), as adopted, provides that a security-based swap shall be subject to regulatory reporting and public dissemination if "[t]here is a direct or indirect counterparty that is a U.S. person on either or both sides of the transaction." Rule 908(a)(1)(ii), as adopted, provides that a security-based swap shall be subject to regulatory reporting and public dissemination if "[t]he security-based swap is submitted to a clearing agency having its principal place of business in the United States." Rule 908(a)(2), as adopted, provides that a security-based swap not included within the above provisions would be subject to regulatory reporting but not public dissemination "if there is a direct or indirect counterparty on either or both sides of the transaction that is a registered security-based swap dealer or a registered major security-based swap participant."

Regulation 908(b), as adopted, defines when a person might incur obligations under Regulation SBSR. Rule 908(b) provides that, notwithstanding any other provision of Regulation

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409 See Regulation SBSR Proposing Release, 75 FR at 75259. This figure is based on the following: [(Sr. Programmer at 3,333 hours) + (Compliance Manager at 6,667 hours) + (Compliance Attorney at 10,000 hours) + (Compliance Clerk at 5,000 hours) + (Sr. System Analyst at 3,333 hours) + (Director of Compliance at 1,667 hours)] = 30,000 burden hours per registered SDR.

410 See Regulation SBSR Proposing Release, 75 FR at 75259. This figure is based on the following: [(30,000 burden hours per registered SDR) x (10 registered SDRs)] = 300,000 ongoing, annualized aggregate burden hours.

SBSR, a person shall not incur any obligation under Regulation SBSR unless it is a U.S. person, a registered security-based swap dealer, or a registered major security-based swap participant.

The Commission stated its belief in the Regulation SBSR Adopting Release that Rules 908(a) and 908(b) do not impose any collection of information requirements. To the extent that a security-based swap transaction or person is subject to Rule 908(a) or 908(b), respectively, the collection of information burdens are calculated as part of the underlying rule (e.g., Rule 901, which imposes the basic duty to report security-based swap transaction information).

Rule 908(c), as adopted, sets forth the requirements surrounding requests for substituted compliance. Rule 908(c)(1) sets forth the general rule that compliance with Title VII's regulatory reporting and public dissemination requirements may be satisfied by compliance with the rules of a foreign jurisdiction that is the subject of a Commission order described in Rule 908(c)(2), provided that at least one of the direct counterparties is either a non-U.S. person or a foreign branch.

Rule 908(c)(2)(ii), as adopted, applies to any person that requests a substituted compliance determination with respect to regulatory reporting and public dissemination of security-based swaps. In connection with each request, the requesting party must provide the Commission with any supporting documentation that the entity believes is necessary for the Commission to make a determination, including information demonstrating that the requirements applied in the foreign jurisdiction are comparable to the Commission's and describing the methods used by relevant foreign financial regulatory authorities to monitor compliance with those requirements. In the Regulation SBSR Adopting Release, the Commission estimated that the total paperwork burden associated with submitting a request for a substituted compliance determination with respect to regulatory reporting and public dissemination will be

approximately 1,120 hours, plus $1,120,000 for 14 requests.[411] The Commission noted that this estimate includes all collection burdens associated with the request, including burdens associated with analyzing whether the regulatory requirements of the foreign jurisdiction impose a comparable, comprehensive system for the regulatory reporting and public dissemination of all security-based swaps. Furthermore, the Commission observed that this estimate assumes that each request will be prepared de novo, without any benefit of prior work on related subjects. The Commission noted, however, that as such requests are developed with respect to certain jurisdictions, the cost of preparing such requests with respect to other foreign jurisdictions could decrease.[412]

In the Regulation SBSR Adopting Release, the Commission estimated, assuming ten requests in the first year, that the aggregated burden for the first year will be 800 hours, plus $800,000 for the services of outside professionals.[413] The Commission estimated that it would receive 2 requests for substituted compliance determinations pursuant to Rule 908(c)(2)(ii) in each subsequent year. Assuming the same approximate time and costs, the Commission stated

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411 The Commission staff estimates that the paperwork burden associated with making a substituted compliance request pursuant to Rule 908(c)(2)(ii) will be approximately 80 of in-house counsel time, plus $80,000 for the services of outside professionals (based on 200 hours of outside counsel time x $400). See Cross-Border Proposing Release, 78 FR at 31110.

412 If and when the Commission grants a request for substituted compliance, subsequent applications might be able to leverage work done on the initial application. However, the Commission is unable to estimate the amount by which the cost could decrease without knowing the extent to which different jurisdictions have similar regulatory structures.

413 The Commission staff estimates that the paperwork burden associated with making a substituted compliance request pursuant to Rule 242.908(c)(2)(ii) will be up to approximately 800 hours (80 hours of in-house counsel time x 10 respondents), plus $800,000 for the services of outside professionals (based on 200 hours of outside counsel time x $400 x 10 respondents). See Cross-Border Proposing Release, 78 FR at 31110.

that the aggregate burden for each year following the first year will be up to 160 hours of company time and $160,000 for the services of outside professionals.[414]

2. Rule 908—Proposed Amendments

The Commission is proposing to amend Rule 908(b) to make it consistent with 901(a)(1) which would provide that platforms and registered clearing agencies would have the duty to report in certain circumstances. The Commission proposes to amend Rule 908(b) to provide: "Notwithstanding any other provision of [Regulation SBSR], a person shall not incur any obligation under [Regulation SBSR] unless it is: (1) A U.S. person; (2) A registered security-based swap dealer or registered major security-based swap participant; (3) A platform; or (4) A registered clearing agency." The Commission preliminarily believes that, since the proposed amendment to Rule 908(b) simply makes it clear that platforms and registered clearing agencies may have obligations under Regulation SBSR, there are no burdens associated with the amendment to Rule 908(b). In addition, to the extent that a platform or registered clearing agency does have obligations under Regulation SBSR, those burdens are discussed under the applicable rule.

3. Rule 908—Aggregate Total Burdens and Costs

Based on the foregoing, the Commission estimates the following aggregate total PRA burdens and costs, by category of entity, resulting from Rule 908, as adopted and as proposed to be amended herein.

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414 The Commission staff estimates that the paperwork burden associated with making a substituted compliance request pursuant to Rule 908(c)(2)(ii) would be up to approximately 160 hours (80 hours of in-house counsel time x two respondents) + plus $160,000 for the services of outside professionals (based on 200 hours of outside counsel time x $400 x two respondents). See Cross-Border Proposing Release, 78 FR at 31110.

The Commission has estimated that the total paperwork burden associated with submitting a request for a substituted compliance determination with respect to regulatory reporting and public dissemination will be approximately 1,120 hours, plus $1,120,000 for 14 requests.[415] The Commission further estimated that the aggregated burden for the first year will be 800 hours, plus $800,000 for the services of outside professionals.[416] The Commission estimated that it would receive 2 requests for substituted compliance determinations pursuant to Rule 908(c)(2)(ii) in each subsequent year. Assuming the same approximate time and costs, the Commission stated that the aggregate burden for each year following the first year will be up to 160 hours of company time and $160,000 for the services of outside professionals.[417]

G. Request for Comments

Pursuant to 44 U.S.C. 3505(c)(2)(B), the Commission solicits comment to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information shall have practical utility;

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415 The Commission staff estimates that the paperwork burden associated with making a substituted compliance request pursuant to Rule 908(c)(2)(ii) will be approximately 80 of in-house counsel time, plus $80,000 for the services of outside professionals (based on 200 hours of outside counsel time x $400). See id. at 31110

416 The Commission staff estimates that the paperwork burden associated with making a substituted compliance request pursuant to Rule 908(c)(2)(ii) will be up to approximately 800 hours (80 hours of in-house counsel time x 10 respondents), plus $800,000 for the services of outside professionals (based on 200 hours of outside counsel time x $400 x 10 respondents). See Cross-Border Proposing Release, 78 FR at 31110.

417 The Commission staff estimates that the paperwork burden associated with making a substituted compliance request pursuant to Rule 908(c)(2)(ii) would be up to approximately 160 hours (80 hours of in-house counsel time x 2 respondents) + plus $160,000 for the services of outside professionals (based on 200 hours of outside counsel time x $400 x 2 respondents). See Cross-Border Proposing Release, 78 FR at 31110.

2. Evaluate the accuracy of our estimate of the burden of the proposed collection of information;
3. Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and
4. Evaluate whether there are ways to minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090, with reference to File Number S7-03-15. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File Number S7-03-15 and be submitted to the Securities and Exchange Commission, Office of FOIA/PA Operations, 100 F Street NE., Washington, DC 20549-2736. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

X. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA)[418] the Commission must advise the OMB whether the proposed regulation

[418] Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. and 15 U.S.C. and as a note to 5 U.S.C. 601).

constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation.

The Commission requests comment on the potential impact of the proposed rules and amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

XI. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act of 1980 ("RFA")[419] requires the Commission to undertake an initial regulatory flexibility analysis of the proposed rules on "small entities." Section 605(b) of the RFA[420] provides that this requirement shall not apply to any proposed rule or proposed rule amendment which, if adopted, would not have a significant economic impact on a substantial number of small entities. Pursuant to 5 U.S.C. 605(b), the Commission hereby certifies that the proposed rules and rule amendments to Regulation SBSR would not, if adopted, have a significant economic impact on a substantial number of small entities. In developing these proposed amendments to Regulation SBSR, the Commission has considered their potential impact on small entities. For purposes of Commission rulemaking in connection with the RFA, a small entity includes: (1) when used with reference to an "issuer" or a "person," other than an investment company, an "issuer" or "person" that, on the last day of its most recent fiscal year, had total assets of $5 million or less;[421] or (2) a broker-dealer with total

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419 5 U.S.C. 603(a).

420 5 U.S.C. 605(b).

421 See 17 CFR 240.0-10(a).

capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a-5(d) under the Exchange Act,[422] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[423]

The Commission believes, based on input from security-based swap market participants and its own information, that the majority of security-based swap transactions have at least one counterparty that is either a security-based swap dealer or major security-based swap participant, and that these entities—whether registered broker-dealers or not—would exceed the thresholds defining "small entities" set out above. Accordingly, neither of these types of entities would likely qualify as small entities for purposes of the RFA. Moreover, even in cases where one of the counterparties to a security-based swap is not covered by these definitions, the Commission believes that any such entities would not be "small entities" as defined in Commission Rule 0-10. Feedback from industry participants and the Commission's own information about the security-based swap market indicate that only persons or entities with assets significantly in excess of $5 million participate in the security-based swap market.[424] Given the magnitude of this figure, and the fact that it so far exceeds $5 million, the Commission continues to believe that the vast

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422 17 CFR 240.17a-5(d).

423 See 17 CFR 240.0-10(c).

424 For example, as revealed in a current survey conducted by Office of the Comptroller of the Currency, 99.9% of CDS positions by U.S. commercial banks are held by those with assets over $80 billion. See Office of the Comptroller of the Currency, "Quarterly Report on Bank Trading and Derivatives Activities First Quarter 2014" (2014).

majority of, if not all, security-based swap transactions are between large entities for purposes of the RFA.

In addition, the Commission believes that persons that are likely to register as SDRs would not be small entities. Based on input from security-based swap market participants and its own information, the Commission continues to believe that most if not all registered SDRs would be part of large business entities, and that all registered SDRs would have assets exceeding $5 million and total capital exceeding $500,000. Therefore, the Commission continues to believe that no registered SDRs would be small entities.

The proposed rules and rule amendments would apply to all platforms on which security-based swaps are executed and registered clearing agencies that clear security-based swaps. Based on the Commission's existing information about the security-based swap market and the entities likely to be platforms and registered clearing agencies, the Commission preliminarily believes that these entities would not be small entities. The Commission preliminarily believes that most, if not all, of the platforms and registered clearing agencies would be large business entities or subsidiaries of large business entities, and that all platforms would have assets in excess of $5 million and annual receipts in excess of $7,000,000. Therefore, the Commission preliminarily believes that no platforms or registered clearing agencies would be small entities.

The Commission encourages written comments regarding this certification. The Commission solicits comment as to whether the proposed rules and amendments to Regulation SBSR could have an effect on small entities that has not been considered. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

XII. Statutory Basis and Text of Proposed Rules

Pursuant to the Exchange Act, 15 U.S.C. 78a et seq., and particularly Sections 3C(e), 11A(b), 13(m)(1), 13A(a), 23(a)(1), 30(c), and 36(a), 15 U.S.C. §§ 78c-3(e), 78k-1(b), 78m(m)(1), 78m-1(a), 78w(a)(1), 78dd(c), and 78mm(a) thereof, the Commission is proposing to amend Rules 900, 901, 905, 906, 907, and 908 of Regulation SBSR under the Exchange Act, 17 CFR 242.900, 242.901, 242.905, 242.906, 242.907, and 242.908.

List of Subjects in 17 CFR Part 242

Brokers, Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, and as amended elsewhere in this issue of the Federal Register, the Commission proposes to further amend 17 CFR part 242 as follows:

PART 242—REGULATIONS M, SHO, ATS, AC, NMS, AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

1. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k-l(c), 78*l*, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd-1, 78mm, 80a-23, 80a-29, and 80a-37, unless otherwise noted.

2. In § 242.900, revise paragraph (u) and add paragraph (tt) to read as follows:

Regulation SBSR-Regulatory Reporting and Public Dissemination of Security-Based Swap Information

§ 242.900 Definitions.

* * * * *

(u) Participant, with respect to a registered security-based swap data repository, means:

(1) A counterparty, that meets the criteria of § 242.908(b), of a security-based swap that is reported to that registered security-based swap data repository to satisfy an obligation under § 242.901(a);

(2) A platform that reports a security-based swap to that registered security-based swap data repository to satisfy an obligation under § 242.901(a); or

(3) A registered clearing agency that is required to report to that registered security-based swap data repository whether or not it has accepted a security-based swap for clearing pursuant to § 242.901(e)(1)(ii).

* * * * *

(tt) Widely accessible, as used in paragraph (cc) of this section, means widely available to users of the information on a non-fee basis.

3. In § 242.901 add paragraphs (a)(1), (a)(2)(i), (a)(3), and (e)(1)(ii) and revise paragraphs (e)(2) and (h) to read as follows:

§ 242.901 Reporting obligations.

(a) * * *

(1) Platform-executed security-based swaps that will be submitted to clearing. If a security-based swap is executed on a platform and will be submitted to clearing, the platform on which the transaction was executed shall report to a registered security-based swap data repository the information required by §§ 242.901(c), 901(d)(1), 901(d)(9), and 901(d)(10).

(2) * * *

(i) Clearing transactions. For a clearing transaction, the reporting side is the registered clearing agency that is a counterparty to the transaction.

* * * * *

(3) Notification to registered clearing agency. A person who, under § 242.901(a)(1) or § 242.901(a)(2)(ii), has a duty to report a security-based swap that has been submitted to clearing at a registered clearing agency shall promptly provide that registered clearing agency with the transaction ID of the submitted security-based swap and the identity of the registered security-based swap data repository to which the transaction will be reported or has been reported.

* * * * *

(e) * * *

(1) * * *

(ii) Acceptance for clearing. A registered clearing agency shall report whether or not it has accepted a security-based swap for clearing.

(2) All reports of life cycle events and adjustments due to life cycle events shall, within the timeframe specified in paragraph (j) of this section, be reported to the entity to which the original security-based swap transaction will be reported or has been reported and shall include the transaction ID of the original transaction.

* * * * *

(h) Format of reported information. A person having a duty to report shall electronically transmit the information required under this section in a format required by the registered security-based swap data repository to which it reports.

* * * * *

4. In § 242.905, revise paragraph (a) to read as follows:

§ 242.905 Correction of errors in security-based swap information.

(a) Duty to correct. Any counterparty or other person having a duty to report a security-based swap that discovers an error in information previously reported pursuant to §§ 242.900 through 242.909 shall correct such error in accordance with the following procedures:

(1) If a person that was not the reporting side for a security-based swap transaction discovers an error in the information reported with respect to such security-based swap, that person shall promptly notify the person having the duty to report the security-based swap of the error; and

(2) If the person having the duty to report a security-based swap transaction discovers an error in the information reported with respect to a security-based swap, or receives notification from a counterparty of an error, such person shall promptly submit to the entity to which the security-based swap was originally reported an amended report pertaining to the original transaction report. If the person having the duty to report reported the initial transaction to a registered security-based swap data repository, such person shall submit an amended report to the registered security-based swap data repository in a manner consistent with the policies and procedures contemplated by § 242.907(a)(3).

* * * * * *

5. In § 242.906, revise paragraphs (b) and (c) to read as follows:

§ 242.906 Other duties of participants.

* * * * *

(b) Duty to provide ultimate parent and affiliate information. Each participant of a registered security-based swap data repository that is not a platform or a registered clearing agency shall provide to the registered security-based swap data repository information sufficient to identify its ultimate parent(s) and any affiliate(s) of the participant that also are participants of

the registered security-based swap data repository, using ultimate parent IDs and counterparty IDs. Any such participant shall promptly notify the registered security-based swap data repository of any changes to that information.

(c) Policies and procedures of security-based swap dealers, major security-based swap participants, registered clearing agencies, and platforms. Each participant of a registered security-based swap data repository that is a security-based swap dealer, major security-based swap participant, registered clearing agency, or platform shall establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that it complies with any obligations to report information to a registered security-based swap data repository in a manner consistent with §§ 242.900 through 242.909. Each such participant shall review and update its policies and procedures at least annually.

6. In § 242.907, revise paragraph (a)(6) to read as follows:

§ 242.907 Policies and procedures of registered security-based swap data repositories.

(a) * * *

(6) For periodically obtaining from each participant other than a platform or a registered clearing agency information that identifies the participant's ultimate parent(s) and any participant(s) with which the participant is affiliated, using ultimate parent IDs and counterparty IDs.

* * * * *

7. In § 242.908, revise paragraphs (b)(1) and (2) and add paragraphs (b)(3) and (4) to read as follows:

§ 242.908 Cross-border matters

* * * * *

(b) * * *

(1) A U.S. person;

(2) A registered security-based swap dealer or registered major security-based swap participant;

(3) A platform; or

(4) A registered clearing agency.

* * * * *

By the Commission.

Brent J. Fields
Secretary

Dated: February 11, 2015

Note: The following appendix will not appear in the Code of Federal Regulations:

Appendix

Reopening of Comment Periods for Certain Rulemaking Releases and Policy Statement Applicable to Security-Based Swaps Proposed Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Action [Release No. 34-69491; File No. S7-34-10]

http://www.sec.gov/comments/s7-34-10/s73410.shtml

- E-mail message from Christopher Young, Director, U.S. Public Policy, ISDA, to Thomas Eady, SEC, dated March 27, 2014 ("ISDA III").

- E-mail message from Marisol Collazo, Chief Executive Officer, DTCC Data Repository US LLC, to Thomas Eady and Michael J. Gaw, SEC, dated March 24, 2014 (with attached letters submitted to the CFTC regarding CME Rule 1001) ("DTCC VIII").

- Letter from Kim Taylor, President, Clearing, CME Group, and Kara L. Dutta, General Counsel, ICE Trade Vault ("ICE"), LLC, to Elizabeth M. Murphy, Secretary, Commission, dated November 19, 2013 ("CME/ICE Letter").

- Letter from Kara L. Dutta, General Counsel, ICE Trade Vault, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated September 23, 2013 ("ICE Letter").

- Letter from Larry E. Thompson, General Counsel, Depository Trust & Clearing Corporation ("DTCC"), to Elizabeth M. Murphy, Secretary, SEC, dated August 21, 2013 ("DTCC VI").

- Letter from Jeff Gooch, Head of Processing, Markit, Chair and CEO, MarkitSERV, to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 ("MarkitSERV IV").

- Letter from Kathleen Cronin, Senior Managing Director, General Counsel, CME Group Inc., to Elizabeth M. Murphy, Secretary, Commission, dated August 21, 2013 ("CME II").

Comments on Proposed Rule: Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information [Release No. 34-63346; File No. S7-34-10]

http://www.sec.gov/comments/s7-34-10/s73410.shtml

- Letter from Larry E. Thompson, General Counsel, the Depository Trust & Clearing Corporation ("DTCC"), to the Honorable Mary L. Schapiro, Chairman, Commission, and the Honorable Gary Gensler, Chairman, CFTC, dated June 3, 2011 ("DTCC IV").

- Letter from John R. Gidman, Association of Institutional Investors, to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated June 2, 2011 ("Institutional Investors Letter"). [Note: This comment letter is in fact dated "June 2, 2010," but the Commission deems the true date to be June 2, 2011. The comment letter references proposed Regulation SBSR, which the Commission issued in November 2010, and thus the comment could not have been submitted in June 2010.]

- Letter from Richard M. Whiting, Executive Director and General Counsel, FSR, to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated May 12, 2011 ("Roundtable Letter").

- MFA Recommended Timeline for Adoption and Implementation of Final Rules Pursuant to Title VII of the Dodd-Frank Act ("MFA Recommended Timeline"), attached to letter from Richard H. Baker, President and Chief Executive Officer, MFA, to the Honorable Mary L. Schapiro, Chairman, Commission, dated March 24, 2011.

- Letter from Edward J. Rosen, Cleary Gottlieb Steen & Hamilton LLP, on behalf of Bank of America Merrill Lynch, BNP Paribas, Citi, Credit Agricole Corporate and Investment Bank, Credit Suisse Securities (USA), Deutsche Bank AG, Morgan Stanley, Nomura Securities International, Inc., PNC Bank, Société General, UBS Securities LLC, and Wells Fargo & Company, to Elizabeth M. Murphy, Secretary, Commission, and David A. Stawick, Secretary, CFTC, dated February 14, 2011 ("Cleary I").

- Letter from Andrew Downes, Managing Director, UBS Investment Bank, and James B. Fuqua, Managing Director, UBS Securities LLC, to Elizabeth M. Murphy, Secretary, Commission, dated February 7, 2011 ("UBS Letter").

- Letter from Richard G. Ketchum, Chairman and Chief Executive Officer, Financial Industry Regulatory Authority ("FINRA"), to Elizabeth M. Murphy, Secretary, Commission, dated January 27, 2011 ("FINRA Letter").

- Letter from Dennis M. Kelleher, President and Chief Executive Officer, Stephen W. Hall, Securities Specialist, and Wallace C. Turbeville, Derivatives Specialist, Better Markets, Inc. ("Better Markets"), to Elizabeth M. Murphy, Secretary, Commission, dated January 24, 2011 ("Better Markets II").

- Letter from Kevin Gould, President, Markit North America, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated January 24, 2011 ("Markit I").

- Letter from Jeff Gooch, Chief Executive Officer, MarkitSERV LLC, to Elizabeth M. Murphy, Secretary, Commission, dated January 24, 2011 ("MarkitSERV I").

- Letter from Larry E. Thompson, General Counsel, DTCC, dated January 18, 2011 ("DTCC II").

- Letter from Karrie McMillan, General Counsel, ICI, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 ("ICI I").

- Letter from Robert Pickel, Executive Vice Chairman, ISDA, and Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 ("ISDA/SIFMA I"), and accompanying study, "Block trade reporting for over-the-counter derivatives markets" ("ISDA/SIFMA Block Trade Study").

- Letter from Stuart J. Kaswell, Executive Vice President, Managing Director, and General Counsel, Managed Funds Association, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 ("MFA I").

- Letter from Lee H. Olesky, Chief Executive Officer, and Douglas L. Friedman, General Counsel, Tradeweb Markets LLC, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 ("Tradeweb Letter").

- Letter from Gus Sauter, Managing Director and Chief Investment Officer, and John Hollyer, Principal and Head of Risk Management and Strategy Analysis, Vanguard, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 ("Vanguard Letter").

- Letter from Julian Harding, Chairman, WMBAA, to Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 ("WMBAA II").

- Letter from R. Glenn Hubbard, Co-Chair, John L. Thornton, Co-Chair, and Hal S. Scott, Director, Committee on Capital Markets Regulation, David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated January 18, 2011 ("CCMR I").

- Letter from Spencer Bachus, Ranking Member, Committee on Financial Services, and Frank Lucas, Ranking Member, Committee on Agriculture, U.S. House of Representatives, to The Honorable Timothy Geithner, Secretary, Department of Treasury, the Honorable Gary Gensler, Chairman, CFTC, the Honorable Mary Schapiro, Chairman, Commission, and the Honorable Ben Bernanke, Chairman, Federal Reserve, dated December 16, 2010 ("Bachus/Lucas Letter").

- Letter from Chris Barnard, dated December 3, 2010 ("Barnard I").

Re-Opening of Comment Periods for Certain Rulemaking Releases and Policy Statement Applicable to Security-Based Swaps Proposed Pursuant to the Securities

Comments on Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act
[Release No. 34-67177; File No. S7-05-12]

- Letter from Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, to Elizabeth M. Murphy, Secretary, Commission, dated August 13, 2012 ("SIFMA II").

Comments on Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants
(Release No. 34-69490; File No. S7-02-13)

http://www.sec.gov/comments/s7-02-13/s70213.shtml

- Letter from Karel Engelen, Senior Director, Head of Data, Reporting & FpML, ISDA, to Elizabeth M. Murphy, Secretary, Commission, dated November 14, 2014 ("ISDA IV").

Real-Time Reporting: Title VII Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act

http://www.sec.gov/comments/df-title-vii/real-time-reporting/real-time-reporting.shtml

- Letter from Gerald Donini, Barclays Capital, Inc., to David A Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, SEC, dated February 3, 2011 ("Barclays I").

- Letter from James Hill, Managing Director, Morgan Stanley, to David A Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, SEC, dated November 1, 2010 ("Morgan Stanley Letter").

Comments on Reporting of Security-Based Swap Transaction Data
[Release No. 34-63094; File No. S7-28-10]

http://www.sec.gov/comments/s7-28-10/s72810.shtml

- Letter from Larry E. Thompson, General Counsel, DTCC, to Elizabeth M. Murphy, Secretary, Commission, dated December 20, 2010 ("DTCC I").

- Letter from Robert Pickel, Executive Vice Chairman, ISDA, to Elizabeth Murphy, Secretary, Commission, dated December 10, 2010 ("ISDA I").

Comments on Proposed Rule: Security-Based Swap Data Repository Registration, Duties, and Core Principles
[Release No. 34-63347; File No. S7-35-10]

http://www.sec.gov/comments/s7-35-10/s73510.shtml

- Letter from Larry E. Thompson, General Counsel, DTCC, to Elizabeth M. Murphy, Secretary, Commission, dated January 24, 2011 ("DTCC III").

Comments on Joint Public Roundtable on International Issues relating to the Implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act
[Release No. 34-64939; File No. 4-636]

http://www.sec.gov/comments/4-636/4-636.shtml

- Letter from Jeff Gooch, Chief Executive Officer, MarkitSERV, to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated September 19, 2011 ("MarkitSERV III").

Roundtable Transcripts

- Joint CFTC-SEC Staff Roundtable On Implementation, May 2, 2011. Available at:

  http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/csjac_transcript050211.pdf ("Implementation Roundtable, Day 1").

- Joint CFTC-SEC Staff Roundtable on Implementation, May 3, 2011. Available at:

  http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/csjac_transcript050311.pdf ("Implementation Roundtable, Day 2").

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