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

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 242

[Release No. 34–63346; File No. S7–34–10]

RIN 3235–AK80

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

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: In accordance with Section 763 ("Section 763") and Section 766 ("Section 766") of Title VII ("Title VII") of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), the Securities and Exchange Commission ("SEC" or "Commission") is proposing Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information ("Regulation SBSR") under the Securities Exchange Act of 1934 ("Exchange Act").[1] Proposed Regulation SBSR would provide for the reporting of security-based swap information to registered security-based swap data repositories or the Commission and the public dissemination of security-based swap transaction, volume, and pricing information. Registered security-based swap data repositories would be required to establish and maintain certain policies and procedures regarding how transaction data are reported and disseminated, and participants of registered security-based swap data repositories that are security-based swap dealers or major security-based swap participants would be required to establish and maintain policies and procedures that are reasonably designed to ensure that they comply with applicable reporting obligations. Finally, proposed Regulation SBSR also would require a registered SDR to register with the Commission as a securities information processor on existing Form SIP.

DATES: Comments should be received on or before January 18, 2011.

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/final.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7– 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 in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–34–10. 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 Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 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.

FOR FURTHER INFORMATION CONTACT: Michael Gaw, Assistant Director, at (202) 551–5602, David Michehl, Senior Special Counsel, at (202) 551–5627, Sarah Albertson, Special Counsel, at (202) 551–5647, Natasha Cowen, Special Counsel, at (202) 551–5652, Yvonne Fraticelli, Special Counsel, at (202) 551–5654, Geoffrey Pemble, Special Counsel, at (202) 551–5628, Brian Trackman, Special Counsel, at (202) 551–5616, Mia Zur, Special Counsel, at (202) 551–5638, Kathleen Gray, Attorney, at (202) 551–5305, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is proposing Regulation SBSR under the Exchange Act providing for the reporting of security-based swap information to registered security-based swap data repositories or the Commission, and the public dissemination of security-based swap transaction, volume, and pricing information. The Commission is soliciting comments on all aspects of the proposed rules and will carefully consider any comments received.

I. Introduction

A. Background

On July 21, 2010, the President signed the Dodd-Frank Act into law.[2] The Dodd-Frank Act was enacted to, among other things, promote the financial stability of the United States by improving accountability and transparency in the financial system.[3] Title VII of the Dodd-Frank Act provides the Commission and the Commodity Futures Trading Commission ("CFTC") with the authority to regulate over-the-counter ("OTC") derivatives in light of the recent financial crisis, which demonstrated the need for enhanced regulation in the OTC derivatives markets. The Dodd-Frank Act is intended to close loopholes in the existing regulatory structure and to provide the Commission and the CFTC with effective regulatory tools to oversee the OTC derivatives markets, which have grown exponentially in recent years and are capable of affecting significant sectors of the U.S. economy. The primary goals of Title VII, among others, are to increase the transparency and efficiency of the OTC derivatives markets and to reduce the potential for counterparty and systemic risk.[4]

The Dodd-Frank Act provides that the CFTC will regulate "swaps," the Commission will regulate "security-based swaps" ("SBSs"), and the CFTC and the Commission will jointly regulate "mixed swaps."[5] The Dodd-

[1] 15 U.S.C. 78a *et seq.* All references in this release to the Exchange Act refer to the Securities Exchange Act of 1934, as amended by the Dodd-Frank Act.

[2] The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111–203, H.R. 4173).

[3] *See id.* at Preamble.

[4] *See* "Financial Regulatory Reform—A New Foundation: Rebuilding Financial Supervision and Regulation," U.S. Department of the Treasury, pp. 47–48 (June 17, 2009).

[5] Section 712(d) of the Dodd-Frank Act provides that the Commission and the CFTC, in consultation with the Board of Governors of the Federal Reserve System ("Federal Reserve"), shall jointly further define the terms "swap," "security-based swap," "swap dealer," "security-based swap dealer," "major swap participant," "major security-based swap participant," "eligible contract participant," and "security-based swap agreement." These terms are defined in Sections 721 and 761 of the Dodd-Frank Act and, with respect to the term "eligible contract participant," in Section 1a(18) of the Commodity Exchange Act ("CEA"), 7 U.S.C. 1a(18), as re-designated and amended by Section 721 of the Dodd-Frank Act. Further, Section 721(c) of the Dodd-Frank Act requires the CFTC to adopt a rule to further define the terms "swap," "swap dealer," "major swap participant," and "eligible contract participant," and Section 761(b) of the Dodd-Frank Act requires the Commission to adopt a rule to further define the terms "security-based swap," "security-based swap dealer," "major security-based swap participant," and "eligible contract participant," with regard to SBSs, for the purpose of including transactions and entities that have been structured to evade Title VII of the Dodd-Frank Act. Finally, Section 712(a) of the Dodd-Frank Act provides that the Commission and CFTC, after consultation with the Federal Reserve, shall

Frank Act amends the Exchange Act to require the Commission to adopt rules providing for, among other things (1) the reporting of SBSs to a registered security-based swap data repository ("SDR") [6] or to the Commission; and (2) real-time public dissemination of SBS transaction, volume, and pricing information.[7] To fulfill these requirements, the Commission today is proposing Regulation SBSR, which would be comprised of Rules 900 to 911 under the Exchange Act. In preparation for the rulemakings required by the Dodd-Frank Act, the Commission and the CFTC held a joint public roundtable (the "Market Data Roundtable") on September 14, 2010, to gain further insight into many of the issues addressed in this proposal.[8] In addition, the Commission has offered the opportunity for the public to express its views on the Commission rulemakings required by the Dodd-Frank prior to proposing rules.[9] The rules proposed today generally take into account the views expressed at the Market Data Roundtable, as well as any comments received.

In a separate release, the Commission is today proposing new rules under the Exchange Act governing the security-based swap data repository registration process, duties, and core principles.[10] Proposed Rules 13n–1 through 13n–11 under the Exchange Act would, among other things, require SDRs to comply with the requirements and core principles described in Section 13(n) of the Exchange Act. An SDR also would be required to appoint a chief compliance officer and specify the duties of the chief compliance officer.

Taken together, the rules that the Commission proposes today would establish comprehensive regulation of SBS data and thus provide transparency for SBSs to regulators and the markets. The proposed rules would require SBS transaction information to be (1) provided to registered SDRs in accordance with uniform data standards; (2) verified and maintained by registered SDRs, which would serve as secure, centralized recordkeeping facilities that are accessible by regulators and relevant authorities; and (3) publicly disseminated in a timely fashion by registered SDRs. In combination, these proposed rules are designed to promote transparency and efficiency in the SBS markets and create an infrastructure to assist the Commission and other regulators in performing their market oversight functions.

In proposing these rules, the Commission is mindful that there may be differences between the SBS market and the other securities markets that the Commission regulates. For example, though the marketplace has developed standardized terms for various types of SBSs, contracts are nevertheless customizable. Furthermore, unlike bonds or equity securities, SBSs are not today readily fungible. The liquidity characteristics of SBSs also may differ in comparison with other markets. Relative to the overall equity markets, SBSs trade much less frequently, though the trading frequency of some illiquid equities would be comparable to that of some SBSs. The liquidity of SBSs compared to the bond market depends on the specifics of the SBS and the bond (*e.g.,* Treasury, corporate, municipal). Many bonds do not have standardized SBS analogs and would therefore be more liquid than bespoke customizable SBS contracts that would function as the analog. But some market participants have found the SBSs written on some issuers and securities to be more liquid and readily tradable during certain periods of time than the underlying securities themselves.

Another notable distinction is that the SBS market does not generally have the equivalent of a "retail" segment characterized by a high-volume of small-sized trades. Though some swaps on some interest rates, indices, and currencies may support high volumes, many SBSs trade infrequently. For example, an analysis by the staff of trading in single-name credit default swaps ("CDS") show that approximately 90% of single-name CDS on corporate issuers trade at an average of five times or less per day, with an average trade size of over $5 million.[11] This same analysis shows that 89% of single-name CDS on sovereign issuers trade at an average of ten times or less per day, with an average trade size of over $12 million.

The Commission also is mindful that, both over time and as a result of Commission proposals to implement the Dodd-Frank Act, the further development of the SBS market may alter some of the specific calculus for future regulation of reporting and real-time public dissemination of SBS transaction information. During the process of implementing the Dodd-Frank Act and beyond, the Commission will therefore closely monitor developments in the SBS market.

B. Overview of Security-Based Swap Reporting and Dissemination Requirements in the Dodd-Frank Act

1. Security-Based Swap Reporting Requirements

The Dodd-Frank Act adds several provisions to the Exchange Act that require the reporting of information relating to SBSs. Section 3C(e) of the Exchange Act [12] requires the Commission to adopt rules that provide for the reporting of SBS data as follows: (1) SBSs entered into before the date of enactment of Section 3C shall be reported to a registered SDR or the Commission no later than 180 days after the effective date of Section 3C (*i.e.,* 540 days after the enactment of the Dodd-Frank Act); and (2) SBSs entered into on or after the date of enactment of Section 3C shall be reported to a registered SDR or to the Commission no later than the later of (1) 90 days after the effective date of Section 3C (*i.e.,* 450 days after the enactment of the Dodd-Frank Act),

jointly prescribe regulations regarding "mixed swaps," as may be necessary to carry out the purposes of Title VII. To assist the Commission and CFTC in further defining the terms specified above, and to prescribe regulations regarding "mixed swaps" as may be necessary to carry out the purposes of Title VII, the Commission and the CFTC sought comment from interested parties. *See* Securities Exchange Act Release No. 62717 (August 13, 2010), 75 FR 51429 (August 20, 2010) (File No. S7–16–10) (advance joint notice of proposed rulemaking regarding definitions contained in Title VII of the Dodd-Frank Act) ("Definitions Release").

[6] A SDR is "any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for security based swaps." *See* Section 3(a)(75) of the Exchange Act, 15 U.S.C. 78c(a)(75). The Commission is also proposing today new Rules 13n–1 through 13n–11 under the Exchange Act relating to the SDR registration process, the duties of SDRs, and the core principles for operating a registered SDR. *See* Securities Exchange Act Release No. 63347 (November 19, 2010) ("SDR Registration Proposing Release").

[7] Rules governing the reporting and dissemination of swaps are the subject of a separate rulemaking by the CFTC.

[8] The Commission and the CFTC solicited comments on the Market Data Roundtable. *See* Securities Exchange Act Release No. 62863 (September 8, 2010), 75 FR 55575 (September 13, 2010). Comments received by the Commission are available at *http://www.sec.gov/cgi-bin/ruling-comments?ruling=df-title-vii-real-time-reporting&rule_path=/comments/df-title-vii/real-time-reporting&file_num=DF%20Title%20VII%20-%20Real%20Time%20Reporting&action=Show_Form&title=Real-Time%20Reporting%20-%20Title%20VII%20Provisions%20of%20the%20Dodd-Frank%20Wall%20Street%20Reform%20and%20Consumer%20Protection%20Act.*

[9] *See http://www.sec.gov/spotlight/regreformcomments.shtml.*

[10] *See* SDR Registration Proposing Release, *supra* note 6.

[11] This analysis is based on a sample of dollar-quoted, gold record transactions submitted to the Depository Trust & Clearing Corporation ("DTCC") between August 1, 2009, and July 30, 2010.

[12] 15 U.S.C. 78c–3(e).

or (2) such other time after entering into the SBS as the Commission may prescribe by rule or regulation.

In addition, Section 13A(a)(1) of the Exchange Act [13] requires that each SBS that is not accepted for clearing by any clearing agency or derivatives clearing organization be reported to (1) an SDR, or (2) in the case in which there is no SDR that would accept such SBS, to the Commission, within such time period as the Commission may by rule or regulation prescribe. Section 13(m)(1)(G) of the Exchange Act [14] provides, further, that each SBS (whether cleared or uncleared) shall be reported to a registered SDR. Section 13(m)(1)(F) of the Exchange Act [15] states that the parties to a SBS, including agents of the parties to a SBS, shall be responsible for reporting SBS transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.[16]

Section 13(n)(4)(A)(i) of the Exchange Act [17] requires the Commission to prescribe standards that specify the data elements for each SBS that must be collected and maintained by each registered SDR. Further, Section 13(n)(4)(A)(ii) of the Exchange Act [18] requires the Commission, in carrying out Section 13(n)(4)(A)(i) of the Exchange Act, to prescribe consistent data element standards applicable to registered entities and reporting counterparties. Under Section 13(n)(5) of the Exchange Act, a registered SDR must, among other things, maintain the SBS data it collects in the form and manner prescribed by the Commission, provide the Commission or its designee with direct electronic access, and make SBS data available on a confidential basis, upon request, to certain regulatory authorities.[19]

2. Security-Based Swap Dissemination Requirements

Section 13(m)(1)(B) of the Exchange Act [20] authorizes the Commission to make SBS transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery, subject to the general requirement in Section 13(m)(1)(C) of the Exchange Act [21] that all SBS transactions be subject to real-time public reporting. Section 13(m)(1)(C) authorizes the Commission to provide by rule for the public availability of SBS transaction, volume, and pricing data as follows:

(1) With respect to those SBSs that are subject to the mandatory clearing requirement described in Section 3C(a)(1) of the Exchange Act (including those SBSs that are excepted from the requirement pursuant to Section 3C(g) of the Exchange Act), the Commission shall require real-time public reporting for such transactions; [22]

(2) With respect to those SBSs that are not subject to the mandatory clearing requirement described in Section 3C(a)(1) of the Exchange Act, but are cleared at a registered clearing agency, the Commission shall require real-time public reporting for such transactions;

(3) With respect to SBSs that are not cleared at a registered clearing agency and which are reported to a SDR or the Commission under Section 3C(a)(6),[23] the Commission shall require real-time public reporting for such transactions, in a manner that does not disclose the business transactions and market positions of any person; and

(4) With respect to SBSs that are determined to be required to be cleared under Section 3C(b) of the Exchange Act but are not cleared, the Commission shall require real-time public reporting for such transactions.[24]

Section 13(m)(1)(A) of the Exchange Act [25] states that the term "real-time public reporting" means to report data relating to a SBS transaction, including price and volume, as soon as technologically practicable after the time at which the SBS transaction has been executed.

With respect to SBSs that are subject to Sections 13(m)(1)(C)(i) and (ii) of the Exchange—*i.e.,* SBSs that are subject to the mandatory clearing requirement in Section 3C(a)(1) (including those SBSs that are not cleared pursuant to the exception in Section 3C(g)(1)) and SBSs that are not subject to the mandatory clearing requirement in Section 3C(a)(1) but are cleared—Section 13(m)(1)(E) of the Exchange Act [26] requires that the Commission's rule providing for the public availability of SBS transaction and pricing data contain provisions to: (1) Ensure that such information does not identify the participants; (2) specify the criteria for determining what constitutes a large notional SBS transaction (block trade) for particular markets and contracts; (3) specify the appropriate time delay for reporting large notional SBS transactions (block trades) to the public; and (4) that take into account whether public disclosure will materially reduce market liquidity.

Section 13(m)(1)(D) of the Exchange Act [27] authorizes the Commission to require registered entities [28] to publicly disseminate the SBS transaction and pricing data required to be reported under Section 13(m)(1) of the Exchange Act. In addition, Section 13(n)(5)(D)(ii) of the Exchange Act states that a registered SDR shall provide data "in such form and at such frequency as the Commission may require to comply with the public reporting requirements set forth in subsection (m)." [29]

II. Description of Proposed Rules

A. Overview

In general, proposed Regulation SBSR would provide for the reporting of three broad categories of SBS information: (1) Information that would be required to be reported to a registered SDR in real

[13] 15 U.S.C. 78m–1(a)(1).

[14] 15 U.S.C. 78m(1)(G).

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

[16] In addition, Section 13A(a)(2) of the Exchange Act requires the Commission to adopt an interim final rule providing for the reporting of SBSs entered into before the date of enactment of the Dodd-Frank Act the terms of which had not expired as of that date. To satisfy this requirement, the Commission adopted Rule 13Aa–2T under the Exchange Act, an interim final temporary rule for the reporting of such SBSs. *See* Securities Exchange Act Release No. 63094 ("Interim Rule Release").

[17] 15 U.S.C. 78(n)(4)(A)(i).

[18] 15 U.S.C. 78(n)(4)(A)(ii).

[19] These responsibilities of registered SDRs under Section 13(n)(5) of the Exchange Act, 15 U.S.C. 78m(n)(5), will be the subject of a separate Commission rulemaking. *See* SDR Registration Proposing Release, *supra* note 6.

[20] 15 U.S.C. 78m(m)(1)(B).

[21] 15 U.S.C. 78m(m)(1)(C).

[22] Section 3C(a)(1) of the Exchange Act provides that it shall be unlawful for any person to engage in a SBS unless that person submits such SBS for clearing to a clearing agency that is registered under the Exchange Act or a clearing agency that is exempt from registration under the Exchange Act if the SBS is required to be cleared. Section 3C(g)(1) of the Exchange Act provides that requirements of Section 3C(a)(1) will not apply to a SBS if one of the counterparties to the SBS (1) is not a financial entity; (2) is using SBSs to hedge or mitigate commercial risk; and (3) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared SBSs.

[23] The reference in Section 13(m)(1)(C)(iii) of the Exchange Act to Section 3C(a)(6) of the Exchange Act is incorrect. Section 3C of the Exchange Act does not contain a paragraph (a)(6).

[24] Section 3C(b)(1) of the Exchange Act requires the Commission to review on an ongoing basis each SBS, or any group, category, type, or class of SBS to make a determination that such SBS, or group, category, type, or class of SBS should be required to be cleared.

[25] 15 U.S.C. 78m(m)(1)(A).

[26] 15 U.S.C. 78m(m)(1)(E).

[27] 15 U.S.C. 78m(m)(1)(D).

[28] The Exchange Act does not define the term "registered entity" or "registered entities." The Commission believes that the term "registered entities" in Sections 13(m)(1)(F) and 13(n)(4)(A)(ii) of the Exchange Act includes registered SDRs because SDRs are required to register with the Commission pursuant to Section 13(n) of the Exchange Act, 15 U.S.C. 78m(n).

[29] 15 U.S.C. 78m(n)(5)(D)(ii).

time and publicly disseminated;[30] (2) additional information that would be required to be reported to a registered SDR or, if there is no registered SDR that would receive such information, to the Commission, within specified timeframes, but that would not be publicly disseminated; and (3) information about "life cycle events", as defined in proposed Rule 900[31] and discussed below, that would be reported as a result of a change to information previously reported for a SBS. As described in greater detail below, proposed Regulation SBSR would identify the SBS transaction information that would be required to be reported, establish reporting obligations, and specify the timeframes for reporting and disseminating information.

In addition, proposed Regulation SBSR would require a registered SDR to publicly disseminate the SBS information that would be required to be reported in real time. Proposed Regulation SBSR also would require a registered SDR to register with the Commission as a securities information processor ("SIP") on existing Form SIP.

B. Who Must Report

Section 13(m)(1)(F) of the Exchange Act[32] provides that parties to a SBS (including agents of parties to a SBS) shall be responsible for reporting SBS transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission. Section 13A(a)(3) of the Exchange Act[33] specifies the party obligated to report SBSs that are not accepted by any clearing agency or derivative clearing organization. Proposed Rule 901(a) would specify which counterparty is the "reporting party" for a SBS, thereby implementing Sections 13(m)(1)(F) and 13A(a)(3) of the Exchange Act, as follows:

- With respect to a SBS in which only one counterparty is a security-based swap dealer ("SBS dealer") or major security-based swap participant ("major SBS participant"),[34] the SBS dealer or major SBS participant shall be the reporting party;
- With respect to a SBS in which one counterparty is a SBS dealer and the other counterparty is a major SBS participant, the SBS dealer shall be the reporting party; and
- With respect to any other SBS not described in the first two cases, the counterparties to the SBS shall select a counterparty to be the reporting party.

The Exchange Act, as modified by the Dodd-Frank Act, does not explicitly specify which counterparty should be the reporting party for those SBSs that are cleared by a clearing agency or derivative clearing organization. The Commission preliminarily believes that, for the sake of uniformity and ease of applicability, the duty to report a SBS should attach to the same counterparty regardless of whether the SBS is cleared or uncleared. In addition, the Commission preliminarily believes that SBS dealers and major SBS participants generally should have the responsibility to report SBS transactions, as they are more likely than other counterparties to have appropriate systems in place to facilitate reporting.

Accordingly, with respect to a SBS where both counterparties are U.S. persons,[35] proposed Rule 901(a) would assign reporting responsibilities as follows:

- With respect to a SBS in which only one counterparty is a SBS dealer or major SBS participant, the SBS dealer or major SBS participant would be the reporting party;
- With respect to a SBS in which one counterparty is a SBS dealer and the other counterparty is a major SBS participant, the SBS dealer would be the reporting party; and
- With respect to any other SBS not described in the first two cases, the counterparties to the SBS would select a counterparty to be the reporting party.

Proposed Rule 901(a)(1) would provide that, where only one counterparty to a SBS is a U.S. person, the U.S. person would be the reporting party. The Commission preliminarily believes that, where only one counterparty is a U.S. person, assigning the reporting duty to the counterparty that is a U.S. person would help to assure compliance with the reporting requirements of proposed Regulation SBSR.

In addition, it is possible that a SBS executed in the United States or through any means of interstate commerce, or that is cleared through a clearing agency having its principal place of business in the United States, could be executed between two counterparties neither of which is a U.S. person. Proposed Rule 901(a)(3) would provide that, if neither party is a U.S. person but the SBS is executed in the United States or through any means of interstate commerce, or is cleared through a clearing agency having its principal place of business in the United States,[36] the counterparties to the SBS would be required to select a counterparty to be the reporting party.[37]

To comply with the duty to report in real time itself, a reporting party likely would need to develop and maintain an internal order management system ("OMS") capable of capturing all relevant SBS data and sending it in real time. The Commission further believes that each reporting party likely would need to establish and maintain an appropriate compliance program and support for the operation of the OMS and reporting mechanism, which could include transaction verification and validation protocols, and necessary technical, administrative, and legal support. However, proposed Rule 901(a) would not prevent a reporting party to a SBS from entering into an agreement with a third party to report the transaction on behalf of the reporting party. For example, for a SBS executed on a security-based swap execution facility ("SB SEF")[38] or a national securities exchange, the SB SEF or national securities exchange could transmit a transaction report for the SBS to a registered SDR. By specifying the reporting party with the duty to report SBS information under proposed Regulation SBSR, the Commission does not intend to inhibit the development of commercial ventures to provide trade processing services to SBS counterparties. Nevertheless, a SBS counterparty that is a reporting party would retain the obligation to ensure

[30] *See* proposed Rule 900 (defining "real time" to mean, with respect to the reporting of SBS information, as soon as technologically practicable, but in no event later than 15 minutes after the time of execution of the SBS, and defining "time of execution" as the point at which the counterparties to a SBS become irrevocably bound under applicable law). *See also infra* Section III (discussing proposed rules relating to real-time public dissemination of SBS transaction information).

[31] Proposed Rule 900 would provide definitions of various terms used in proposed Regulation SBSR and further provide that terms that appear in Section 3 of the Exchange Act, 15 U.S.C. 78c, would have the same meaning as in Section 3 and the rules or regulations thereunder.

[32] 15 U.S.C. 78m(m)(1)(F).

[33] 15 U.S.C. 78m[A(a)(3)].

[34] *See* 15 U.S.C. 78c(a)(71) (defining "security-based swap dealer"); 15 U.S.C. 78c(a)(67) (defining "major security-based swap participant"). *See also supra* note 5.

[35] *See* proposed Rule 900 (defining "U.S. person" to mean a natural person that is a U.S. citizen or U.S. resident or a legal person that is organized under the corporate laws of any part of the United States or has its principal place of business in the United States). *See also infra* Section VIII (discussing application of proposed Regulation SBSR to cross-border SBS transactions).

[36] *See* proposed Rules 908(a)(2) and (3) and *infra* Section VIII.

[37] *See infra* Section VIII (discussing the requirements for the reporting of a SBS if the SBS is executed in the United States or through any means of interstate commerce, or is cleared through a registered clearing agency having its principal place of business in the United States).

[38] *See* 15 U.S.C. 78c(a)(77) (defining "security-based swap execution facility"). The registration and regulation of SB SEFs is the subject of a separate Commission rulemaking.

that information is provided to a registered SDR in the manner and form required by proposed Regulation SBSR, even if the reporting party has entered into an agreement with a third party to report on its behalf.[39]

Request for Comment

The Commission requests comment on all aspects of the proposal as to who would be responsible for reporting SBSs to a registered SDR.

1. Do any entities currently have the functionality to report SBSs, as proposed, to data repositories? If so, who? Do commenters think it is likely that entities other than SBS counterparties will develop the functionality to report SBSs to registered SDRs? If so, what are these entities and how will they operate?

2. Should the Commission *require* one or more entities other than a SBS counterparty, such as a registered SB SEF, a national securities exchange, a clearing agency, or a broker, to report SBSs? Or do commenters agree with the Commission's approach of assigning the responsibility to report to a counterparty, while allowing the counterparty to have an agent (such as a SB SEF) act on its behalf?

3. In practice, would reporting parties employ agents? Should the Commission encourage this?

4. Are the obligations assigned in proposed Rule 901(a) sufficiently clear?

5. For SBSs executed on a SB SEF or national securities exchange, would the counterparties to the SBS have the information necessary to know which counterparty would incur the reporting obligation? For example, for an anonymous SBS executed on a SB SEF and cleared by a clearing agency, would the counterparties know each other's identities? If not, what steps could they take to obtain enough information to be able to ascertain which party has the reporting obligation? Could the SB SEF provide that information to the counterparties? Alternatively, should the reporting obligation be assigned to the SB SEF or other trading venue?

6. In cases where counterparties would be required to select which counterparty would report the transaction, is additional Commission guidance likely to be necessary? Should the Commission adopt a default mechanism to allocate the reporting obligation in such cases? For example, if a SBS is between two SBS dealers, should the Commission mandate that the "seller" always have the responsibility for reporting?

7. Do commenters agree with the Commission's proposed approach for reporting for SBSs where only one counterparty is a U.S. person? If not, how should it be revised?

8. Do commenters agree with the Commission's proposed approach for reporting for SBSs where neither counterparty is a U.S. person? If not, how should it be revised?

9. To what extent would reporting parties have to obtain new or update existing OMSs and establish appropriate compliance programs to satisfy the real-time reporting obligations of proposed Rule 901(c)? Would current systems be able to handle this responsibility? Could current systems be upgraded or would they have to be replaced completely?

C. Where Information Is Reported

Proposed Rule 901(b) would require a reporting party to report the information required under proposed Regulation SBSR to a registered SDR or, if there is no registered SDR that would accept the information, to the Commission. The Commission believes that it would be very unlikely that there would be a situation where a reporting party would be required to report to the Commission rather than a registered SDR. Proposed Rule 13n–5(b)(1)(ii) under the Exchange Act would require a registered SDR that accepts reports for any SBS in a particular asset class to accept reports for all SBSs in that asset class.[40] Thus, a reporting party would not be able to report a SBS transaction to the Commission unless no registered SDR accepts transaction information for any SBS in the same asset class as the transaction. In addition, there currently exist entities that accept SBS transaction data in CDS and equity swaps that would likely be required to register as a SDR.

Request for Comment

10. Is the Commission's belief that it would be unlikely to have a situation where a reporting party must report to the Commission rather than a registered SDR reasonable?

11. Do commenters believe that there will be at least one registered SDR in each SBS asset class?

12. Are there any SBS asset classes for which there might not be a registered SDR?

III. Information To Be Reported in Real Time

A. Introduction

Proposed Rule 901 divides the SBS information that would be required to be reported into three broad categories: (1) Information that would be required to be reported in real time pursuant to proposed Rule 901(c)[41] and publicly disseminated pursuant to proposed Rule 902; (2) additional information that would be required to be reported (but not publicly disseminated) pursuant to proposed Rule 901(d)(1)[42] within the timeframes specified in proposed Rule 901(d)(2), which would vary depending on whether the transaction was executed and confirmed electronically or manually; and (3) life cycle event information that would be required to be reported under proposed Rule 901(e).[43]

The Commission notes that, although only the information specified in proposed Rule 901(c) would be required to be reported in real time, proposed Rule 901(c) would not prevent a reporting party from reporting some or all of the additional information required under proposed Rule 901(d)(1) at the same time that it reports the information required under proposed Rule 901(c). In other words, proposed Rule 901 would not mandate separate reports for the SBS information required under paragraphs (c) and (d) of proposed Rule 901; if a reporting party wished to provide all of the information required under proposed Rule 901 in a single transaction report, it would be free to do so—provided it could provide all of the information within the timeframe required by proposed Rule 901(c).

B. Categories of Information To Be Provided for Real-time Reporting

Proposed Rule 901(c) would set forth the categories of information pertaining to a SBS transaction that a reporting party would be required to report to a registered SDR in real time. For the reasons discussed below, the Commission preliminarily believes that the SBS information required to be reported under proposed Rule 901(c)—which the registered SDR would publicly disseminate pursuant to

[39] Thus, a reporting party would be liable for a violation of proposed Rule 901 if, for example, a SB SEF acting on the reporting party's behalf reported a SBS transaction to a registered SDR late or inaccurately.

[40] *See* SDR Registration Proposing Release, *supra* note 6.

[41] *See infra* Section III.B (discussing the categories of information to be provided for real-time reporting).

[42] *See infra* Section IV.B (discussing those data elements required under Rule 901(d)(1)).

[43] *See infra* Section IV.D (discussing the reporting of life cycle event information). A registered SDR would be required to adopt policies and procedures to determine, among other things, whether and how it would publicly disseminate reports of life cycle events. *See* proposed Rule 907(a)(4).

proposed Rule 902—would serve the objectives of Section 13(m) of the Exchange Act by enhancing price discovery in the SBS market.

The Commission recognizes that the SBS market involves complex instruments and that reporting conventions continue to evolve. Consequently, in developing proposed Rule 901, the Commission explored various alternative approaches, including mandating by rule an enumerated list of all specific data elements to be reported. The Commission believes that such a list likely would have to vary by asset class (*e.g.,* CDS and equity-based swaps), and would require further variations based on sub-asset type.[44] The Commission understands, based on discussion with industry participants, that between 50 and 100 or more separate data elements could be used to express a typical CDS.

A Commission rule that attempted to identify each data element for each SBS asset class or sub-asset type could be less flexible in responding to changes in the marketplace, including the introduction of new types of SBSs, because it would be necessary for the Commission to amend its rules each time it sought to require the reporting of additional or different data elements. Accordingly, rather than enumerating each data element for each SBS asset class or sub-asset type that would be required to be reported, proposed Rule 901(c) would instead specify the categories of information that would be required to be reported for each SBS transaction. Furthermore, proposed Rule 907, discussed more fully below, would require each registered SDR to establish, maintain, and make publicly available policies and procedures that, among other things, specify the data elements of a SBS (or a life cycle event) that a reporting party would be required to report. These data elements would be required to include, at a minimum, the data elements required under proposed Rule 901(c) (for information that will be publicly disseminated) and proposed Rule 901(d) (for non-disseminated regulatory information). The Commission preliminarily believes that proposed Rule 901(c), together with these policies and procedures, would promote the reporting of uniform, material information for each SBS, while providing flexibility to account for changes to the SBS market over time.

The Commission discusses below the SBS data that would be required to be reported in real time, and which would be publicly disseminated.

1. Asset Class

Proposed Rule 901(c)(1) would require the reporting party to report the asset class of the SBS and, if the SBS is an equity derivative, whether the SBS is a total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the SBS is based. Proposed Rule 900 would define "asset class" to mean those SBSs in a particular broad category, including, but not limited to, credit derivatives, equity derivatives, and loan-based derivatives. The Commission believes that identifying the asset class would provide market participants with basic information about the SBS transaction to identify the type of SBS being publicly reported. In addition, requiring the reporting party to indicate whether the SBS is an equity total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the SBS is based would enable a registered SDR to know if the SBS was excluded from being a block trade.[45]

2. Date and Time of Execution

Proposed Rule 901(c)(4) would require the reporting party to report the date and time, to the second, of execution of a SBS, so that prices of transactions that are disseminated in real time can be properly ordered, and so the Commission can have a detailed record of when any given SBS was executed. In the absence of this information, market participants and regulators would not know whether transaction reports they are seeing reflect the current state of the market.

The Commission preliminarily believes that the time at which the SBS transaction has been executed should be the point at which the counterparties to a SBS become irrevocably bound under applicable law.[46] For example, in the context of SBSs, an oral agreement over the phone will create an enforceable contract, and the time of execution would be deemed to be the time that the parties to the telephone call agree to the material terms.[47] The Commission recognizes that trades agreed to over the phone would need to be systematized for purposes of fulfilling this reporting requirement (as well as real-time reporting of other data elements) by being entered in an electronic system that assigns a time stamp. The Commission believes that it is consistent with Congress' intent for orally negotiated SBS transactions to be systematized as quickly as possible so that they could be publicly disseminated using electronic means.[48]

The Commission is proposing that the date and time of execution be expressed using Coordinated Universal Time ("UTC"), a slight variation on Greenwich Mean Time.[49] SBSs are traded globally, and the Commission expects that many SBSs subject to these reporting and dissemination rules would be executed between counterparties in different time zones. In the absence of a uniform standard, it might not be clear whether the date and time of execution were being expressed from the standpoint of the time zone of the first counterparty, the second counterparty, or the registered SDR itself. Mandating a common standard for expressing date and time is designed to alleviate any potential confusion on the part of registered SDRs, counterparties, other market participants, and the public as to when the SBS was executed. The Commission believes that UTC is an appropriate and well known standard

[44] For example, the following types of CDS could each require a different list of data elements: Single-name CDS, index CDS, loan CDS, and CDS on asset-backed securities.

[45] *See* proposed Rule 907(b)(4)(ii).

[46] *See* proposed Rule 900. Section 13(m)(1)(A) of the Exchange Act defines "real time" in relation to the "execution" of the SBS, not when it is confirmed or cleared.

[47] The Dodd-Frank Act amends the definition of "security" under the Securities Act and Exchange Act to explicitly include SBSs, and the execution of the transaction will be the sale for purposes of the federal securities laws. *See* Securities Act Release No. 3591 (July 19, 2005), 70 FR 44722 (August 3, 2005), notes 391 and 394 (explaining when a sale occurs under the Securities Act).

[48] The Senate Report accompanying the Dodd-Frank Act indicates that "[m]arket participants—including exchanges, contract markets, brokers, clearing houses and clearing agencies–were consulted and affirmed that the existing communications and data infrastructure for the swaps markets could accommodate real time swap transaction and price reporting." The Senate Report stated, further, that real time swap transaction and price reporting would narrow swap bid/ask spreads, make for a more efficient swaps market and benefit consumers and counterparties overall. *See* 156 Cong. Rep. S5921 (July 15, 2010). In light of this acknowledgement of the benefits of real-time SBS transaction and price reporting, and the apparent feasibility of such reporting, the Commission believes that Congress intended for orally negotiated SBS transactions to be systematized as quickly as possible and reported in real time.

[49] The generally acknowledged acronym for Coordinated Universal Time is "UTC," rather than "CUT." The International Telecommunication Union, an agency of the United Nations that oversees information and communication technology issues, wanted Coordinated Universal Time to have the same symbol in all languages. English and French speakers wanted the initials of both their respective language's terms to be used internationally: "CUT" for "coordinated universal time" and "TUC" for "temps universel coordonné." This resulted in the final compromise of "UTC." *See http://www.nist.gov/physlab/div847/utenist.cfm#cut.*

suitable for purposes of reporting the time of execution of SBSs.

3. Price

Proposed Rule 901(c)(7) would require the reporting of the price of a SBS transaction, expressed in terms of the commercial conventions used in that asset class.[50] The Commission recognizes that the price of a SBS generally would not be a simple number, as with stocks, but would be expressed in terms of the quoting conventions for that SBS. For example, a CDS may be quoted in terms of the economic spread—which is variously referred to as the "traded spread," "quote spread," or "composite spread"—expressed as a number of basis points per annum. Alternately, CDS can be quoted in terms of prices representing a discount or premium over par. In contrast, an equity or loan total return swap may be quoted in terms of a LIBOR-based floating rate payment, expressed as a floating rate plus a fixed number of basis points.

The Commission preliminarily believes that, because these quoting conventions are widely used and understood by SBS market participants, requiring the price of a SBS to be reported in terms of one of these existing quoting conventions would be consistent with the mandate in Section 13(m)(1)(B) of the Exchange Act to enhance price discovery. As discussed further below, however, proposed Rule 907(a)(1) would require a registered SDR to establish, maintain, and make publicly available policies and procedures that specify the data elements of a SBS that a reporting party must report, which would include the elements that constitute the price. The Commission preliminarily believes that, because of the many different conventions that exist to express the price in various SBS markets and the new conventions that might arise in the future, some flexibility should be given to registered SDRs to select appropriate conventions for denoting the price of different asset classes of SBSs.

4. Other Terms of the SBS

Proposed Rule 901(c) would require the reporting of, among other things, information that identifies the SBS instrument[51] and the specific asset(s) or issuer(s) of a security or indexes on which the SBS is based; the notional amount(s) of the SBS and the currenc(ies) in which the notional amount(s) is expressed; the effective date of the SBS; the scheduled termination date of the SBS; and the terms of any fixed or floating rate payments and the frequency of any payments. The Commission preliminarily believes that this information is fundamental to understanding the SBS transaction being publicly reported, and that a SBS transaction report that lacked such information would not be meaningful.

For example, some types of SBSs are contractual agreements that generally involve the periodic exchange of cash flows from specified assets over a defined time period. These cash flows are based on the notional amount(s) of the SBS—*i.e.,* the notional principal(s) of the SBS is used to calculate the periodic payments made under the agreement. Accordingly, information that identifies the asset(s), including a narrow-based index, or issuer(s) of the security or securities on which a SBS is based, the notional amount(s) of the SBS (including the currenc(ies) in which it is expressed), the effective date, and the scheduled termination date of that SBS are fundamental elements of the transaction that would enhance price discovery.[52]

The Commission anticipates that, for at least some standardized instruments, conventions about how a SBS instrument is referred to can become so well known that certain terms of the underlying contract can be assumed, and thus would not need to be specifically provided pursuant to other provisions of proposed Rule 901(c).

5. Whether the SBS Will Be Cleared by a Clearing Agency

Proposed Rule 901(c)(9) would require the reporting party to indicate whether or not the SBS will be cleared by a clearing agency. This factor can impact the price of the SBS. If a SBS is not cleared, one counterparty might charge a higher price to do the trade because of the counterparty credit risk it would incur (which might be significantly diminished if the SBS were centrally cleared). Because the use of a clearing agency to clear a SBS would thus impact price, knowing whether a SBS will be cleared should provide market participants with additional information that would be useful in assessing the reported price for a SBS, thus enhancing price discovery. Therefore, the Commission is proposing to require that this data element be reported in real time and publicly disseminated.

6. Indication That a Transaction Is Between Two SBS Dealers

Proposed Rule 901(c)(10) would require the reporting party to indicate if both counterparties to the SBS are SBS dealers. The Commission preliminarily believes that such an indication would enhance market transparency and provide more accurate information about the pricing of the SBS transaction, and thus about trading activity in the SBS market. Prices of transactions involving a dealer and non-dealer are typically "all-in" prices that include a mark-up or mark-down, while interdealer transaction prices typically do not. Thus, the Commission believes that requiring an indication of whether a SBS was an interdealer transaction or a transaction between a dealer and a non-dealer counterparty would enhance transparency by allowing market participants to more accurately assess the reported price for a SBS.

7. If Applicable, an Indication That the SBS Transaction Does Not Accurately Reflect the Market

In some instances, a SBS transaction might not reflect the current state of the market. Thus, publicly disseminating a report of that transaction without an indication to that effect could mislead market participants and other observers. The Commission does not expect that a registered SDR would be able to identify such cases. Therefore, proposed Rule 901(c)(11) would require the reporting party to alert the registered SDR in such cases. This could occur, for example, if the reporting party were reporting the transaction late (*i.e.,* over 15 minutes after the time of execution). An aged transaction by definition no longer represents the current state of the market, and a reporting party would therefore be required to indicate that the

[50] One commenter identified the traded price as one of the elements that should be included in a SBS transaction report. *See* letter from James W. Toffey, Chief Executive Officer, Benchmark Solutions, to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated October 1, 2010 ("Benchmark Letter") at 2.

[51] *See* proposed Rule 900 (defining "security-based swap instrument" to mean each SBS in the same asset class, with the same underlying reference asset, reference issuer, or reference index).

[52] One commenter believed that a SBS transaction report should include: (1) The traded price and execution time; (2) the counterparty type, including a designation for an "end user;" (3) the notional size of the transaction; and (4) contract "open interest." *See* Benchmark Letter at 2. In addition, the commenter believed that the reference data for a SBS must include "standard attributes necessary to derive cash flows and any contingent claims that can alter or terminate payments" of the SBS. *See id.* at 1. As described above, the proposed rules would require the real-time reporting of price and time of execution, notional size, and an indication of whether a SBS is between two dealers. The proposed rules would not require the reporting of "open interest." However, another Commission rulemaking will provide regulators with the ability to monitor open SBS positions. *See* SDR Registration Proposing Release, *supra* note 6.

transaction is being reported late.[53] Other situations where this could occur are inter-affiliate transfers and assignments where the new counterparty has no opportunity to negotiate the terms, including the price, of taking on the position. In such cases, there might not be an arm's length negotiation over the terms of the SBS transaction, and disseminating a report of the transaction report without noting that fact would be inimical to price discovery. Accordingly, the Commission preliminarily believes that a reporting party must note such circumstances in its real-time transaction report to a registered SDR.

The Commission further notes that a registered SDR would be required to have policies and procedures that, among other things, describe how reporting parties shall report SBS transactions that, in the estimation of the registered SDR, do not accurately reflect the market.[54] The Commission expects that these policies and procedures would require, among other things, different indicators being applied in different situations.

8. Indication for Customized Trades

Proposed Rule 901(c)(12) would provide that the reporting party must indicate if the SBS is customized to the extent that the other information provided pursuant to proposed Rule 901(c) does not provide all of the material information necessary to identify such customized SBS or does not contain the data elements necessary to calculate the price of the SBS. The Commission believes that reporting highly customized SBS in this manner would promote transparency by providing market participants with knowledge of the transaction in a given asset class and on certain reference securities or issuers while, at the same time, making clear that the reported data elements would not, and would not be required to, provide sufficient information to fully understand all aspects of the customized transaction. The Commission preliminarily believes that requiring public dissemination of more detailed information about customized SBSs would be of limited utility in facilitating price discovery because of the unique nature of such transactions.

Request for Comment

The Commission requests comment generally on all aspects of the categories of information that would be required to be reported in real time for public dissemination.

13. Do commenters agree with the proposed categories of information that would be required to be reported in real time for public dissemination? If not, what additional specific categories of information should be required to be reported in real time for public dissemination, and why? How would public dissemination of such additional information enhance price discovery or market liquidity?

14. What categories of information, if any, should not be required to be reported in real time for public dissemination, and why? Would the public dissemination of certain information materially reduce market liquidity? If so, how, specifically, would dissemination of the particular information affect liquidity? Please supply data to support your answer.

15. Does proposed Rule 901(c) provide adequate guidance with respect to the information that must be reported? If not, what additional guidance do commenters believe is necessary?

16. Would the real-time dissemination of the categories of information specified in proposed Rule 901(c) serve the objectives of Section 13(m) of the Exchange Act by enhancing price discovery in the SBS market? If so, how? Would disclosure of certain categories of information not further price discovery? If so, why not? Please provide examples.

17. Is it necessary to require dissemination of the date of execution, unless it is a date other than the current date?

18. Do commenters agree that it would be feasible to require SBSs agreed to by phone to be entered into an electronic system that assigns a time stamp? Why or why not?

19. Do commenters agree that the time of execution should be reported to the second? Why or why not? Should it be reported in a finer increment?

20. Would requiring the reporting and dissemination of price in terms of the existing quoting conventions provide adequate information regarding the price of a SBS? Where more than one quoting or pricing convention exists within an asset class, what convention should be used? Should proposed Regulation SBSR require specific conventions to be used?

21. Are there specific data elements that should be required to be reported to help understand the price of a SBS? If so, what are they, and do they vary by asset class? Or by some further categorization?

22. Are there categories of SBSs that do not have an existing quoting convention? If so, how should "price" be expressed for those SBSs? What data elements should be required to be reported and disseminated to capture the price of such SBSs?

23. Would information regarding whether a SBS is cleared impact the price of the SBS? If not, why not? Would the reporting party in all cases know whether the SBS transaction will be cleared?

24. Would information concerning whether a SBS is a transaction between two SBS dealers enhance transparency and provide more accurate information about the pricing of the SBS? If not, why not?

25. In a SBS executed on a SB SEF or national securities exchange, would a counterparty know in real time the category of its counterparty, *e.g.,* whether its counterparty is a SBS dealer, a major SBS participant, or not?

26. Do commenters agree that it would be appropriate for reporting parties to report whether a SBS transaction accurately reflects the market? How should such "off-market" transactions be defined? Could public dissemination of potential off-market transactions (*e.g.,* related to portfolio compressions) make it more difficult for market participants to understand and analyze market pricing?

27. Do commenters agree with the proposed approach for real-time reporting and public dissemination with respect to customized SBSs? Should the Commission require that additional information be reported and publicly disseminated for these SBSs? How practical would it be to report and publicly disseminate sufficient details about a customized SBSs in real time? Is there sufficient agreement over which SBSs should be considered customized for this purpose or is additional guidance needed? Is there a risk that this rule could be applied inconsistently by counterparties or across asset classes? Would public dissemination of information concerning customized SBSs materially reduce market liquidity? If so, why?

28. Would real-time transaction reports of customized SBSs have price discovery value? If so, in what way and how much? If not, why not? Would price discovery be enhanced by

[53] The registered SDR could deduce that a transaction has been reported late by looking to the time of execution, a data element required to be reported by proposed Rule 901(c)(4). However, if a registered SDR received a transaction report submitted with an anomalous time stamp, the registered SDR might not know whether the time stamp was correct and the trade was reported late, or whether the trade was reported in a timely fashion but the time stamp was inaccurate. Supplementing the time stamp with a "late" indicator would confirm to the registered SDR that the transaction was in fact being reported late.

[54] *See* proposed Rule 907(a)(4); *infra* Section VI.A.

requiring public dissemination of additional details of a customized SBS at a later time? If so, what additional details of the transaction should be publicly disseminated, and when?

29. Would any of the data elements specified in proposed Rule 901(c), if reported in real time, reveal the trading strategies or positions of any person? If so, how?

30. What do commenters believe would be the costs of reporting and publicly disseminating the proposed categories of information for SBSs? Or the benefits? Please be specific in your responses, and quantify your answers to the extent possible.

C. Definition of Real Time

Proposed Rule 900 would define "real time" to mean, with respect to the reporting of SBS transaction information, "as soon as technologically practicable, but in no event later than 15 minutes after the time of execution of the SBS transaction." [55] The Commission preliminarily believes that this proposed definition of "real-time" reporting is consistent with Sections 13(m)(1)(A) and (B) of the Exchange Act and technologically practicable in light of current industry practice.[56] Based on its discussions with market participants, the Commission understands that much of the infrastructure necessary to support real-time reporting to a registered SDR may already be in place.[57] The Commission understands, further, that the SBS market is almost entirely institutional, and large institutions have in place the systems and processes necessary to support trading and risk management of complex structured products. In many cases, trade details will already be systematized and little or no manual intervention would be necessary to aggregate or send the transaction data. In such cases, where it is technologically practicable for a reporting party to report the SBS transaction information required by proposed Rule 901(c) in one second, then it would be required to report the SBS transaction to a registered SDR in one second.

The Commission recognizes that, in other cases, a SBS transaction might be negotiated orally, and some manual data entry might be necessary before a transaction report could be sent. At the same time, however, the Commission believes it is appropriate to encourage market participants to take steps to minimize manual handling of such transactions, because the Dodd-Frank Act requires price and volume information of all SBS transactions to be disseminated publicly as soon as technologically practicable after the time of execution. Furthermore, the Commission notes that real-time reporting under proposed Rule 901(c) would require only certain elements of the trade to be systematized and reported, not all of the data elements that are required for full regulatory reporting under proposed Rule 901(d). The Commission is, therefore, proposing a 15-minute outer boundary for real-time public reporting of the data elements specified in proposed Rule 901(c) following the SBS's time of execution.[58]

Under the proposed approach, a reporting party would not be permitted to delay submission of a transaction report required by proposed Rule 901(c) while preparing the information necessary to provide a transaction report under proposed Rule 901(d), even if the reporting party could prepare the latter in under 15 minutes. Assume, for example, that two counterparties execute a SBS on an electronic trading platform, which permits the collection and transmission of all information required by proposed Rule 901(c) in one second, and all other details of the SBS can be confirmed in eight minutes. The reporting party would not be permitted to wait eight minutes to send a single transaction report containing the information required under proposed Rules 901(c) and (d) to a registered SDR. Instead, the reporting party would be required to send the information required by proposed Rule 901(c) in one second—because one second in this example is as soon as technologically practicable—and to send the information required by proposed Rule 901(d) in eight minutes. The Commission preliminarily believes that this approach is most conducive to price discovery. Collecting data elements that have less bearing on price discovery (such as those required by proposed Rule 901(d)) should not slow down the public dissemination of data elements that would facilitate price discovery (*i.e.,* those required by proposed Rule 901(c)).

Request for Comment

31. Do commenters agree with the proposed definition of "real time"? Would it be technologically practicable in all cases to report the information that would be required under proposed Rule 901(c) within 15 minutes? If not, why not? Would it be technologically practicable for some, but not all, SBSs? Or some, but not all, of the data elements? If so, what are the differentiating factors?

32. Should the Commission require shorter reporting time frames for certain SBS transactions? For example, should electronically executed SBSs be

[55] *See supra* note 30 (noting that the "time of execution" would mean the point at which the counterparties to a SBS become irrevocably bound under applicable law).

[56] The Commission notes, in addition, that the Senate report accompanying the Dodd-Frank Act indicates that "[m]arket participants—including exchanges, contract markets, brokers, clearing houses and clearing agencies—were consulted and affirmed that the existing communications and data infrastructure for the swaps markets could accommodate real time swap transaction and price reporting." *See* 156 Cong. Rec. S5921 (July 15, 2010).

[57] *See, e.g.,* CFTC and SEC, Public Roundtable to Discuss Swap Data, Swap Data Repositories, and Real Time Reporting, transcript available at *http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/derivative18sub091410.pdf,* comments of Sean Bernardo, Managing Director of Tullett Prebon Americas Corp. and representing the Wholesale Market Brokers Association, at 297 ("From the brokers' perspective, however you tell us to send those [transactions] straight to you, whatever the time frame is, we're able to do that, whether it's done voice, whether it's done electronic, or whether it's done hybrid"), and at 310 ("From the brokers' perspective, we already have these systems in place for 99 percent of these products already in some way, shape, or form. So, as far as upgrading them, we're upgrading the systems on a regular basis. So, I think, again, we can accommodate the needs that you have, and we currently do a lot of the reporting and * * * processing with the firms").

[58] One commenter believed that SBS transaction reports should be disseminated to the market within five minutes of execution, or as soon as technologically feasible. *See* Benchmark Letter at 2. The commenter noted that "the sooner post trade data is accessible to the market, the more effectively it can feed back into the update cycle of pre-trade information. Better pre-trade information allows investors to make more well-informed decisions regarding market values, risk and helps assure that investors achieve best execution." *Id.* Another commenter argued that "voice/hybrid execution systems" should have the same reporting timeframes as venues that execute electronically, because "a bifurcated requirement could result in an inaccurate trade tape confusing the market and regulator alike," and because "such a bifurcation might also create a 'race to the slowest' * * * as certain market participants, seeking to shroud their trading, favor slower reporting SEF's with their business over more efficient and transparent counterparts." *See* letter from James Cawley, CEO, Javelin Capital Markets, to SEC and CFTC (October 20, 2010) ("Javelin Letter") at 2. The Commission further notes that the Financial Industry Regulatory Authority ("FINRA") requires its members to report transactions in corporate and agency debt securities to FINRA's Transaction Reporting and Compliance Engine ("TRACE") within 15 minutes of the time of execution. *See* FINRA Rule 6730(a). For purposes of TRACE reporting, the time of execution generally means the time when the parties to the trade agree to all of the terms of the transaction that are sufficient to calculate the dollar price of the trade. *See* FINRA Rule 6710(d). FINRA has indicated that, based on 2009 figures, approximately 98% of corporate bond trades were reported within 15 minutes, 96% within ten minutes, and 92% within five minutes. *See* e-mail from Steve Joachim, Executive Vice President for Transparency Services, FINRA, to Michael Gaw, Assistant Director, Division of Trading and Markets, Commission (November 17, 2010).

reported as soon as technologically practical but in any event no later than 5 seconds? 30 seconds? Some other period? What should that period be, and why?

33. Should the Commission require longer reporting time frames for orally executed SBS transactions (such as 30 minutes)? If so, what should that longer period be, and why?

34. If there were a longer reporting time frame for orally executed SBSs, would the potential benefits of real-time public reporting be compromised? If so, how? If not, why not? Would this create an incentive for market participants to prefer oral negotiation of SBSs to delay real-time reporting of their transactions?

35. In the context of real-time reporting of SBS transactions, what is "technologically practicable"? Should the Commission define that term specifically? What systems and processes would be necessary to report orally concluded SBSs as soon as technologically practicable? Does this imply a requirement that all such SBSs must be immediately systematized?

36. What do commenters believe would be the costs of reporting the proposed data elements within 15 minutes? What would be the benefits? Please be specific in your response, and quantify the costs and benefits to the extent possible.

IV. Additional Reporting of Regulatory Information

A. Introduction

Proposed Rule 901(d) would require the reporting, within specified timeframes, of certain SBS transaction information that would not be publicly disseminated, in addition to the information required to be reported in real time pursuant to proposed Rule 901(c) that would be publicly disseminated. The Commission believes that the information that would be reported pursuant to proposed Rule 901(d) would facilitate regulatory oversight and monitoring of the SBS market by providing comprehensive information regarding SBS transactions and trading activity.[59] The Commission believes, further, that this information would assist the Commission in detecting and investigating fraud and trading abuses in the SBS market.

B. Data Elements Required Under Proposed Rule 901(d)

The data elements that would be required to be reported by the reporting party for each SBS pursuant to proposed Rule 901(d) are discussed below.

1. Unique Identifiers

Proposed Rule 901(d) would require the reporting of a participant ID of each counterparty and, as applicable, the broker ID, desk ID, and trader ID of the reporting party. The Commission preliminarily believes that reporting of this information would help promote effective oversight, enforcement, and surveillance of the SBS market by the Commission and other regulators. For example, activity could be tracked by a particular participant, a particular desk, or a particular trader. Regulators could observe patterns and connections in trading activity, or examine whether a trader had engaged in questionable activity across different SBS instruments. These identifiers also would facilitate aggregation and monitoring of the positions of SBS counterparties, which could be of significant benefit for systemic risk management.

The Commission understands that some efforts have been undertaken—in both the private and public sectors, both domestically and internationally—to establish a comprehensive and widely accepted system for identifying entities that participate not just in the SBS market, but in the financial markets generally. Such a system could be of significant benefit to regulators worldwide, as each market participant could readily be identified using a single reference code regardless of the jurisdiction or product market in which the market participant was engaging. Such a system also could be of significant benefit to the private sector, as market participants would have a common identification system for all counterparties and reference entities, and would no longer have to use multiple identification systems. The enactment of the Dodd-Frank Act and the establishment of a comprehensive system for reporting and dissemination of SBSs—and for reporting and dissemination of swaps, under the jurisdiction of the CFTC—offer a unique opportunity to facilitate the establishment of a comprehensive and widely accepted system for identifying entities that participate not just in the SBS market, but in the financial markets generally.[60]

The Commission preliminarily believes that a registered SDR must have a systematic means to identify and track all products and all persons involved in SBS transactions captured and recorded by the registered SDR. Therefore, the Commission is requiring that a "unique identification code" ("UIC") be assigned to each such product or person (or unit thereof, such as a branch or desk of a financial institution). Thus, under proposed Regulation SBSR, the "participant ID" would mean the UIC assigned to a participant.[61] "Broker ID" would be defined as the UIC assigned to an entity acting as a broker for a participant. "Desk ID" would be defined as the UIC assigned to the trading desk of a participant or of a broker of a participant, and "trader ID" would be defined as the UIC assigned to a natural person who executes SBSs.

Under the definition of "unique identification code" in proposed Rule 900, a UIC would have to be assigned by or on behalf of an internationally recognized standards-setting body ("IRSB") that imposes fees and usage restrictions that are fair and reasonable and not unreasonably discriminatory. The Commission seeks to avoid requiring market participants to participate in a system that would require them to pay unreasonable fees, or that would permit discrimination among potential users of the system. Thus, the definition of "UIC" would further provide that, if no standards-setting body meets these criteria, a

[59] To the extent the Commission receives information that is reported under proposed Rule 901(d), such information would be kept confidential, subject to the provisions of the Freedom of Information Act.

[60] One commenter believes that a single source of reference data and a standard set of unique identifiers must be used across the industry (*i.e.,* SB SEFs and SDRs) to ensure the comparability of similar contracts. The commenter urged the Commission to work with the industry to standardize terms and definitions of all reference data components and establish a single master reference data source. *See* Benchmark Letter at 1. *See also* Neal S. Wolin, Deputy Secretary of the Treasury, Remarks at Georgetown University McDonough School of Business (October 25, 2010), available at *http://www.treas.gov/press/releases/tg923.htm* (stating that the Office of Financial Research ("OFR") "is working with regulators and industry, laying the groundwork to standardize financial reporting and develop reference data that will identify and describe financial contracts and institutions. Data standardization will provide for more consistent and complete reporting, making the data available to decision makers easier to obtain, digest, and utilize. Over the coming weeks and months, the OFR will begin to define a set of standards for reporting of financial transaction and position data. The OFR will collaborate with the financial industry, data experts, and regulators to develop an approach to standardization that works for everyone").

[61] "Participant" would be defined as: (1) a U.S. person that is a counterparty to a SBS that is required to be reported to a registered SDR; or (2) a non-U.S. person that is a counterparty to a SBS that is (i) required to be reported to a registered SDR; and (ii) executed in the United States or through any means of interstate commerce, or cleared through a clearing agency having its principal place of business in the United States. *See* proposed Rule 900.

registered SDR would be required to assign all necessary UICs using its own methodology.

The Commission preliminarily believes that, if an IRSB meets these criteria, the UICs employed by a registered SDR must come from the IRSB, and participants of that registered SDR must take necessary steps to obtain UICs from that IRSB. However, it could take an extended period for an IRSB to assign, or establish protocols for assigning, UICs for all entities participating in the SBS market. A registered SDR would be required to use the UICs available from the IRSB's system, while using its own methodology to assign the rest. In addition, the definition of "UIC" would provide that, if a standards-setting body meets these criteria but has not assigned a UIC to a particular person, unit of a person, or product, a registered security-based swap data repository would be required to assign a UIC to that person, unit of a person, or product using its own methodology.

The proposed definition of "UIC" would not require that a UIC be assigned "by" a IRSB itself. Rather, the proposed definition would provide only that the UIC be assigned "by or on behalf of" the IRSB. This is designed to preserve flexibility in how UICs may be assigned. An IRSB might establish the general protocols under which UICs are assigned, while another entity operating as an agent on behalf of the IRSB might assign the UICs pursuant to the protocols established by the IRSB. The proposed definition would allow for that possibility.

2. Other Terms of the SBS

Proposed Rule 901(d) would require identification of the amount(s) and currenc(ies) of any up-front payment(s) and a description of the terms and contingencies of the payment streams of each counterparty to the other;[62] the title of any master agreement, or any other agreement governing the transaction (including the title of any document governing the satisfaction of margin obligations), incorporated by reference and the date of any such agreement; and the data elements necessary to calculate the market value of a transaction.[63] In addition, for a SBS that is not cleared, proposed Rule 901(d) would require a description of the settlement terms, including whether the SBS is cash-settled or physically settled, and the method for determining the settlement value.[64]

The Commission believes that each of these data elements would facilitate regulatory oversight of counterparties and the SBS market generally by providing information concerning counterparty obligations and risk exposures. For example, the reporting of data elements necessary to calculate the market value of a transaction would allow regulators to value an entity's SBS positions and calculate the exposure resulting from those positions. The Commission understands, based on discussions with industry participants, that market participants currently provide this information regarding SBSs to data repositories.

3. Clearing Information

Proposed Rule 901(d) would require the reporting of the name of the clearing agency, if the SBS is cleared. The Commission believes that the identity of the clearing agency that cleared a SBS is fundamental information regarding a cleared SBS. This information would allow regulators to verify, if necessary, that a SBS was cleared, and to easily identify the clearing agency that cleared the transaction.

Proposed Rule 901(d) also would require the reporting party to report, if the SBS is not cleared, whether the exception provided in Section 3C(g) of the Exchange Act was invoked. Section 3C(g)(1) of the Exchange Act provides that the requirements of Section 3C(a)(1) will not apply to a SBS if one of the counterparties to the SBS: (1) Is not a financial entity; (2) is using SBSs to hedge or mitigate commercial risk; and (3) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared SBSs. The application of the clearing exception in Section 3C(g)(1) of the Exchange Act is solely at the discretion of the SBS counterparty that satisfies these conditions.[65] Section 3C(g)(6) of the Exchange Act[66] authorizes the Commission, among other things, to request information from those persons claiming the clearing exception as necessary to prevent abuse of the exceptions described in Section 3C(g) of the Exchange Act. The Commission believes that information regarding whether the exception in Section 3C(g)(1) was invoked for a non-cleared SBS would assist the Commission in overseeing and monitoring the use of the exception. This information would be a necessary preliminary step in determining whether the exception was properly invoked.[67]

4. Execution Venue

Proposed Rule 901(d) would require the reporting party to report the venue where the SBS was executed, or whether the SBS was executed bilaterally in the OTC market. The venue where a SBS is executed is necessary for investigating any potential improper behavior relating to the transaction. For example, regulators investigating a suspected abuse or other impropriety would need to know the execution venue in order to obtain records from the venue to assist in their investigation.

Request for Comment

The Commission requests comment on all aspects of the proposed additional information that would be required to be reported pursuant to proposed Rule 901(d).

37. Do commenters agree with the information that the Commission has proposed to be required to be reported pursuant to proposed Rule 901(d)? Should additional information be reported? If so, what information, and why?

38. Are there any data elements proposed to be reported that commenters believe should not be reported? If so, why not?

39. Should proposed Rule 901(d) also require reporting of the purpose of the SBS transaction (such as market making, directional trade, or asset hedge)? If so, what categories of purposes should be established, and why?

40. Is it possible that inconsistencies in pricing conventions among SBS market participants could result in uninformative prices being reported to a registered SDR? Could a reporting party use variation in pricing conventions to obscure pricing information? Do commenters believe that proposed Regulation SBSR should prescribe the

[62] For example, this would include, for a CDS, an indication of the counterparty purchasing protection and the counterparty selling protection, and the terms and contingencies of their payments to each other; and for other SBSs, an indication of which counterparty is long and which is short. This information could be useful to regulators in investigating suspicious trading activity.

[63] The Commission believes that these elements would include, for a SBS that is not cleared, information related to the provision of collateral, such as the title and date of the relevant collateral agreement.

[64] One commenter believed that a SBS transaction report should include information necessary to derive cash flows and any contingent claims that could alter or terminate payments of the SBS. *See* Benchmark Letter at 1. This is similar to the information required by proposed Rule 901(d)(1)(iii).

[65] *See* 15 U.S.C. 78c[C(g)(2)].

[66] 15 U.S.C. 78c[C(g)(6)].

[67] The use of this exception, and further information required to be reported regarding this exception, will be the subject of another Commission rulemaking. Any comments regarding this exception should be submitted in connection with that proposal.

specific pricing conventions that should be used?

41. Does proposed Rule 901(d) provide adequate guidance with respect to the information that must be reported?

42. Do commenters agree that the information described above regarding the material terms of a SBS would be useful for monitoring risk exposure and for other regulatory purposes? Why or why not?

43. Would it be difficult or cost prohibitive for reporting parties to report such information? If so, why?

44. Do SBS counterparties employ transaction-level collateral arrangements? If so, what specific information on transaction-level collateral information should be reported to a registered SDR?

45. Do commenters agree that the participant ID of each counterparty, and, as applicable, the broker ID, desk ID, and trader ID of the reporting party or its broker would be useful information to be reported? Why or why not? Would these identifiers be helpful for conducting regulatory oversight, including measuring risk exposure? How costly would it be for participants to report this information for each SBS?

46. Are there other entities that may play some part in the execution or reporting of a SBS transaction? If so, what are they? Should their identification information be reported to a registered SDR?

47. Are there additional subunits of a legal person, besides the desk, that should be identified by a UIC? If so, what are those subunits and how should they be defined?

48. Would the reporting party be in a position to know, in all cases, the participant ID of its counterparty? If a SBS is executed on a SB SEF, would the SB SEF be able to provide the reporting party the participant ID of the counterparty? If not, what alternative would be available to have this information reported?

49. Does an IRSB currently exist or will one exist in the near future that could carry out the functions envisioned by proposed Regulation SBSR? What additional steps would need to be taken for that entity to carry out these functions?

50. Who would own the intellectual property underlying the UICs assigned by or on behalf of an IRSB? Would a registered SDR have to pay fees to obtain UICs from an IRSB? If so, how much? What usage restrictions might the owners of the relevant intellectual property impose on registered SDRs or on consumers of the market data feed? Are any fees and usage restrictions imposed by an IRSB (or any entity that might become an IRSB) fair and reasonable and not unreasonably discriminatory? If not, in what way are they not?

51. Are there any issues that could result from the Commission requiring that UICs only be assigned by or on behalf of an IRSB that imposes fees and usage restrictions that are fair and reasonable and not unreasonably discriminatory? Would imposing such a standard allow for any activity that could undermine the ability of market participants to effectively obtain or use the UICs as anticipated? In the alternative, should the Commission require that there be no fees related to the use of UICs?

52. Would any end users of SBS market data disseminated by a registered SDR have to pay fees relating to an IRSB? If so, why? How much would these fees be?

53. How do data repositories currently identify participants and products? If UICs cannot be assigned by or on behalf of an IRSB, would the current methodologies of data repositories be adequate for assigning UICs pursuant to proposed Regulation SBSR? What would be the likely costs to a registered SDR of assigning such UICs itself?

54. What would be the potential impact on market participants and registered SDRs if no IRSB emerges and there are multiple SDRs per asset class assigning UICs?

55. What additional steps can or should the Commission take to promote internationally recognized standards for UICs?

56. Are there any other factors not already discussed that the Commission should take into account when considering voluntary consensus standards for UICs?

C. Reporting Timeframes for Regulatory Information

The Dodd-Frank Act does not specify the timeframes under which SBS transaction information, beyond that necessary to support real-time public dissemination for enhancing price discovery, must be reported to a registered SDR or to the Commission for regulatory purposes. However, the Commission preliminarily believes that, to further the objectives of the Dodd-Frank Act, SBS transaction information should be reported within a reasonable time following the time of execution—*i.e.,* the point at which the counterparties to a SBS become irrevocably bound under applicable law—rather than waiting until the time a transaction is confirmed.[68] For purposes of proposed Regulation SBSR, the time a transaction is confirmed means the production of a confirmation that is agreed to by the parties to be definitive and complete and that has been manually, electronically, or, by some other legally equivalent means, signed.[69] Requiring reporting at or after the time a SBS transaction is confirmed, rather than at the time of execution, could encourage counterparties to delay confirming in order to delay the reporting of a transaction.

The Commission recognizes that the amount of time required for counterparties to report the data elements that would be required to be reported under proposed Rule 901(d)(1) could vary depending upon, among other things, the extent to which the SBS is customized and whether the SBS is executed or confirmed electronically or manually. The Commission believes that the extent to which a SBS is executed or confirmed electronically is an indication of the degree to which the SBS is or could be systematized, and thus could directly impact the amount of time needed to report such SBS. For example, the Commission believes, based on discussions with industry participants, that the required information would be available relatively quickly for a SBS that is executed and confirmed electronically because most of the information required to be reported would already be in an electronic format. On the other hand, the Commission recognizes that, for those SBSs that are not executed or confirmed electronically, additional time may be needed to systematize the information required to be reported under proposed Rule 901(d) and put it into an acceptable format. Accordingly, proposed Rule 901(d)(2) would obligate a reporting party to report the regulatory, non-real-time information required to be reported under proposed Rule 901(d)(1) promptly, but in no event later than:

- 15 minutes after the time of execution for a SBS that is executed and confirmed electronically;
- 30 minutes after the time of execution for a SBS that is confirmed

[68] *See* proposed Rule 900 (defining "time of execution"); *supra* Section III.B.2.

[69] *See* proposed Rule 900 (defining "confirm"). "Confirmation" refers to the specific documentation that evidences the legally binding agreement. Section 15F(i)(2) of the Exchange Act provides that SBS dealers and major SBS participants shall conform with such standards as may be prescribed by the Commission that relate, among other things, to timely and accurate confirmation of SBSs. Requirements for confirmations issued by SBS dealers and major SBS participants will be the subject of a separate Commission rulemaking.

electronically but not executed electronically; or

• 24 hours after execution for a SBS that is not executed or confirmed electronically.

The Commission preliminarily believes that requiring a SBS that is executed and confirmed electronically to be reported promptly, but in no event later than 15 minutes after the time of execution, is appropriate because such SBS could be easily systematized (if it is not already), thus allowing the SBS to be reported within a time period similar to that required for real-time reporting. The Commission further believes that, for a SBS that is confirmed electronically but not executed electronically, additional time would be needed to report such SBS. However, the Commission preliminarily believes that 30 minutes would be a sufficient amount of time because such SBS already would be put into electronic form for confirmation, and thus likely could be easily systematized and would not require a significant amount of manual handling.

Finally, since a SBS that is not executed or confirmed electronically would likely not already be systematized and could require a significant amount of manual intervention, the proposed rules would allow additional time for reporting. For this group of SBSs, the Commission seeks to balance the need to allow market participants sufficient time to determine the terms of their trade, with the need for regulators to have current and complete information about positions in the SBS market.

Request for Comment

The Commission requests general comments on the proposed reporting times and the basis for the proposed reporting times.

57. Do commenters believe that there should be different reporting times based on whether a SBS is executed or confirmed manually or electronically? If so, why? If not, what other basis should be used to distinguish reporting timeframes, and why? Should all SBSs be reported in the same time frame? If so, what should the timeframe be, and why?

58. Do commenters agree that the reporting time for a SBS that is executed and confirmed electronically should be 15 minutes after the time of execution? Should that period be shorter, for example, 30 seconds, one minute, or five minutes? Why or why not?

59. Do commenters agree that the reporting time for a SBS that is confirmed electronically but not executed electronically should be 30 minutes after the time of execution? Should that period be shorter, for example, one minute, five minutes, or 15 minutes? Why or why not?

60. Do commenters agree that the reporting time for a SBS that is not executed or confirmed electronically should be 24 hours? Should that period be shorter—perhaps eight hours? 12 hours? Should that period be longer—perhaps 36 hours? 48 hours? Why or why not? If the time period were greater than 24 hours, how significant would be the risks that regulators would not know of SBS positions recently taken by counterparties engaging in SBSs that are not executed or confirmed electronically?

61. Do commenters agree with the proposed timeframes for reporting information required to be reported pursuant to proposed Rule 901(d)(1)? Would the timeframes in proposed Rule 901(d)(2) provide adequate time for reporting the information that would be required to be reported under proposed Rule 901(d)(1)? If not, why not? Should the time frame for reporting be shorter or longer? Why or why not?

62. Would public dissemination of information in the proposed timeframes materially reduce market liquidity? If so, for what types of SBSs? Why? What timeframe(s) would balance the concerns about market liquidity with the requirement for real-time reporting?

63. Are there customized SBSs for which it would be too difficult or burdensome to report within 24 hours? How long do those SBS transactions currently take to report to a SDR? What steps would have to be taken to accelerate reporting for such SBS transactions?

D. Reporting of Life Cycle Events

Proposed Rule 901(e) would require the reporting of certain "life cycle event" information. Proposed Rule 900 would define a "life cycle event" to mean, with respect to a SBS, any event that would result in a change in the information reported to a registered SDR pursuant to proposed Rule 901, including a counterparty change resulting from an assignment or novation; a partial or full termination of the SBS; a change in the cash flows originally reported; for a SBS that is not cleared, any change to the collateral agreement; or a corporate action affecting a security or securities on which the SBS is based (*e.g.,* a merger, dividend, stock split, or bankruptcy). Notwithstanding the above, a life cycle event shall not include the scheduled expiration of the SBS, a previously described and anticipated interest rate adjustment (such as a quarterly interest rate adjustment), or other event that does not result in any change to the contractual terms of the SBS.

For any life cycle event that results in a change to information previously reported, proposed Rule 901(e) would require the reporting party to promptly provide updated information reflecting such change to the entity to which it reported the original transaction, using the transaction ID, except that:

(1) If a reporting party ceases to be a counterparty to a SBS due to an assignment or novation, the new counterparty would be the reporting party following such assignment or novation, if the new counterparty is a U.S. person; and

(2) If, following an assignment or novation, the new counterparty is not a U.S. person, the counterparty that is a U.S. person would be the reporting party following such assignment or novation.

As discussed in greater detail below, proposed Rule 907(a)(1) would require the policies and procedures of a registered SDR to specify the data elements of a life cycle event that a reporting party would be required to report, which would include, at a minimum, the data elements specified in proposed Rules 901(c) and (d). Proposed Rule 901(g) would require a registered SDR to assign a transaction ID to each SBS reported by a reporting party. The assignment of a transaction ID, which would be included in a life cycle event report, would facilitate the reporting of life cycle event information by identifying the particular SBS transaction to which the life cycle event pertained.[70]

The reporting of life cycle event information would provide regulators with access to information about significant changes that occur over the duration of a SBS, including, for example, a counterparty change resulting from an assignment or novation, a change in the data elements necessary to calculate the value of the SBS, a partial or full termination of the SBS prior to the scheduled termination date of the SBS, or a modification of the periodic cash flows originally reported. The Commission preliminarily believes that the reporting of life cycle event information would help to assure that regulators have accurate and up-to-date information concerning outstanding SBSs and the current obligations and exposures of SBS counterparties.[71]

[70] *See infra* Section IV.E.2 (discussing proposed Rule 901(g)).

[71] In a separate rulemaking today, the Commission is proposing to require a registered SDR to establish, maintain, and enforce policies and

Request for Comment

The Commission requests comment on all aspects of the proposed life cycle event reporting requirements.

64. Do participants agree with the proposed definition of life cycle event? What life cycle event information should be reported? Should changes to all information that would be required to be reported under proposed Rules 901(c) and (d) be updated, or only specific items? If so, which items, and why?

65. Should a life cycle event report be formatted to include only the transaction ID and the updated information, or should it include the transaction ID, the updated information, and the other information that would be required to be reported under proposed Rules 901(c) and (d)? Should the Commission prescribe the format of a life cycle event report, or allow a registered SDR to determine the format of the report?

66. Does the proposed rule provide adequate guidance concerning the life cycle events that would be required to be reported? If not, what areas require further guidance? Does the proposed rule provide adequate guidance regarding what information would be required to be reported for each life cycle event?

67. What benefits would result from the reporting of life cycle events? What would be the costs of such reporting?

68. Is it appropriate to require that life cycle events be reported promptly? If not, what should be the appropriate timeframe for reporting such events?

E. Additional Requirements Applicable to Registered SDRs or Participants

1. Time Stamp for Reported Information

Proposed Rule 901(f) would require a registered SDR to time stamp, to the second, receipt of any information required to be submitted pursuant to proposed Rule 901(c), (d), or (e). The Commission believes that this requirement would help regulators to evaluate certain trading activity. For example, a reporting party's pattern of submitting late transaction reports could be an indicator of weaknesses in the reporting party's internal compliance processes. Accordingly, the Commission believes that the ability to compare the time of execution reported with the time of receipt of the report by the registered SDR could be an important component of surveillance activity conducted by regulators.

2. Transaction Identifiers

Proposed Rule 901(g) would require a registered SDR to assign a transaction ID to each SBS transaction reported to it. Proposed Rule 900 would define "transaction ID" to mean the unique identification code assigned by a registered SDR to a specific SBS. The Commission preliminarily believes that, because each transaction is unique, it is not necessary or appropriate to look to an IRSB for assigning such identifiers. Accordingly, a registered SDR would be required to use its own methodology for assigning transaction IDs.[72]

The Commission preliminarily believes that a unique transaction ID would allow registered SDRs, regulators, and counterparties to more easily track a SBS over its duration and facilitate the reporting of life cycle events and the correction of errors in previously reported SBS information. The transaction ID of the original SBS would allow for the linking of the original report to a report of a life cycle event. Similarly, the transaction ID would be required to be included on an error report to identify the transaction to which the error report pertained.

3. Counterparty ID Information

As discussed above, proposed Rule 901(d) would require the reporting of a participant ID of each counterparty and, as applicable, the broker ID, desk ID, and trader ID of the reporting party or its broker.[73] For regulators to monitor the SBS positions of market participants, evaluate trading activity, and conduct effective oversight and enforcement of the SBS market, it is important that the applicable UICs for both counterparties to a SBS be available to regulators.

Proposed Rule 901(d) would require the reporting party, for each SBS for which it is a reporting party, to report the participant ID of itself and its counterparty, and (as applicable) the reporting party's broker ID, desk ID, and trader ID. The reporting party would not be required to report the broker ID, desk ID, and trader ID for its counterparty. However, nothing in proposed Regulation SBSR would prevent a reporting party from reporting, or providing for the reporting to a registered SDR, of its counterparty's applicable UICs. For example, orders entered into an electronic trading system could be coded to include all relevant UICs. When the system matches two orders, it could bundle information about both orders (including the UICs) into a transaction report for the reporting party to report to a registered SDR, or the execution venue could provide the UICs directly to the registered SDR on behalf of the reporting party. Further, in a bilateral negotiated SBS, the counterparties could agree to have the non-reporting-party participant provide the applicable UICs to the reporting party for reporting to the registered SDR.

The Commission preliminarily believes that, to the extent that it is not feasible or desirable in a particular SBS transaction for the reporting party to report UICs, proposed Regulation SBSR should contain some means for the registered SDR to obtain the applicable UICs from the counterparty that is not the reporting party. Accordingly, proposed Rule 906(a) would set forth a procedure designed to ensure that a registered SDR obtains applicable UICs for both counterparties to a SBS, not just the reporting party. Proposed Rule 906(a) would require a registered SDR to identify any SBS reported to it for which the registered SDR did not have a participant ID and (if applicable), the broker ID, desk ID, and trader ID of each counterparty. Proposed Rule 906(a) would further require the registered SDR, once a day, to send a report to each participant identifying, for each SBS to which that participant is a counterparty, the SBS(s) for which the registered SDR lacks participant ID and (if applicable) broker ID, desk ID, and trader ID. Finally, under proposed Rule 906(a), a participant that receives such a report would be required to provide the missing UICs to the registered SDR within 24 hours of receipt of the report.

The Commission preliminarily believes that the registered SDR would be in the best position to know whether the reporting party had reported the UICs for its counterparty, and to request the missing UICs from any participant as necessary. In addition, the Commission recognizes that some reasonable period should be afforded to the registered SDR to determine what UICs have not been reported, to provide the report to each participant requesting such information, and for the participant to complete and return the report. The Commission preliminarily believes that it would be reasonable to require a registered SDR to produce only one such report per day, and to allow a participant up to 24 hours to complete

procedures reasonably designed to calculate positions for all persons with open SBSs maintained by the registered SDR, and is requesting comment on whether a SDR should calculate (on at least a daily basis) the market value of each position in SBSs for which the registered SDR maintains transaction data. *See* SDR Registration Proposing Release, *supra* note 6 (proposing Rule 13n–5(b)(2) under the Exchange Act).

[72] *Cf. supra* Section IV.B.1 (discussing participant IDs, broker IDs, desk IDs, and trader IDs, which could be used for multiple transactions across multiple asset classes).

[73] *See id.*

and return the report with the requested information.

4. Parent and Affiliate Information

The Commission also preliminarily believes that, to be able to effectively report on participant positions to assist the Commission and other regulators in monitoring systemic risk, a registered SDR should be able to identify all SBS positions within the same ownership group. Therefore, the Commission is proposing Rule 906(b), which would require each participant of a registered SDR to provide to the registered SDR information sufficient to identify its ultimate parent(s)[74] and any affiliate(s)[75] of the participant that also are participants of the registered SDR. Proposed Rule 906(b) also would require a participant to promptly notify the registered SDR of any changes to that information. Under proposed Rule 906(b), a participant would be required to provide this ownership and affiliation information to a registered SDR immediately upon becoming a participant (in other words, as soon as a SBS for which it is a counterparty is required to be reported to the registered SDR). As with other UICs,[76] an ultimate parent ID would be the unique identification code assigned to an ultimate parent by or on behalf of an IRSB (or, if no standards-setting body meet the required criteria or the IRSB has not assigned a UIC to a particular person or unit thereof, by the registered SDR).

Request for Comment

The Commission requests comment on all aspects of the proposed time stamp and identifier requirements.

69. Would it be feasible for a registered SDR to time stamp, to the second, information that would be submitted pursuant to proposed Rule 901? Would some other time increment be appropriate? If so, why?

70. Would requiring a transaction ID for each reported SBS help facilitate reporting of all events related to that SBS? If not, what alternative method should be required to allow for tracking of all events related to a SBS throughout its life?

71. Would transaction IDs be helpful to counterparties? If so, how?

72. Should registered SDRs have the sole responsibility to assign transaction IDs? Would it be feasible for other registered entities (*e.g.,* exchanges or SB SEFs) to assign transaction IDs?

73. Do existing SDRs that accept reports of SBSs assign transaction IDs or an equivalent identifier? If so, how?

74. Do commenters agree that the applicable UICs for both counterparties to a SBS would be useful to regulators? Why or why not?

75. Is the method set forth in proposed Rule 906(a) a practical way for the registered SDR to obtain the applicable UICs from the other counterparty if necessary? Why or why not? If not, what better mechanism should be required to ensure that a registered SDR has applicable UICs for both counterparties for any SBSs for which it acts as a repository?

76. Do commenters agree with the proposal to require participants to provide the required UICs within 24 hours? If not, why not? How long should the counterparty be given to complete the report?

77. Would it be more practicable and less burdensome to require a registered SDR to post on its Web site (in an area accessible only to participants) reports identifying missing UICs and requiring participants to check these reports daily, rather than requiring the registered SDR to send these reports to participants each day, as provided in proposed Rule 906(a)?

78. Would it be unduly burdensome to require a registered SDR to periodically obtain information from each participant that identifies the participant's ultimate parent(s) and any other participant(s) with which the counterparty is affiliated? If so, why? Would there be an easier method for assuring that such information is readily available to regulators? If so, what is it?

79. How much information about its counterparty should a reporting party be expected to obtain? Would it be practical to require the reporting party to report applicable UICs on behalf of its counterparty? If not, what alternative do commenters propose? For example, should the Commission directly require each counterparty to report applicable UICs for each SBS?

80. For SBSs executed on a SB SEF or on a national securities exchange where a reporting party might not know the identity of its counterparty, how should the reporting of counterparty UICs be addressed? Should the Commission require the SB SEF or national securities exchange to report to the registered SDR, at a minimum, the participant ID of the counterparty?

81. Do commenters agree with the need for, and the goal of, having parent and affiliate information reported to a registered SDR?

82. What difficulties do commenters envision in establishing and implementing a UIC system for ultimate parents and affiliates of participants of a registered SDR?

6. Format of Reported Information

a. Data Format

To develop a meaningful reporting and dissemination regime for SBSs, the Commission believes that it is essential that all required information for all SBS transactions be reported in a uniform electronic format.[77] Accordingly, proposed Rules 901(h) and 907(a)(2) together would mandate the use of a uniform reporting format for SBS information reported to a particular registered SDR. Specifically, proposed Rule 901(h) would require the reporting party to electronically transmit the information required to be reported by proposed Rule 901 in a format as required by the registered SDR. In addition, proposed Rule 907(a)(2) would require a registered SDR to have policies and procedures that specify the data format (which must be an open-source structured data format that is widely used by participants), connectivity requirements, and other protocols for submitting information.[78]

The Commission recognizes that this likely would require some change in existing practice, particularly with respect to highly customized transactions that may not be electronically executed or confirmed currently. However, the Commission

[74] *See* proposed Rule 900 (defining "parent" as a legal person that controls a participant); Rule 900 (defining "ultimate parent" as a legal person that controls a participant and that itself has no parent); Rule 900 (defining "control" for purposes of proposed Regulation SBSR as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise. A person would be presumed to control another person if the person: (1) Is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (2) directly or indirectly has the right to vote 25% or more of a class of voting securities or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (3) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25% or more of the capital). The proposed definitions of "parent" and "ultimate parent" are designed to identify particular categories of affiliated entities based on their ability to control a participant. Thus, a "parent" refers to a legal person that controls a participant, and the "ultimate parent" refers to an entity that controls a participant but that itself has no parent and thus is not controlled by another entity.

[75] *See* proposed Rule 900 (defining "affiliate" as any person that, directly or indirectly, controls, is controlled by, or is under common control with, a person).

[76] *See supra* Section IV.B.1.

[77] In a separate rulemaking today, the Commission is proposing various requirements for registered SDRs that would include, among other things, standards regarding data that registered SDRs would be required to collect and maintain. *See* SDR Registration Proposing Release, *supra* note 6.

[78] *See infra* Section VI.

believes that such a requirement would provide significant benefits by allowing for more efficient use and analysis of the data. The Commission understands that, currently, information for certain SBSs is communicated using an open-source structured data format called Financial Products Markup Language ("FpML"), which is accepted and used industry-wide and has a sufficiently flexible structure to accommodate new products and asset classes.[79]

Request for Comment

The Commission requests comment on all aspects of the proposed rules regarding the electronic submission of information required under proposed Rule 901 and the formatting of information that would be required to be reported to a registered SDR.

83. Are there different standard data formats currently in use depending on the type or class of SBS?

84. Should the registered SDR have the flexibility to specify acceptable data formats, connectivity requirements, and other protocols for submitting information? Are there disadvantages to this approach? If so, what are they and how should they be addressed?

85. Are there concerns with a registered SDR requiring use of FpML to report SBSs? If so, what are they? Are there any licensing fees associated with use of FpML? If so, what actions should the Commission take, if any, to help ensure wide availability of a common data format by all participants?

86. Are commenters concerned that varying reporting formats would develop if there were more than one registered SDR in each asset class? If so, should there be a uniform reporting format across all registered SDRs? How would commenters recommend that the Commission achieve this goal? Should the Commission require all registered SDRs to use the same format and the same data elements?

b. Reference Codes

The Commission understands that there are—or could be developed—industry conventions for identifying SBSs or reference entities on which SBS are based through readily available reference codes comparable to the CUSIP identifier used for debt, equity, and certain derivative securities.[80] Proposed Rule 903 would permit the use of codes in place of certain data elements for purposes of reporting and disseminating the information required under proposed Regulation SBSR, provided that the information needed to interpret such codes is widely available on a non-fee basis. Specifically, proposed Rule 903 would provide that a reporting party could provide information to a registered SDR pursuant to proposed Rule 901, and a registered SDR could publicly disseminate information pursuant to proposed Rule 902, using codes in place of certain data elements, provided that the information necessary to interpret such codes is widely available on a non-fee basis.

The Commission preliminarily believes that it is appropriate for the information required to interpret any codes used for reporting SBSs be widely available on a non-fee basis. If the information necessary to interpret such codes were not widely available, or available only for a fee, SBS transaction and pricing data might not be meaningfully available to the public. In the absence of proposed Rule 903, a registered SDR potentially could use proprietary code information, thereby requiring all consumers of its SBS market data to purchase from the code creator information necessary to interpret the codes.

Request for Comment

The Commission requests comment on all aspects of the proposed rules regarding the use of reference codes.

87. Do commenters agree it would be useful to permit the use of codes in place of specific data elements? Why or why not?

88. Are such codes currently in use? How would proposed Rule 903 affect how market participants employ any existing codes? Should the Commission permit registered SDRs to publicly disseminate SBS information using existing codes? Are market participants able to understand the codes without having to pay licensing or other usage fees?

89. Who might in the future develop any codes to be used in place of specific data elements? Would it be costly to develop these codes?

90. Is it feasible for information necessary to interpret these codes to be widely available on a non-fee basis? If not, why not? Would codes be developed if developers were not able to charge fees for the information necessary to interpret the codes? How would permitting developers of codes to charge fees for information necessary to interpret the codes affect SBS market participants? Would SBS market participants effectively be compelled to purchase this information?

91. If fees are necessary to protect the investment in intellectual property, what standards should be established to assure that such fees are fair and reasonable and not unreasonably discriminatory?

92. Do commenters believe a better approach would be to permit the use of fee-based codes for reporting information to a registered SDR, provided that SBS transaction reports are disseminated by the registered SDR without the codes, or with codes that are widely available on a non-fee basis? Should a registered SDR be expected to pay any fees or be subject to any usage restrictions imposed by the code creator? Would these fees and usage restrictions impact the public's access to the registered SDR's market data feed?

F. Reporting of Data for Historical SBSs

Section 3C(e)(1) of the Exchange Act requires the Commission, no later than 180 days after the effective date of Section 3C, to adopt rules providing for the reporting to a registered SDR or to the Commission of SBSs entered into before the date of enactment of Section 3C. Section 3C(e)(2) of the Exchange Act requires the Commission to adopt rules that provide for the reporting of SBSs entered into on or after the date of enactment of Section 3C no later than the later of (1) 90 days after the effective date of Section 3C, or (2) such other time after entering into the SBS as the Commission may prescribe by rule or regulation.

The statutory provision applicable to the reporting of SBSs entered into prior to the date of enactment does not limit the SBSs subject to the reporting. In contrast, the statutory provision requiring the Commission to adopt an interim final rule for the reporting of SBSs entered into prior to the effective date of the Dodd-Frank Act does limit the applicability of that rule to such SBSs that had "not expired as of the date of enactment."[81] Indeed, the statutory language applicable in this proposal would not prohibit collection of SBS data on all SBSs entered into since the first SBS, whether or not those SBS positions remain open or have been closed. This would potentially capture a very large amount of data on SBSs going

[79] FpML is based on XML (eXtensible Markup Language), the standard meta-language for describing data shared between applications. The Commission preliminarily believes that FpML would be an appropriate format for data reporting, in part because it is already widely understood and used and can be used across multiple asset classes.

[80] The CUSIP number for a security uniquely identifies a company or issuer, the type of security, and other information about the instrument. From the CUSIP number for a debt instrument, for example, market participants are able to determine the issuer, the date of maturity, the interest rate, the coupon structure, and other terms of the instrument.

[81] 15 U.S.C. 78m[A(a)(2)(A)].

back many years. The Commission preliminarily believes that an attempt to collect many years' worth of transaction-level SBS data (including closed or expired SBSs) would not enhance the goal of price discovery, nor would it be particularly useful to regulators or market participants in implementing a forward-looking SBS reporting and dissemination regime. Furthermore, collecting, reporting, and processing all such data would involve substantial costs to market participants with little potential benefit. Accordingly, the Commission has proposed to limit the reporting of SBSs entered into prior to the date of enactment to those SBSs that had not expired as of that date ("pre-enactment SBSs").[82]

The Commission acknowledges that reporting parties will not necessarily possess all of the information required by proposed Rule 901(c) and (d) with respect to pre-enactment SBSs or SBSs executed on or after July 21, 2010, and before the effective reporting date[83] ("transitional SBSs") (and together with pre-enactment SBSs, "historical SBSs"). Thus, proposed Rule 901(i) would require a reporting party to report all of the information required by proposed Rules 901(c) and (d) for any historical SBSs, to the extent such information is available.[84] For example, a reporting party would not have to report the time stamp of a historical SBS if a time stamp had not already been captured. In addition, if the terms of a SBS had been amended since the initial time of execution, only the most current version of the SBS would be considered the historical SBS that had to be reported pursuant to proposed Rules 901(i) and 910(a).

By requiring reporting of pre-enactment SBS transactions, proposed Rule 901(i) would provide the Commission with insight as to outstanding notional size, number of transactions, and number and type of participants in the SBS market. This would provide a starting benchmark against which to assess the development of the SBS market over time and, thus, represent a first step toward a more transparent and well regulated market for SBSs. The data reported pursuant to proposed Rule 901(i) also could help the Commission prepare the reports that it is required to provide to Congress. Further, proposed Rule 901(i) would require market participants to inventory their positions in SBS to determine what information needs to be reported, which could benefit market participants by encouraging management review of their internal procedures and controls.

The Commission notes that, especially with respect to CDSs, reporting parties may already have reported SBS information about historical SBSs to a data repository. Should such a data repository become registered with the Commission, the Commission would not require reporting parties to submit duplicate information to the registered SDR, except to the extent the reporting party has information in its possession that satisfies the provisions of proposed Rules 901(c) and (d) that had not previously been reported to the registered SDR.

Request for Comment

The Commission requests comment on all aspects of the proposed rules relating to pre-enactment SBSs and transitional SBSs.

93. Do commenters agree with the proposed reporting requirements for historical SBSs? Should the Commission extend the reporting requirement to include SBSs that were entered into prior to the date of enactment of the Dodd-Frank Act that had expired as of that date? If so, what information should be reported with respect to these SBSs? Would this approach be feasible? What would be the benefits of such an approach? Who would use this information, and for what purpose(s)? What would be the costs of this approach?

94. Would data concerning expired SBSs be of use to anyone? If so, who would use this information, and for what purpose?

95. Should the proposed rule "grandfather" all SBSs previously reported to a SDR regardless of whether the reporting party has information in its possession that satisfies the provisions of proposed Rule 901(c) and (d) that had not previously been reported to the registered SDR?

V. Public Dissemination of Security-Based Swap Transaction Information

In seeking to carry out Congress's mandate to require real-time public reporting for all SBSs, the Commission is mindful of Congress's statement in Section 13(m)(1)(B) of the Exchange Act[85] that "[t]he purpose of [Section 13(m)] is to authorize 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)(E)(iv) of the Exchange Act[86] further provides that the rule promulgated by the Commission to carry out the real-time reporting mandate shall contain provisions that take into account whether the public disclosure will materially reduce market liquidity.[87]

By reducing information asymmetries, post-trade transparency has the potential to lower transaction costs, improve confidence in the market, encourage participation by a larger number of market participants, and increase liquidity in the SBS market. The current market is opaque. Market participants, even dealers, lack an effective mechanism to learn the prices at which other market participants transact. In the absence of post-trade transparency, market participants do not know whether the prices they are paying or would pay are higher or lower than what others are paying for the same SBS instruments. Currently, market participants resort to "screen-scraping" e-mails containing indicative quotation information to develop a sense of the market. Supplementing that effort with prompt last-sale information would provide all market participants with more extensive and more accurate information on which to make trading and valuation determinations.

SBSs are complex derivative instruments, and there exists no single accepted way to model a SBS for pricing purposes. Post-trade pricing and volume information could allow valuation models to be adjusted to reflect how other market participants have valued a SBS instrument at a specific moment in time. Public, real-time dissemination of

[82] *See* proposed Rule 900 (defining "pre-enactment security-based swap" to mean any SBS executed before July 21, 2010—the date of enactment of the Dodd-Frank Act—the terms of which had not expired as of that date).

[83] *See* proposed Rule 900 (defining "effective reporting date," with respect to a SDR, as the date six months after the registration date); proposed Rule 900 (defining "registration date," with respect to a SDR, as the date on which the Commission registers the SDR, or, if the Commission registers the SDR before the effective date of proposed Regulation SBSR, the effective date of proposed Regulation SBSR).

[84] Information concerning historical SBSs would be reported, but would not be publicly disseminated. *See* proposed Rules 901(i) and 910. This reporting is consistent with the requirements contained in Rule 13Aa–2T(b)(1) under the Exchange Act, as the Commission recognizes that such information may not be available. *See* Interim Rule Release, *supra* note 16. Furthermore, if a reporting party has reported a SBS to a registered SDR pursuant to proposed Rule 901(i), the reporting party would become obligated to report to the registered SDR any life cycle events pertaining to that SBS. *See* proposed Rule 901(e).

[85] 15 U.S.C. 78m(m)(1)(B).

[86] 15 U.S.C. 78m(m)(1)(E)(iv).

[87] This provision applies only with regard to SBSs described in clauses (i) and (ii) of Section 13(m)(1)(C) of the Exchange Act, not SBSs described in clauses (iii) and (iv) of Section 13(m)(1)(C). *See supra* Section I.B.2 (describing which SBSs fall into each of these four categories).

last-sale information also could aid dealers in deriving better quotations, because they would know the prices at which other market participants have traded. The same information could aid end users in evaluating current quotations, because they would be able to inquire from dealers why the quotations that the dealers are providing them differ from the prices of the most recent transactions. Furthermore, end users that could view last-sale information in real time would be able to test whether quotations offered by dealers before the last sale were close to the price at which the last sale was executed. In this manner, post-trade transparency could promote price competition and more efficient price discovery in the SBS market.

In other markets, greater post-trade transparency has increased competition among market participants and reduced transaction costs. A number of studies of the corporate bond market, for example, have found that post-trade transparency, resulting from the introduction of TRACE, has reduced transaction costs.[88]

However, the structure of the SBS market and the way in which participants manage risk in this market might be sufficiently different from other financial markets to warrant different approaches to post-trade transparency. The SBS market is almost wholly institutional, unlike other securities markets where there is substantial retail participation. Moreover, the SBS market has many fewer market participants, fewer transactions, and larger trade sizes relative to other securities markets. It could be argued that post-trade transparency in the SBS market might not have the same effects as in other securities markets. Indeed, one study of TRACE stated that "[o]ur evidence suggests that the availability of last sale price information may have little impact on spreads for less active bonds" and that "[w]e do not find any effect (positive or negative) of transparency for very thinly traded bonds."[89]

It could be argued that post-trade transparency in the SBS market, particularly for large-sized trades, might even adversely impact liquidity by increasing the costs of dealers to hedge. In a typical SBS, one party (the "natural long") either has a risk position that it wishes to offset (because, for example, it is long the bonds of a reference company) or it wishes to establish a risk position. The natural long typically would approach one or more dealers to take the other side of the trade. If a dealer were to enter into a SBS with the natural long, the dealer typically would seek to lay off that risk as much as possible, perhaps with another dealer. Eventually, however, the risk would typically be assumed by a market participant (the "natural short") who is willing to assume the risk being laid off by the natural long. In the SBS market, dealers generally are not natural longs or natural shorts, because they do not seek to profit by taking long or short risk positions. Dealers profit, rather, by collecting spreads between the price at which they buy risk and the price at which they sell risk, and by charging commissions.

The larger the natural long's initial risk position, the more difficult it would likely be for a dealer that enters into an SBS with the natural long to lay off the risk. All other things being equal, it would likely be easier for the dealer to find another dealer or a natural short willing to take on a small risk than a larger one. This is the case even in an opaque market, such as the SBS market as it exists today. The difficulties in transferring the risk could be even greater if the transaction details of the initial SBS between the natural long and the dealer were publicly disseminated in real time. A dealer trying to engage in hedging transactions following an initial, large SBS trade could be put in a weaker bargaining position relative to subsequent counterparties, who could anticipate the structure of the hedge.

In an opaque market, market participants have to rely primarily on their understanding of the market's fundamentals to arrive at a price at which they would be willing to assume risk. With immediate real-time public dissemination of a block trade, however, market participants who might be willing to offset that risk—*i.e.,* other dealers and natural shorts—could extract rents from a dealer that takes the risk from the natural long. Because the initial dealer would not internalize those higher costs, it would most likely seek to pass those costs on to the natural long in the form of a higher price for the initial SBS up front. Alternatively, the initial dealer could choose not to enter into the initial SBS if the dealer's cost to hedge increased. In other words, increasing the dealer's initial cost to hedge could increase costs to those seeking to take a natural long position both in the form of less favorable SBS prices for the natural long and potentially fewer counterparties for a natural long to transact with, if certain dealers were to scale back their activity in the SBS market. This could lead to less liquidity in the SBS market, and thus lower trading volume and less ability for market participants to manage risk.[90] It also might be argued that increased post-trade transparency could drive large trades to other markets that offer the opacity desired by traders, creating fragmentation and harming price efficiency and liquidity. This possibility is consistent with the argument that large, informed traders may prefer a less transparent trading environment that allows them to minimize the price impact of their trades.[91]

Under this view of the SBS market, real-time public dissemination of SBS block trades could result in market inefficiencies, as evidenced by fewer transactions or less liquidity. If the natural long were unable or unwilling to assume higher costs for the initial SBS transaction, it might be left with an undesired level of risk, because the market has been unable to relocate the risk to others who are more willing or able to assume it. Furthermore, higher overall transaction costs could hurt dealers, even though they can pass on to the natural long the higher costs to hedge. This is because post-trade transparency could cause overall transaction volumes to decline, thereby reducing profits accruing to dealers, whether in the form of spreads or commissions. Furthermore, to the extent natural shorts are able under a post-trade transparency regime without a block trade exception to extract rents from natural longs (albeit indirectly), there could be a wealth transfer from natural longs to natural shorts. This could be viewed as inefficient, because the prices charged (and presumably obtained) by the natural shorts are not based solely on economic fundamentals, but also are impacted by the predicament of the natural longs (or dealers that have traded with the natural longs), where all market participants

[88] *See* Amy K. Edwards, Lawrence Harris, & Michael S. Piwowar, *Corporate Bond Market Transparency and Transaction Costs,* J. of Fin., Vol. 62, at 1421–1451 (2007); Hendrik Bessembinder, William F. Maxwell, & Kumar Venkataraman, *Market Transparency, Liquidity, Externalities and Institutional Trading Costs in Corporate Bonds,* J. of Fin. Econ., Vol. 82, at 251–288 (2006). It should be noted that Amy Edwards, one of the co-authors of the first article cited, currently serves as an economist in the Commission's Division of Risk, Strategy, and Financial Innovation.

[89] Michael A. Goldstein, Edith S. Hotchkiss, & Erik R. Sirri, *Transparency and Liquidity: A Controlled Experiment on Corporate Bonds,* Rev. of Fin. Stud., Vol. 20, Issue 4, at 235–273 (2007), at 269, 270.

[90] *See* N.Y. Naik, A. Neuberger, & S. Viswanathan, *Trade Disclosure Regulation in Markets with Negotiated Trades,* Rev. of Fin. Stud., Vol. 2, Issue 4, at 873–900 (1999).

[91] *See* Ananth Madhavan, *Consolidation, Fragmentation, and the Disclosure of Trading Information,* Rev. of Fin. Stud., Vol. 8, Issue 3, at 579–603 (1995).

know that the natural longs (or the dealers) have a large risk position that they presumably will wish to offset in the near future.

On the other hand, fully and immediately disseminating SBS transactions to the public—even those of large notional size—could incentivize additional market participants to compete to purchase the risk that the natural long is trying to acquire or offset. In other words, the desire by natural shorts to extract rents from natural longs might be offset by more natural shorts competing to acquire the risk. In this view, greater post-trade transparency would result in lower rather than higher costs for natural longs to offset or acquire their risk positions. In the existing, opaque market for SBSs, any individual market participant possesses only incomplete knowledge of when transactions occur, and thus when opportunities arise to enter the market by offering to offset risk. Moreover, any individual market participant possesses only incomplete information about where others view the price of risk. Real-time public dissemination of both the price and full size of all SBS transactions, including block trades, could cause more market participants to bid to take on risk after seeing a report of the block trade. Moreover, full post-trade transparency of block trades would allow natural shorts to know the prices at which natural longs transacted, which would enable natural shorts to bid more efficiently to accept the risk, particularly if natural shorts used the post-trade information as an input to, rather than as a substitute for, their own independent valuation and pricing decisions. Currently, a natural short—without knowledge of the price at which the natural long transacted—could underprice its willingness to acquire the risk, resulting in a windfall profit for the dealer, who can capture a greater spread.

Discussed in greater detail below are the provisions in proposed Regulation SBSR relating to post-trade transparency. In particular, the Commission is proposing Rules 907(b) and 902(b) relating to block trades, and is thereby taking into account the possibility that public disclosure required under the Dodd-Frank Act could materially reduce market liquidity for SBSs of large notional size.[92] These proposed rules are designed to balance the benefits of post-trade transparency against the potential harm that could be done to dealers and natural longs that could face higher costs of transferring or hedging a large risk position after other market participants learn of the execution of a block trade.

The Commission acknowledges that it would be difficult at this stage to accurately predict how post-trade transparency in general, or the particular methods of post-trade transparency discussed in this release, would affect the SBS market. The Commission is mindful that there are similarities and differences between the SBS market and the other securities markets that the Commission regulates, and that these similarities and differences may impact how post-trade transparency could affect the SBS market, in contrast to how post-trade transparency affects other securities markets. Moreover, the effects of immediate real-time dissemination could differ between the near term and the long term, particularly as the SBS market evolves in response to other regulatory actions. The Commission expects that, as post-trade transparency is implemented in the SBS market, new data will come to light that will inform the discussion and could cause subsequent revision of Regulation SBSR. Whatever approach is ultimately adopted, the Commission will study the development of the market closely, particularly with regard to block trades, and make subsequent revisions to the rules relating to post-trade transparency in the SBS market as necessary or appropriate.

Request for Comment

The Commission requests comment generally on how the Commission should address Congress's instruction in Section 13(m)(1)(E)(iv) of the Exchange Act that, with respect to certain SBSs, the rule promulgated by the Commission to carry out the real-time reporting mandate shall contain provisions that take into account whether the public disclosure will materially reduce market liquidity. In particular:

96. Would post-trade transparency have an effect on the SBS market similar to its effect in other securities markets? Why or why not?

97. Academic studies of other securities markets generally have found that post-trade transparency reduces transaction costs and has not reduced market liquidity. How do those markets differ or compare to the SBS market? How would those similarities or differences affect post-trade transparency in the SBS market?

98. The SBS market currently is almost wholly institutional. Would this characteristic impact the effect of post-trade transparency on the SBS market? If so, how and how much? Are the needs of market participants in the SBS market for access to transaction information different than the needs of market participants in other securities markets for access to transaction information?

99. A significant amount of trading in the SBS market is currently carried out by only a limited number of market participants. Would this characteristic impact the effect of post-trade transparency on the SBS market? If so, how and how much? For example, is there a concern that it would be easier to determine the identity of the counterparties to a SBS transaction in certain instances based on the real-time transaction report? If so, what would be the harm, if any, of such knowledge? Would the answer differ depending upon the liquidity of the SBS instrument, or whether it was a customized SBS or not?

100. Overall, the SBS market is significantly more illiquid than other securities markets that have post-trade transparency regimes. How would this characteristic impact, if at all, the effect of post-trade transparency on the SBS market? Do commenters believe that post-trade transparency could materially reduce market liquidity in the SBS market, or particular subsets thereof? Why and how? Please be specific in your response and provide data to the extent possible.

101. In an illiquid market (such as the CDS market for smaller reference entities), there will likely be fewer last-sale prints than in a more liquid market (such as the CDS market for large corporate debt issuers). Would these few last-sale prints in the illiquid market have more, less, or the same value as prints in the more liquid market? Why or why not?

102. How would a post-trade transparency regime in SBSs affect the liquidity of the underlying securities? For example, how, if at all, would the post-trade transparency regime affect liquidity in the corporate bond market?

103. Should there be exceptions other than a block trading exception to post-trade transparency to avoid unnecessarily reducing market liquidity, *e.g.,* for SBSs based on illiquid securities? Please be specific in your response and provide data to the extent possible.

104. As noted above, Section 13(m)(1)(E)(iv) of the Exchange Act provides that, with respect to real-time public dissemination of information about SBSs that are subject to mandatory clearing or that are not subject to mandatory clearing but are cleared regardless, the rule promulgated by the Commission regarding such

[92] *See* 15 U.S.C. 78m(m)(1)(E)(iv).

dissemination shall contain provisions "that take into account whether the public disclosure will materially reduce market liquidity." Do commenters believe that there are circumstances under which real-time public dissemination of information about SBS transactions, as contemplated by proposed Regulation SBSR, whether or not the transactions are block trades, would materially reduce market liquidity? If so, how, why, and under what circumstances would real-time public dissemination affect market liquidity? If market liquidity would be materially reduced, how do commenters believe that the Commission should address that issue, given the general requirement in Section 13(m)(1)(C) of the Exchange Act that the Commission generally shall require real-time public reporting for all SBSs?

A. Registered SDRs as Entities With Duty To Disseminate

The Dodd-Frank Act identifies four types of SBSs and states, with respect to each, that the Commission shall require real-time public reporting for such transactions.[93] In implementing the requirements of the Dodd-Frank Act, the Commission preliminarily believes that the best approach would be to require registered SDRs to disseminate SBS transaction information, and to require other market participants to report such information to a registered SDR in real time, so that the registered SDR can in turn provide transaction reports to the public in real time.[94] Under this approach, market participants would not have to obtain SBS market data from other potential sources of SBS transaction information—such as SB SEFs, clearing agencies, brokers, or the counterparties themselves—to obtain a comprehensive view of the SBS market. Requiring registered SDRs to be the registered entities with the duty to disseminate information would produce some degree of mandated consolidation of SBS transaction data and help to provide consistency in the form of the reported information. This approach is designed to limit the costs and difficulty to market participants of obtaining and assembling data feeds from multiple venues that might disseminate information using different formats.

Multiple uniquely formatted data feeds could impair the ability of market participants to receive, understand, or compare SBS transaction data and thus undermine its value. The Commission is cognizant of this potential and seeks public comment on means to address this issue. One way to address that issue would be to dictate the exact format and mode of providing required SBS transaction data to the public. Although this approach could promote consistency, the Commission preliminarily believes that such an approach could inhibit innovation and the development of best practices, and could inadvertently omit key elements to a successful SBS transaction reporting system. The Commission also preliminarily believes that such an approach may be difficult to administer over time.

The Commission understands that existing SDRs that accept SBS data do not currently have the functionality to publicly disseminate data in real time. The Commission notes that nothing in the proposal would prohibit a registered SDR from contracting with a vendor to carry out the dissemination function. Over time, as registered SDRs and SBS transaction reporting become more established, it is possible that alternative approaches for reporting and disseminating SBS transaction information could develop. Thus, the proposal would not prohibit registered SDRs that cover the same asset classes from acting together to create a central consolidator that would disseminate information for all SBSs in that asset class. Allowing registered SDRs to satisfy their dissemination obligation by providing information to a third party that would consolidate and disseminate information for all SBSs in an asset class might provide an economic incentive for registered SDRs to create, fund, and operate a single central consolidator.

The Commission is sensitive to the possibility that there could emerge multiple registered SDRs in an asset class. Should this occur, the Commission and the markets would be confronted with the possibility that different registered SDRs could adopt different dissemination protocols, potentially creating fragmentation in SBS market data. Based on conversations with market participants, however, the Commission preliminarily believes that the most likely outcome is for the market to have only a few registered SDRs (although nothing in the Dodd-Frank Act prevents more from being established). Furthermore, even if multiple registered SDRs were to be established in an asset class, it is unclear whether market participants would have an incentive to spread their business across those multiple registered SDRs. The Commission seeks comment on the likelihood of multiple registered SDRs per asset class emerging; how that would likely affect market participant behavior; and what steps, if any, that the Commission should take to address any attendant regulatory issues that could arise.

One step that the Commission could take would be to require one consolidated reporting entity to disseminate all SBS transaction data for that asset class, by requiring each registered SDR in an asset class to provide all of its SBS data to a "central processor" that would also be a registered SDR. There is substantial precedent for this approach in the equity markets, where market participants may access a consolidated quote for national markets system securities and a consolidated tape reporting executed transactions. A central processor could receive a data feed from each registered SDR, consolidate the information, and then publicly disseminate the consolidated data. However, this approach likely would take more time to implement and may not be warranted given the present SBS market structure. Furthermore, as noted above, the proposal would not prohibit registered SDRs that cover the same asset classes from determining on their own to act together to create a central processor.

Another approach would be to require public dissemination pursuant to a "first touch" or "modified first touch" approach. For a first touch approach, a SBS dealer or major SBS participant that is a party to the SBS would be responsible for dissemination, and for SBSs in which no SBS dealer or major SBS participant is a party, the SDR would be responsible for dissemination. Under a modified first touch approach, a SB SEF or national securities exchange would be required to disseminate the information for those SBSs executed on the SB SEF or national securities exchange. In connection with either of these approaches, the Commission could allow a party required to disseminate to satisfy its obligation if it provided the information to a third-party consolidator that would disseminate the information for all SBSs in that asset class. However, if that did not occur in a timely manner—if, for example, the reporting parties could not agree on the practicalities of such an undertaking, or if not all reporting parties wanted to join—it would result

[93] *See* 15 U.S.C. 78m(m)(1)(C).

[94] One commenter has expressed support for this approach. *See* Benchmark Letter at 2 (arguing that trade reporting and dissemination, including the reference data and identifier system, "should be provided via a non-profit industry utility such as a SDR"). *See also* letter from Larry E. Thompson, General Counsel, DTCC, to Mary Schapiro, Chairman, Commission, and Gary Gensler, Chairman, CFTC, at 1 (November 15, 2010) (stating that a registered SDR "should be able to provide * * * a framework for real-time reporting from swap execution facilities and derivatives clearinghouses").

in less consolidation than the proposed approach to require registered SDRs to disseminate the SBS data.

Request for Comment

The Commission requests comment on all aspects of the proposed rules requiring registered SDRs to disseminate SBS information.

105. Would requiring registered SDRs to disseminate SBS information be an effective means of dissemination? Why or why not? Would another approach be more effective? What would be the advantages, or disadvantages, of requiring different registered entities, in addition to or instead of registered SDRs, to disseminate SBS information?

106. Would the presence of multiple disseminators increase the need for a consolidated data feed? Why or why not?

107. Should the Commission require consolidation of data feeds now? Or over time if multiple registered SDRs begin to operate in an asset class?

108. What are the costs and benefits of requiring registered SDRs to disseminate SBS data? Would this approach have an impact on an entity's desire to become a registered SDR? Are other entities, such as SB SEFs, better suited to disseminate SBS data? How should the Commission balance the costs to particular entities with the benefits of greater consolidation of publicly disseminated SBS data?

B. Dissemination in Real Time

Proposed Rule 902(a) would require a registered SDR to publicly disseminate a transaction report of a SBS, other than a block trade,[95] immediately upon (1) receipt of information about the SBS from a reporting party, or (2) re-opening following a period when the registered SDR was closed.[96] The Commission preliminarily believes that "immediately" as used in this context would require a wholly automated process to accept the incoming information, process the information to assure that only information required to be disseminated is disseminated, and disseminate a trade report through electronic means. The transaction report that is disseminated would be required to consist of all the information reported by the reporting party pursuant to proposed Rule 901(c),[97] along with any indicator or indicators contemplated by the registered SDR's policies and procedures.[98] In addition, the registered SDR would be required to have policies and procedures that specify the specific data elements that must be reported to it and the format for reporting this information,[99] which could help to provide greater uniformity in the disseminated transaction data.

The Commission recognizes that there may be circumstances when a registered SDR's systems might be unavailable for publicly disseminating transaction data. In such cases, as provided in proposed Rule 902, the registered SDR would be required to disseminate the transaction data immediately upon its re-opening.[100]

C. Block Trades

The Commission proposes to establish criteria for what constitutes a block trade and for specifying a time delay for disseminating certain information about a block trade to the public, for all SBSs except those that are determined to be required to be cleared under Section 3C(b) of the Exchange Act but are not cleared.[101] Proposed Rule 907(b) would establish criteria for what constitutes a block trade, and proposed Rule 902(b) would specify the time delay for disseminating certain information about a block trade to the public.

1. Role of Registered SDRs Generally

Proposed Rule 900 would define "block trade" to mean a large notional SBS transaction that meets the criteria set forth in proposed Rule 907(b). Proposed Rule 907(b)(1) would require a registered SDR to establish and maintain written policies and procedures for calculating and publicizing block trade thresholds for all SBS instruments reported to the registered SDR in accordance with the criteria and formula for determining block size as specified by the Commission. In determining block trade thresholds, a registered SDR would be performing mechanical, non-subjective calculations.

The Commission preliminarily believes that requiring a registered SDR to calculate and publicize block trade thresholds pursuant to its written policies and procedures would allow for a more streamlined and accurate process, as registered SDRs would have more ready access to the data necessary to make block trade calculations. Further, placing the responsibility on registered SDRs rather than reporting parties would eliminate the burden on reporting parties for making block trade calculations, and should provide greater uniformity in what constitutes a block trade.

2. Block Trade Threshold

As noted above, Section 13m(1)(E)(ii) of the Exchange Act[102] requires the Commission rule for real-time public dissemination of SBS transactions "to specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade)." In this release, the Commission is proposing general criteria that it would consider when setting specific block trade thresholds, but is not proposing specific thresholds at this time. The Commission believes that it would be appropriate to seek additional comment from the public, as well as to collect and analyze additional data on the SBS market, in the coming months. The Commission intends to propose specific block trade thresholds simultaneous with the adoption of Regulation SBSR (in whatever form it may ultimately take).

The Commission preliminarily believes that the general criteria for what constitutes a large notional SBS transaction must be specified in a way that takes into account whether public disclosure of such transactions would materially reduce market liquidity, but presumably should be balanced by the general mandate of Section 13(m)(1) of the Exchange Act, which provides that data on SBS transactions must be publicly disseminated in real time, and in a form that enhances price discovery. In considering criteria for what constitutes a large notional SBS, the Commission notes that there are mechanisms by which reporting data on any SBS might impact liquidity. If the intent to trade were publicly reported prior to a transaction taking place (*i.e.,* if there were pre-trade transparency), it would be reasonable to suppose that the marketplace would have an opportunity to react to this information in a way that

[95] *See infra* Section V.C (discussing block trades).

[96] The Commission notes that FINRA disseminates information on all transactions in TRACE-eligible securities immediately upon receipt of a transaction report. *See* FINRA Rule 6750(a). The Commission also notes that the Municipal Securities Rulemaking Board disseminates information on most transactions in municipal securities almost immediately. *See http://emma.msrb.org/EducationCenter/FAQs.aspx?topic+AboutTrade.*

[97] *See supra* Section III.B (discussing the data elements required to be reported in real time by proposed Rule 901(c)).

[98] *See* proposed Rule 907(a)(4).

[99] *See* proposed Rules 907(a)(1) and (2).

[100] *See infra* Section V.D (discussing proposed Rule 904, which deals with hours of operation of registered SDRs and related operational procedures).

[101] *See* 15 U.S.C. 13m(m)(1)(C)(iv) (providing that, with respect to SBSs that are determined to be required to be cleared under Section 3C(b) but are not cleared, the Commission shall require real-time public reporting of such transactions).

[102] 15 U.S.C. 13m(m)(1)(E)(ii). This provision applies with respect to SBSs that are subject to mandatory clearing and SBSs that are not subject to mandatory clearing but are cleared at a registered clearing agency.

impacted the ability of such a transaction to be completed at the desired price, which might in turn impact the liquidity of such a market by causing participants to withdraw from trading or reduce the size of their trades.

However, this effect could not manifest itself directly via post-trade transparency, since the transaction has already taken place. For post-trade transparency to have a negative impact on liquidity, market participants would need to be affected in a way that either: (1) Impacted their desire to engage in subsequent transactions unrelated to the first, or (2) impacted their ability to follow through with further actions after the reported transaction has been completed that they feel are a necessary consequence of the reported transaction. In instance (1), post-trade dissemination of transaction prices, without necessarily any reference to notional size, could impact the desire for certain market participants to trade if spreads narrowed, because price transparency led to an increased negotiating ability for market participants who otherwise would not have been privy to such information. But this same transparency also could lead to an increase in liquidity if other market participants increase their trading as a result of having access to new information or of narrower spreads. It may not be possible to estimate with any certainty which of these factors will outweigh the other as the SBS market continues to evolve. Analogs to other markets (such as fixed income or equities) may provide guidance; however, those markets each have structures and instruments that differ significantly from the SBS market.

In determining whether there should be a delay in the disclosure of prices of SBS block trades, without necessarily any reference to notional size, the Commission is guided by the general mandate of Section 13(m)(1) of the Exchange Act, which provides that transaction information should be disseminated in a form that enhances price discovery. Nonetheless, the Commission recognizes that mandating disclosure of trades below a certain size would essentially signal to the market that a trade was at or above that size—that is to say, would signal that the trade was "of size"—even when there is no disclosure of the precise size of the trade if it is above some threshold size. The Commission preliminarily believes that even in very illiquid markets transaction prices form the foundation of price discovery. Past transactions may not be indicative of those in the future, and may not themselves accurately reflect fundamental value, but they provide an objective starting point for participants to consider. Moreover, in an illiquid market, the low frequency of transactions and potentially wide variation of past prices inform participants as to uncertainty in pricing that they may expect in the future, which may not only influence trading decisions, but could also play a role in mark-to-market valuations and risk management. There does not seem to be a reason that post-trade price disclosure for large notional SBS transactions would be less relevant for price discovery than similar disclosure for other SBSs. Therefore, as described further below, the Commission is proposing that prices for block trades be disseminated in the same fashion as prices for non-block-trade transactions.

In contrast, instance (2) above considers that disclosure that a block trade has taken place, with or without the exact size of the trade, may lead to a reduction in liquidity if one or both of the parties engaged in such a transaction need to take further actions in the marketplace after the reported transaction was completed and disseminated, and dissemination would inhibit their ability to take such action. In this situation, one or both of the parties might choose not to have participated in the original transaction.

One reason an SBS counterparty might desire to take further action after an initial transaction is completed would be for hedging purposes. This hedge may take the form of re-entering the SBS market on the contra side, or hedging the exposure underlying the initial SBS by taking a contra position in the cash security market. Whether or not one or more parties to a transaction will be subsequently hedging its exposure after the transaction is complete cannot be discerned from data about the transaction. However, if a transaction is to be hedged, the size of the transaction would be a factor in how readily the hedge can be executed.

For transactions that are sufficiently small, disseminating the exact size of the transaction would likely not provide other market participants with information that could be used to the detriment of the hedging party, since the hedging transaction would be indistinguishable from other market activity. However, for transactions that are sufficiently large, it may be the case that disseminating the size of such a transaction would provide a signal to other market participants that there is the potential, though not certainty, that a large transaction could take place in an SBS or a related security. Market participants might be able to use this information to their advantage in a way that disadvantages the hedging party and disincents that party from engaging in such types of SBS transactions. In this fashion, post-trade transparency for one transaction is transformed into pre-trade signaling for another.

To address this issue, the Commission preliminarily believes that the size of an SBS transaction that is sufficiently large to signal other market participants that there is the *potential for a subsequent outsized transaction,* should itself be suppressed to provide time for those subsequent transactions, if any, to be absorbed by the market. Moreover, the Commission recognizes that mandating disclosure of trades below a certain size would essentially signal to the market that a trade was at or above that size—that is to say, would signal that a trade was "of size"—even when there is no disclosure of the precise size of the trade, if it is above some threshold size.

There are a variety of metrics that can be used to determine the criteria for whether or not a SBS transaction should be considered a block trade. These include the absolute size of the transaction, the size of the transaction relative to other similar transactions, the size of the transaction relative to some measure of overall volume for that SBS instrument, and the size of the transaction relative to some measure of overall volume for the security or securities underlying the SBS. The most relevant metric would depend on the specific nature and timing of the hedging, which cannot be discerned from data about the transaction. However, if the goal of not publicly disseminating the size of a large notional SBS transaction is to prevent inadvertent signaling to the market of potential large subsequent transactions, then criteria should be chosen in a way that minimizes such signaling.

This suggests the use of one or more metrics that can help distinguish ordinary transaction sizes from extraordinary transaction sizes. An ordinary transaction size would be one in which the size of subsequent hedging transactions (if any) would be indistinguishable from the rest of the market. Extraordinary transaction sizes would be those in which subsequent transactions could be distinguished from the rest of the market.

One possibility could be to order the sizes of all transactions for a given SBS instrument and identify the top N-percent as large. However, it is not *a priori* obvious what percent should be used. Also, using a simple percentile threshold would not account for the distribution of trade sizes that could be widely dispersed or narrowly clustered. In addition, the distribution of the trade sizes could change over time.

A second possibility would be to examine trade size data to determine if the distribution of trade sizes suggests thresholds that could be used to discern ordinary versus extraordinary trade size. The figure below plots the distribution of trade sizes, bucketed in bins of $5 million, for over 370,000 single name corporate CDS transactions.[103] Almost half of all trades have sizes of less than $5 million, and over 90% have sizes less than $15 million. There is a small cluster of trades between $15 million and $30 million, followed by a long tail beginning at $30 million and extending to over $100 million.

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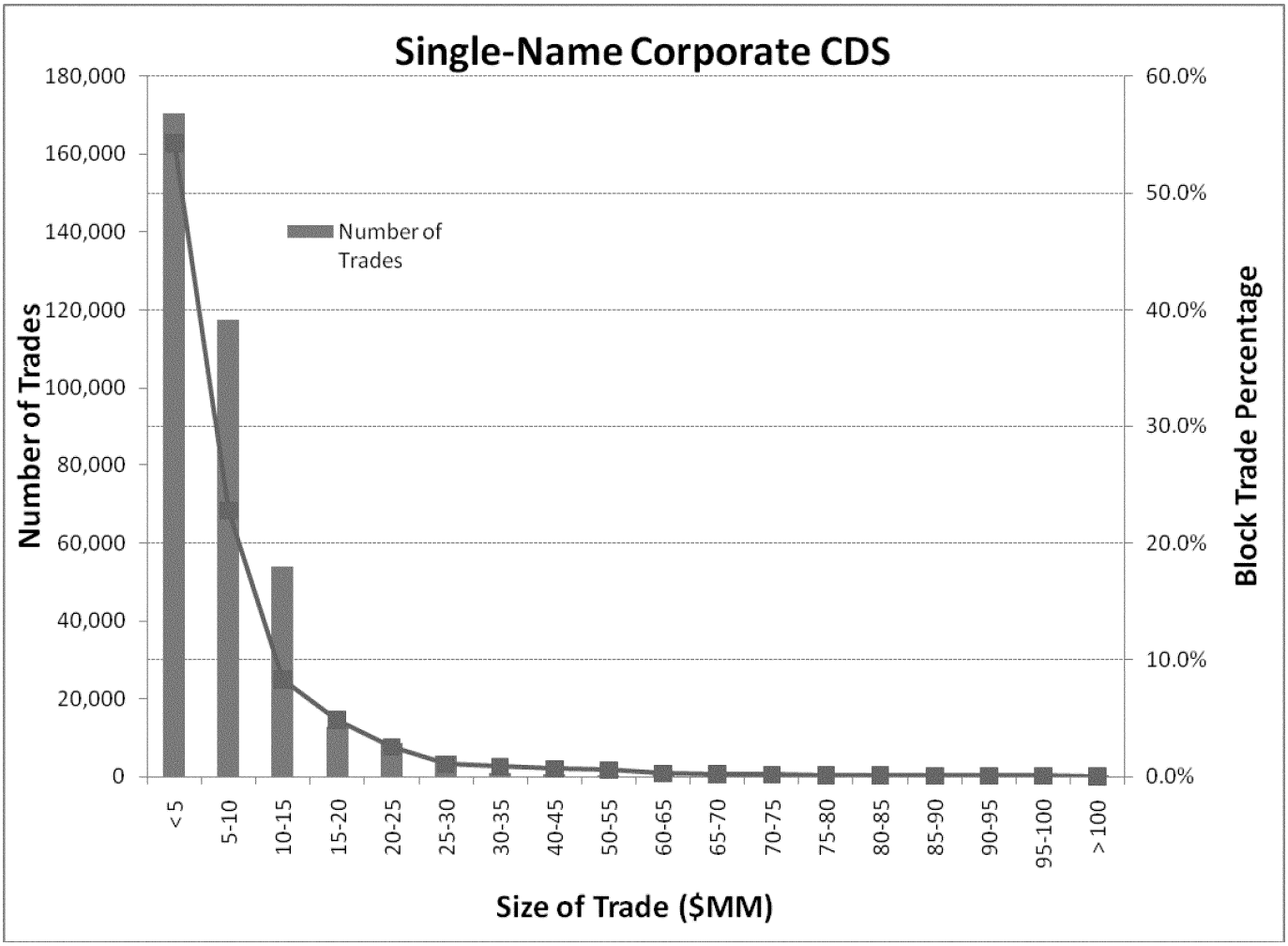
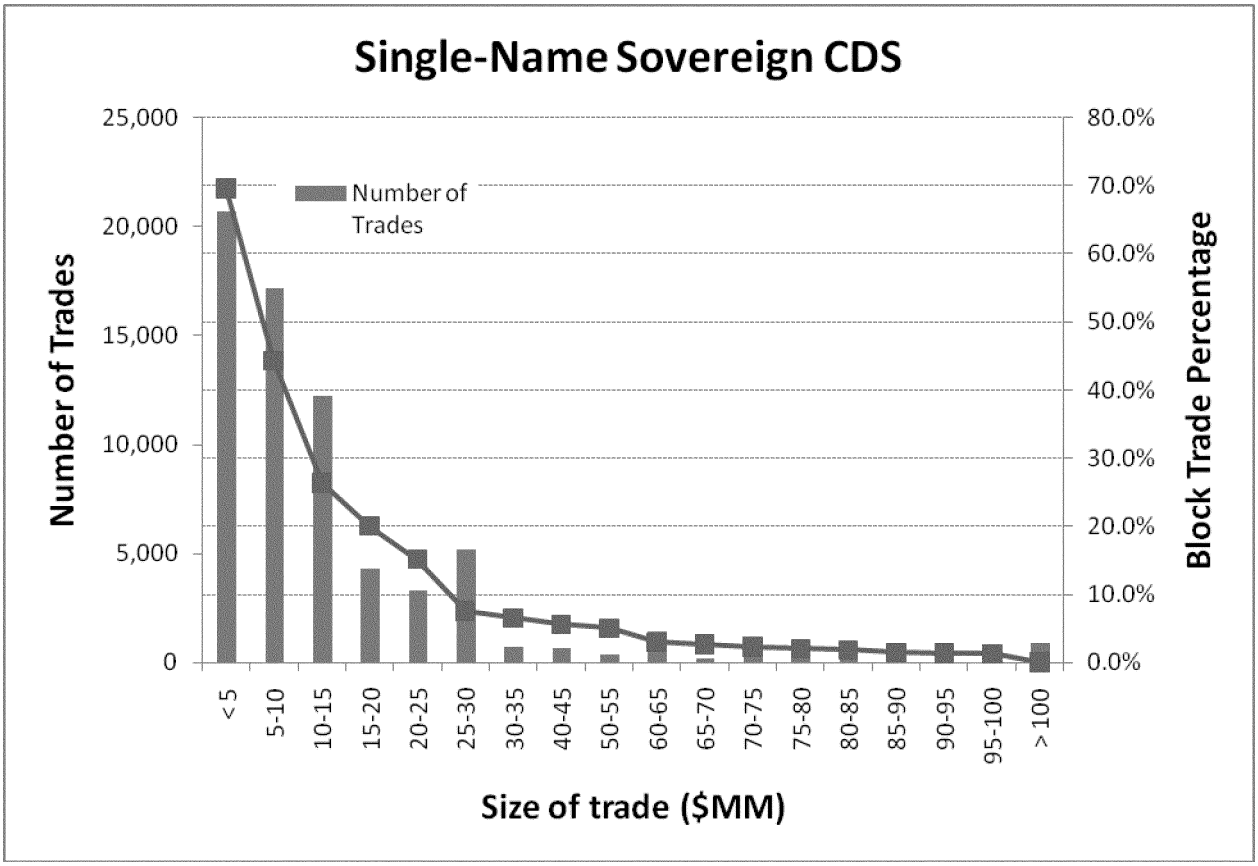


These data would suggest two possible thresholds—$15 million or $30 million. A cutoff of $15 million would have resulted in about 8% of trades executed over this time period being considered large notional, and a cutoff of $30 million would have resulted in about 1% of trades being considered large notional.

The second figure below presents similar data for over 20,000 sovereign CDS transactions from the same source over the same time period. The plot suggests similar cutoff points, although there are notably many more transactions in the tail for sovereign CDS than there were for single-name corporate CDS. A cutoff of $15 million would result in about 26% of all trades being considered large notional, and a cutoff of $30 million would result in about 7.5% of all trades being considered large notional.

[103] *See supra* note 11.



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Splitting the universe of transactions into single-name corporate CDS and sovereign CDS would not provide for potential differences between individual corporates or sovereigns that may have unique distributions or liquidity profiles. As a further consideration, the Commission notes that some SBSs may trade very infrequently, such as only a few times per month. Under these conditions, it would not be obvious how to distinguish an ordinary sized transaction from an extraordinary size. However, if a market were that illiquid it would most likely not be the case that subsequent hedging would be done in that same market. In such case, it is somewhat harder to see how the post-trade reporting of size would *further* impact the ability for one or more market participants to affect subsequent hedging transactions, since in such an illiquid market it may not be possible to hedge at all.

The Commission also notes that this criterion considers only typical trade sizes within the CDS market without regard to overall daily, weekly, or monthly volume. This criterion also does not consider liquidity or volume in the underlying cash markets. Inclusion of volume metrics may be helpful in defining the criteria for what constitutes a block trade. For example, a single trade that is equivalent in size to a full- or half-day's average volume may be considered out-sized. On the other hand, if a particular SBS trades only once or twice per day then every trade would be equivalent to a full or half-day's average size. The Commission invites comment on if and how volume considerations should be included in the criteria for setting block trade thresholds.

For the reasons discussed above, a simple metric based on recent trade sizes of SBSs designed to help distinguish ordinary from extraordinary trade sizes could address the issue of inadvertently signaling market participants that a potential large transaction in a specific SBS or underlying security may be forthcoming as the result of one or more participants hedging a just-completed large notional transaction. On the other hand, the Commission recognizes that requiring disclosure of the fact that a block trade took place may raise some of the same concerns as requiring disclosure of the exact size of the large trade, and that to mandate disclosure of trades below a certain size is tantamount to mandating disclosure that a large trade occurred, even if the precise size of the trade is not disclosed. The Commission is interested in and invites comment on whether there are other means by which the dissemination protocol for block trades could effectively not reveal the size of a block trade or mitigate the potential effects of revealing that a block trade took place, while still offering the price component in real time. For example, could the block trade be disseminated with a "proxy" size, such as the size of the block trade threshold or a randomized size, with no identifier showing that the trade is a block trade?

Finally, the Commission preliminarily believes that it would not be appropriate to establish different block trade thresholds for similar instruments with different maturities. This is reflected in the proposed definition of "security-based swap instrument," which would mean "each security-based swap in the same asset class, with the same underlying reference asset, reference issuer, or reference index." [104] The proposed definition would not include any distinction based on tenor or date until expiration. The Commission is proposing this approach for three reasons. First, the larger the number of distinctions between SBS instruments that are created by the proposed rule, the larger the number of potentially

[104] *See* proposed Rule 900.

illogical categorizations at the margins. For example, there would be little economic rationale to draw a distinction between SBSs alike in all respects except that they had maturities one day apart. Second, the Commission understands that SBSs in the same asset class, with the same underlying reference asset, reference issuer, or reference index have pricing impacts on each other, regardless of their maturities. This is because market participants typically price SBSs based on the same reference issuer or index along a curve, whereby prices at points along the curve where no hard data exist may be interpolated or extrapolated from different points along the curve where harder data (such as publicly disseminated last-sale prints) may exist. Thus, even if a SBS of an unusual maturity were traded only infrequently, the market in that SBS would likely be affected more by the characteristics of other SBSs based in the same asset class, with the same underlying reference asset, reference issuer, or reference index, rather than the fact that there is low liquidity in SBSs having that specific maturity. Third, a regime that differentiated SBSs based on maturities could invite market participants to fragment the market by creating SBSs with non-standard maturities in an effort to gain more favorable block trade treatment.

3. Exclusions From Block Trade Definition

Proposed Rule 907(b)(2)(i) would provide that a registered SDR shall not designate as a block trade any SBS that is an equity total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the security-based swap is based.[105] A SBS can be designed as a synthetic substitute for a position in the underlying equity security or securities. There is no delay in the reporting of block trade transactions for equity securities in the United States. Proposed Rule 907(b)(2)(i) is designed to discourage SBS market participants from evading post-trade transparency in the equity securities markets by using synthetic substitutes in the SBS market.[106]

Proposed Rule 907(b)(2)(ii) would provide that a registered SDR shall not designate as a block trade any SBS contemplated by Section 13(m)(1)(C)(iv) of the Exchange Act, *i.e.,* any SBS that is determined to be required to be cleared under Section 3C(b) of the Exchange Act, but that is not cleared. The Dodd-Frank Act expressly requires the Commission to mandate real-time public dissemination for SBSs that are determined to be required to be cleared but are not cleared.

4. Public Dissemination of Block Trades

Proposed Rule 902(b) would provide that a registered SDR shall publicly disseminate a transaction report of an SBS that constitutes a block trade immediately upon receipt of information about the block trade from the reporting party. The transaction report would be required to consist of all the information reported by the reporting party pursuant to proposed Rule 901(c), except for the notional size, plus the transaction ID and an indicator that the report represents a block trade. The Commission proposes that the registered SDR would be required to publicly disseminate a complete transaction report for such block trade (including the transaction ID and the full notional size) as follows:

- Proposed Rule 902(b)(1) would provide that, if the SBS was executed on or after 05:00 UTC and before 23:00 UTC of the same day (which corresponds to 12 midnight and 6 p.m. EST), the transaction report (including the transaction ID and the full notional size) shall be disseminated at 07:00 UTC of the following day (which corresponds to 2 a.m. EST of the following day).
- Proposed Rule 902(b)(2) would provide that, if the SBS was executed on or after 23:00 UTC and up to 05:00 UTC of the following day (which corresponds to 6 p.m. until midnight EST), the transaction report (including the transaction ID and the full notional size) shall be disseminated at 13:00 UTC of that following day (which corresponds to 8 a.m. EST of the following day).

Under proposed Rule 902(b), market participants would learn the price of an SBS block trade in real time, although not the notional size. The Commission preliminarily believes that this approach promotes the public's interest in price discovery without subjecting the block trade counterparties to undue risk of a significant change in the price necessary to hedge the market risk created by entering into the block trade. Other market participants would know the SBS transaction was above a certain size, and it may be possible to infer the size or direction of a large trade before the size is publicly disseminated, based on the liquidity premium inferred from the reported trade price. The Commission recognizes that the disclosure that a block trade took place, even without disclosure of the exact size, can still implicate some of the concerns regarding subsequent hedging that were previously discussed. On the other hand, there would still be substantial risk for any other market participant that seeks to take long or short market positions solely to profit from the information that a block trade occurred, due to the uncertainty regarding the true size of the trade. Moreover, disseminating the price in real time could allow all market participants to obtain useful information about the block trade for valuation purposes, even though they would not learn about the full size of the block trade until later.[107] The Commission notes that the approach that it is proposing here is similar to TRACE's handling of block trades.[108]

Unlike TRACE, however, the Commission is proposing a second wave of transaction reporting, which would include the full notional size of the

[105] Proposed Rule 901(c)(1) would require the reporting party to report, in real time, the asset class of the SBS and, if the SBS is an equity derivative, whether it is a total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the SBS is based.

[106] As an example: Bank DEF wants to purchase ten million shares of Company XYZ and would like to avoid real-time public reporting of the purchase. If Bank DEF purchased those shares on a national securities exchange, the purchase would be reported in real time. However, Bank DEF could instead enter into a total return swap with ten million shares of XYZ as a reference asset and create an economically similar position. If the total return swap, but not the equity security transaction, were afforded a block trade exception under proposed Regulation SBSR, this disparate regulatory treatment might influence market participants' investment choices.

[107] SBS market participants typically value their holdings at the end of the business day. If no information about a block trade were made public until after the end of the business day (for example, if the block trade occurred at 15:00 UTC/noon EST but no public trade report were required until eight hours later, *i.e.,* at 23:00 UTC/8:00 p.m. EST), all market participants would lose a potentially significant input into their valuation methodologies. This could be the case in particular for infrequently traded SBS instruments, where there are few last-sale prints. This would also likely be the case for market participants that hold SBS instruments in notional sizes similar to the undisseminated SBS block trade. A large position might be valued less on a per-unit basis than a smaller position, due to an illiquidity premium. Seeing the price of the block trade in real time could be useful for market participants that must value a larger SBS position, because the price of the reported block trade (even if the exact size is unknown) would also likely reflect an illiquidity premium to some extent.

[108] FINRA rules require member broker-dealers to report transactions in corporate and agency debt securities to TRACE within 15 minutes. FINRA publicly disseminates a transaction report immediately upon receipt of the information. If the par value of the trade exceeds $5 million (in the case of investment grade bonds) or $1 million (in the case of non-investment-grade bonds) the quantity disseminated by TRACE will be either "5 million+" or "1 million+". At no time will TRACE subsequently disseminate the full size of the trade. *See* TRACE User Guide, version 2.4 (last update March 31, 2010), at 50.

block trade, after an appropriate delay. Under proposed Rules 907(b)(1) and (2), all block trades would have at least an eight-hour delay before the full notional size would be disseminated. Proposed Rule 907(b) would establish a cut-off time of 23:00 UTC, which correspond to 6 p.m. EST. Block trades executed on or after 05:00 UTC (which corresponds to midnight EST) and up to 23:00 UTC (6 p.m. EST) would have to have their full notional size disseminated by 07:00 UTC, which corresponds to 2 a.m. EST. Thus, most block trades executed on a given U.S. day would have their full notional sizes disseminated overnight. However, block trades executed on or after 23:00 UTC (6 p.m. EST) and before 05:00 UTC (midnight EST) would instead have their full notional sizes disseminated at 13:00 UTC, which corresponds to 8 a.m. EST of the following U.S. day. If there were only one point in the day when a registered SDR were required to disseminate the full notional sizes, block trades executed a short time before the second wave of dissemination would not benefit from the proposed delay in the dissemination of the notional size. Under the proposed approach, block trades executed during a period that runs roughly from the close of the U.S. business day to midnight EST would have their full sizes disseminated by a registered SDR at a time that corresponds to the opening of business on the next U.S. day.

The Commission preliminarily believes that disseminating the full size of a block trade, albeit with a delay, would further promote price transparency while having only minimal costs. The ability to view the full notional size, although with a delay of between eight and 26 hours,[109] would allow market participants to understand the full scope of activity in the market. At the same time, market participants that execute block trades would have at minimum eight hours to hedge or take other action to minimize their risks before the full size of their trades was disseminated. Based on preliminary discussions with market participants, the Commission believes that the proposed delay of between eight and 26 hours, which in most cases would represent the better part of a business day, would allow sufficient time for the counterparties to the transaction to take follow-up action as needed. The Commission preliminarily believes, therefore, that these time periods strike a reasonable balance between the goals of post-trade transparency and of providing market participants that trade in large size a reasonable opportunity to mitigate their risks.

Finally, proposed Rule 907(b)(3) would provide that, if a registered SDR is in normal closing hours or special closing hours [110] at a time when it would be required to disseminate information about a block trade pursuant to this section, the registered SDR shall instead disseminate information about the block trade immediately upon re-opening. Under proposed Rules 907(b)(1) and (2), a registered SDR could otherwise be required to disseminate the full report of a block trade, including the notional size, at a time when it is closed.

5. No Delay in Reporting Block Trades to Registered SDR

Because the registered SDR, rather than the reporting party, would have the responsibility to determine whether a transaction qualifies as a block trade, the reporting party would be required to report a SBS to a registered SDR or the Commission pursuant to the time frames set forth in Rules 901(c) and (d), regardless of whether the reporting party believes the transaction qualifies for block trade treatment.

6. Block Trade Policies and Procedures

Proposed Rule 907(b)(1) would provide that a registered SDR shall establish and maintain written policies and procedures for calculating and publicizing block trade thresholds for all SBS instruments reported to the registered SDR. At a minimum, a registered SDR would be required to establish written policies and procedures reasonably designed to: (1) Immediately determine whether a SBS reported to the registered SDR constitutes a block trade and, if so, (2) disseminate information about the block trade in a manner consistent with proposed Rule 902(b).

As noted above, the specific threshold that a registered SDR would have to apply to make the block trade calculations will be established in a future Commission rulemaking.

Request for Comment

The Commission requests comment generally on all aspects of the proposed rules regarding block trades, including the proposed criteria and the proposed exclusions. In particular, the Commission specifically requests comment on the following issues:

109. Do commenters agree with the approach of having a registered SDR calculate and publicize block size thresholds, in accordance with the criteria established by the Commission? Why or why not? If not, what would be an alternative approach?

110. If there is more than one registered SDR for an asset class, how would the Commission ensure that all registered SDRs calculated the same block trade thresholds for the same SBS instrument? How should the Commission address this issue? Is it feasible to expect multiple registered SDRs in the same asset class to obtain each others' market data feeds to obtain the data with which to calculate block trade thresholds?

111. If commenters believe that there would be adverse price impact for traders if all information on block trades was made available in real time, do commenters have any studies or empirical evidence to support that assertion? What would be the long-term effects on the market if all market participants knew the full transaction details of all SBSs in real time? Would this impact liquidity? If so, how?

112. Some participants in the Market Data Roundtable referred to the likelihood of "front running" if all information on block trades were made available in real time. How would front running occur in the SBS market if all the details of block trades were disseminated in real time?

113. How do counterparties hedge large SBS trades? At what notional trade size does it become difficult to hedge a SBS such that a dissemination delay is necessary? How does this vary by asset class? How long does it take to complete a hedge? What characteristics of a SBS instrument or asset class affect the length of time needed to deploy the hedge?

114. Does a counterparty's ability to hedge a trade increase or decrease depending on market characteristics such as trading volume and trading frequency? Does this depend on asset class, and within an asset class does it depend on maturity or other contract characteristics?

115. Do commenters agree that the criteria for determining whether or not a SBS transaction is considered a block trade should be based on a distribution

[109] Market participants would be able to view the full notional size of a SBS transaction no sooner than eight hours and no more than 26 hours after the time of execution. A SBS block trade executed at 05:00 UTC would have its full size disseminated by a registered SDR at 07:00 UTC of the next day, which is 26 hours later. Any other SBS block trade would be disseminated after a shorter delay. For example, a SBS block trade executed at 17:00 UTC also would be disseminated with its full size at 07:00 UTC of the next day, which is 14 hours later. A SBS block trade executed at 04:59:59 would have its full size disseminated by a registered SDR at 13:00 UTC of that same day, just over eight hours later.

[110] *See infra* Section V.E (discussing hours of operation of registered SDRs).

of past trade sizes? Should overall volume also be considered? Should volume or trade sizes in the cash market be considered?

116. Should block trade thresholds be determined with more granularity, such as on a SBS instrument by instrument basis?

117. How often should thresholds be updated? What should be the appropriate look back period for data used to determine thresholds?

118. Is there a preferred formulaic way of computing the thresholds from trade size or other distributions? Should a simple percentile cut-off be chosen? If so, how? Would a standard deviation metric be appropriate?

119. How might trading change as a result of the chosen threshold? Could these provisions be gamed? Would market participants change their trading patterns to purposely skew the distribution to alter the threshold when they are next updated?

120. For any criterion that takes into account trading activity in the SBS instrument, should inter-affiliate transactions or trades resulting from portfolio compressions be excluded? If so, why? Are there other types of SBSs that should be excluded? If so, why? How could those exclusions be defined so as to prevent market participants from inappropriately deeming a SBS as qualifying for an exclusion?

121. Should there be a fixed minimum notional size threshold below which no SBS could be considered a block trade? If so, what should that threshold be and why? Should there be a different fixed minimum threshold for different asset classes or SBS instruments? If so, why? What would those different thresholds be?

122. Do commenters agree with the proposed exclusions from the block trade determination? If so, why or why not? Should other kinds of transactions be prevented from having a block trade exception?

123. Do commenters believe that block trades (however defined) should be treated differently from other trades for purposes of public dissemination? If so, why? If not, why not?

124. What would be the effect of having no or only a short dissemination delay for a block trade report that includes the full notional size? Would it enhance or slow the speed of price discovery and the level of price efficiency in the market? Would it increase or decrease competition among market participants in general, or SBS dealers in particular? Would any short-term increases in the cost of hedging be offset by reductions in the cost of hedging in the longer term?

125. Do commenters agree with the proposed two-step process for public dissemination of a block trade?

126. How likely is it that market participants would be able to infer the size or direction of a large trade before the size is publicly disseminated, based on the liquidity premium inferred from the reported traded price? Is it feasible to remove the liquidity premium component from the price of a large trade, leaving only a normalized price for a standard (non-block) size trade to be reported in real time, with the actual price including the liquidity premium component being reported only at the time that actual trade size is revealed?

127. Would it be preferable to have a single transaction report for a block trade that contains all transaction details, including the notional size, but with a delay in dissemination of the complete trade report? If so, why? What should that delay be? Five minutes? Ten minutes? An hour? Three hours? At the end of the day? Why would this length of time be appropriate?

128. Are there other means by which the dissemination protocol for block trades could effectively not reveal the size of the block trade while still offering the price component in real time? For example, could the block trade be disseminated with a "proxy" size, such as the size of the block trade threshold or a randomized size, with no identifier showing that the trade is a block trade? Even if that approach were to effectively not reveal the true size of the block, would it do so at the cost of creating misinformation in the market?

129. Do commenters believe it is important for market participants to have pricing information from block trades to set end-of-day marks? When are these marks typically set? How valuable would it be in setting end-of-day marks to know the price of a SBS block trade, even without the full size?

130. If the Commission were to adopt a requirement that the price and size of a block trade must be publicly disseminated before the time that market participants typically set marks, would that cause SBS counterparties to avoid executing block trades near that time? For example, assume the Commission were to require that the full transaction details of block trades had to be publicly disseminated by a registered SDR at 21:00 UTC/4:00 p.m. EST, and that even a block trade executed at 3:55 p.m. EST had to be disseminated at 4 p.m. EST. Would this cause market participants to shift block trading earlier or later in the day? If so, would there be any harm in such movement?

131. Do commenters agree with the Commission's proposed times for disseminating the full notional size of block trades? If not, what other times would be appropriate, and why? Would counterparties be able to effectively hedge large SBSs executed toward the end of the day during the time allowed by the proposed rules (*i.e.,* between 6 p.m. and midnight EST)?

132. Do commenters believe it would be more appropriate for a registered SDR to disseminate the notional size of each block trade after a fixed period after the trade report for that SBS transaction is disseminated without the notional size, rather than requiring the registered SDR to disseminate the full trade reports in two "batches" during the day? If so, what would be an appropriate delay for disseminate the full notional size, and why?

133. Under the Commission's proposal, there would be at least an eight-hour delay between the time of execution of a block trade and when the full notional size is required to be disseminated by a registered SDR. Is an eight-hour minimum appropriate? Should that period be longer or shorter? Why?

134. Would the Commission's proposed times for disseminating block trade information with the full notional size included cause any disruptive change in trading patterns or activity for large SBS trades, for example by providing market participants the incentive to move block trading toward the very beginning of the day, or by prompting market participants to avoid trading around the release of block trade information at 07:00 UTC/2 a.m. EST and 13:00 UTC/8 a.m. EST?

135. Would the public dissemination of block trades as proposed allow some market participants to infer the identity of the parties to the transaction or materially reduce market liquidity? If so, how? Can or should there be another means of suppressing the exact size of a block trade?

D. SBS Information That Will Not Be Disseminated

The Commission is proposing Rule 902(c)(1), which would prohibit a registered SDR from disseminating the identity of either counterparty to a SBS, and Rule 902(c)(2), which would prohibit a registered SDR from disseminating, with respect to a SBS that is not cleared at a registered clearing agency and that is reported to a registered SDR, any information disclosing the business transactions and market positions of any person.[111]

[111] *See* 15 U.S.C. 13m(m)(1)(C)(iii) ("With respect to security-based swaps that are not cleared * * * and which are reported to a security-based swap

In addition, proposed Rule 902(c)(3) would prohibit a registered SDR from publicly disseminating any information regarding a SBS reported pursuant to proposed Rule 901(i), which would require participants to report pre-enactment and transitional SBSs.[112] The Commission preliminarily believes that price discovery would not be enhanced by publicly disseminating information about historical SBSs.[113]

Request for Comment

136. Do commenters believe that information that would be disseminated pursuant to proposed Regulation SBSR would disclose the business transactions, identities, or market positions of any person?

137. If so, what revisions to proposed Regulation SBSR do commenters believe would be necessary to avoid disclosing the business transactions, identities, or market positions of any person?

E. Operating Hours of Registered SDRs

1. Continuous Operation

The Dodd-Frank Act does not explicitly address or prescribe the hours of operation of the real-time reporting and dissemination regime. However, to serve the goals of transparency and price discovery, the Commission believes that it is appropriate to implement a system of real-time reporting and dissemination that, in general, operates continuously.[114] Accordingly, proposed Rule 904 would require a registered SDR to design its systems to allow for continuous receipt and dissemination of SBS data, except that a registered SDR would be permitted to establish "normal closing hours." Such normal closing hours may occur only when, in the estimation of the registered SDR, the U.S. markets and other major markets are inactive. In addition, a registered SDR would be permitted to declare, on an *ad hoc* basis, special closing hours to perform routine system maintenance, subject to certain requirements.

The Commission believes there are compelling reasons to adopt this approach. First, the market for SBSs is global, and the Commission believes the public interest is served by requiring continuous real-time dissemination of any SBS transactions that would be required to be reported to a registered SDR, no matter when they are executed. Second, a continuous dissemination regime would reduce the incentive for market participants to defer execution of SBS transactions until after regular business hours to avoid real-time post-trade transparency. Third, the Commission believes that this continuous dissemination regime would be "technologically practicable," and thus consistent with the Dodd-Frank definition of what constitutes real-time dissemination.[115]

2. Normal Closing Hours and Special Closing Hours

Although the Commission believes that continuous operation of a real-time reporting and dissemination regime should be the goal, the Commission recognizes the potential need for a registered SDR to establish normal closing hours to perform necessary system maintenance. Such normal closing hours should occur only when, in the estimation of the registered SDR, the U.S. markets and major foreign markets are inactive. Consequently, proposed Rule 904(a) would allow a registered SDR to establish normal closing hours during periods when, in its estimation, the U.S. market and major foreign markets are inactive. A registered SDR would be required to provide reasonable advance notice to participants and to the public of its normal closing hours.[116]

Further, the Commission recognizes that unexpected circumstances could arise that would require a registered SDR to temporarily make unavailable its systems for processing transaction reports and publicly disseminating transaction data. Consequently, proposed Rule 904(b) would permit a registered SDR to declare, on an *ad hoc* basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. A registered SDR would be required, to the extent reasonably possible under the circumstances, to avoid scheduling special closing hours during when, in its estimation, the U.S. market and major foreign markets are most active, and to provide reasonable advance notice of its special closing hours to participants and to the public.

Paragraphs (c) to (e) of proposed Rule 904 would specify requirements for handling and disseminating reported data during a registered SDR's normal and special closing hours. During normal closing hours and, to the extent reasonably practicable, during special closing hours, a registered SDR would be required to have the capability to receive and hold in queue transaction data it receives. Immediately upon system re-opening following normal closing hours (or opening following special closing hours, if it were able to hold incoming data in queue), the registered SDR would be required to publicly disseminate any transaction data required to be reported under proposed Rule 901(c) that it received and held in queue. If the registered SDR could not, while it was closed, receive and hold in queue information required to be reported, it would be required, immediately upon resuming normal operations, to send a notice to all participants that it had resumed normal operations but could not, while closed, receive and hold in queue such transaction information. Thereafter, any participant that had an obligation to report information, but was unable to do so because of the registered SDR's inability to receive and hold data in queue, would be required to immediately report the information to the registered SDR.

Regardless of the current operating status of a registered SDR, reporting parties would be required to submit information to the registered SDR under the same standards and permissible timing detailed in proposed Rule 901. If a party that has an obligation to report the transaction data is unable to do so because the registered SDR's system is unable to receive and hold in queue such data, the reporting party would be required to report any information that it was obligated to report immediately after it received a notice that it was possible to do so.

Request for Comment

The Commission requests comment on all aspects of the proposed operating hours for registered SDRs.

138. Do commenters agree with the provisions that would allow registered SDRs to have normal and special closing hours and the proposed process for receipt and dissemination of data during and after such hours?

139. Is it reasonable for the Commission to provide registered SDRs with flexibility to set specific closing

data repository or the Commission under section 3C(a)(6), the Commission shall require real-time public reporting * * * in a manner that does not disclose the business transactions and market positions of any person."); 15 U.S.C. 13m(m)(1)(E)(i) (requiring that the Commission's rules governing the dissemination of SBS transaction and pricing information "does not identify the participants"). The Commission does not believe that the information that would be disseminated pursuant to proposed Regulation SBSR would disclose the business transactions, identities, or market positions of any person.

[112] *See* proposed Rule 900 (defining "pre-enactment security based swap" and "transactional security-based swap").

[113] *See supra* Section IV.F.

[114] The Commission is aware that one current data repository, Warehouse Trust Company LLC, a subsidiary of DTCC, operates 24 hours a day for six days a week.

[115] *See* 15 U.S.C. 78m(m)(1)(A).

[116] For example, a registered SDR could provide notices to its participants or publicize its normal closing hours in a conspicuous place on its Web site.

times, or should the Commission adopt a rule that specifies hours of operation?

140. Are there alternatives to allowing registered SDRs to close during normal and special closing hours? Would it be feasible for registered SDRs to operate without normal and special closing hours?

F. Procedures for Correcting Errors

Proposed Rule 905 would establish procedures to correct errors in reported and disseminated SBS information. The Commission recognizes that any system for transaction reporting must accommodate the possibility that certain data elements may be incorrectly reported. Proposed Rule 905 would establish error reporting procedures for counterparties and for registered SDRs.

1. Counterparty Reporting Error

Proposed Rule 905(a) would apply where a counterparty discovers an error after a SBS transaction has been reported. A counterparty that was not the reporting party would be required to promptly notify the reporting party of the error. A reporting party that discovers an error or receives notification of an error from its counterparty would be required to promptly submit to the entity to which it provided the original transaction report an amended report pertaining to the original transaction report. If the reporting party reported the initial transaction to a registered SDR, the reporting party must submit an amended report to the registered SDR in a manner consistent with the policies and procedures contemplated by proposed Rule 907(a)(3).[117] The Commission preliminarily believes that it is reasonable to place the duty to submit a correction report on the reporting party, because the reporting party was responsible for submitting the initial transaction report. This approach should establish a clear duty and help to avoid the submission of duplicative error reports.

2. Responsibility of Registered SDR To Correct

Proposed Rule 905(b) outlines the duties of registered SDRs in correcting information and re-disseminating corrected information.[118] If the registered SDR either discovers an error in the SBS information contained in its system or receives notice of an error from a counterparty, the registered SDR would be required to verify the accuracy of the terms of the SBS and, following such verification, promptly correct the information in its system.[119] Proposed Rule 905 would further require that, if the erroneous information contains any information that falls into the categories enumerated in proposed Rule 901(c) as information required to be reported and disseminated in real time, the registered SDR would be required to publicly disseminate a corrected transaction report of the SBS promptly following verification of the trade by the parties to the SBS, with an indication that the report relates to a previously disseminated transaction.[120]

Proposed Rule 907(a)(3) would require a registered SDR to, among other things, establish and maintain written policies and procedures for determining how participants would be required to report corrections of prior reports. The registered SDR would have flexibility to specify the modifiers or indicators to allow reporting parties to submit reports distinguishing corrected trades from new trades and indicating the actual execution date and time.

For example: Counterparty B (the reporting party) notices that there is an error in the reported notional amount of a SBS transaction. Counterparty B then would be required under proposed Rule 905(a) to promptly notify the registered SDR to which it originally reported the trade of the error in the notional amount. Because the notional amount is one of the data elements that must be reported in real time under proposed Rule 901(c), the registered SDR would be required to immediately disseminate a corrected transaction report to the public, with a notation indicating that it is a corrected trade report.

Request for Comment

The Commission requests comment on all aspects of the proposed rules relating to procedures for correcting errors in reported and disseminated SBS information.

141. Are the proposed obligations for submitting error reports sufficiently clear?

142. Are additional requirements necessary? Are the proposed requirements adequate to assure that errors are corrected promptly and corrections are promptly disseminated as appropriate? If not, what additional procedures should be required?

143. Do commenters agree with the proposed approach? Why or why not?

144. Do commenters agree that error reports should be publicly disseminated? Why or why not?

VI. Policies and Procedures of Registered SDRs

In designing a comprehensive system of transaction reporting and post-trade transparency for all SBS—involving a constantly evolving market, thousands of participants, and potentially millions of transactions—the Commission preliminarily believes that it is not necessary or appropriate for it to specify by rule every detail of how this system should operate. On some matters, there may not be a single correct approach for maximizing transparency and price discovery; rather, it might be more important that there be a coordinated approach that all market participants understand and adhere to.

The Commission believes that registered SDRs could play an important role in developing, operating, and improving the system for transaction reporting and post-trade transparency in SBS, as laid out by Congress in the Dodd-Frank Act. Registered SDRs are placed at the center of the market infrastructure, as the Dodd-Frank Act requires all SBSs, whether cleared or uncleared, to be reported to them.[121] The Commission preliminarily believes that some reasonable flexibility should be given to registered SDRs to carry out their functions—by, for example, being able to specify data formats, connectivity requirements, and other protocols for submitting information to them. The Commission's intent is to set out broad principles that registered SDRs and their participants would be required to follow, while providing registered SDRs with flexibility in determining the precise means of doing so.

As discussed more fully below, a registered SDR would be required to establish and maintain certain policies and procedures, including policies and procedures to: (1) Enumerate the specific data elements of SBS or life cycle event that a reporting party must report; (2) specify one or more acceptable data formats, connectivity requirements, and other protocols for submitting information; (3) promptly correct information in its records that is discovered to be erroneous; (4) determine whether and how life cycle events and other SBSs that may not accurately reflect the market should be

[117] *See* proposed Rule 905(a)(2).

[118] *See also* SDR Registration Proposing Release, *supra* note 6 (proposing Rule 13n–5 under the Exchange Act).

[119] *See* proposed Rule 905(b)(1). The Commission is also proposing to require the registered SDR to establish and maintain written policies and procedures that, among other things, specify how reporting parties are to report corrections to previously submitted information and how information in the records of the SDR, upon being discovered to be erroneous, is to be corrected. *See* proposed Rule 907(a)(3); *infra* Section VI.A (discussing the policies and procedures of registered SDRs).

[120] *See* proposed Rule 905(b)(2).

[121] *See* 15 U.S.C. 13m(m)(1)(G).

disseminated; (5) assign or obtain certain unique identifiers; (6) receive information concerning a participant's ultimate parent and affiliated entities; and (7) handle block trades.

A registered SDR also would be required to make its policies and procedures required by proposed Regulation SBSR publicly available on its Web site.[122] This would allow all interested parties to understand how the registered SDR is utilizing the flexibility it has in operating the transaction reporting and dissemination system.[123] The Commission anticipates that participants might make suggestions to the registered SDR for altering and improving that system, or developing new policies and procedures to address new products or circumstances, consistent with the principles set out in proposed Regulation SBSR. In conclusion, the Commission preliminarily believes that requiring registered SDRs to adopt and maintain policies and procedures, as required under proposed Rule 907, would improve compliance with proposed Regulation SBSR.

A. Elements of Policies and Procedures

Proposed Rule 907(a)(1) of Regulation SBSR would require a registered SDR to establish and maintain written policies and procedures that enumerate the specific data elements of a SBS or a life cycle event that a reporting party must report. These data elements would be required to include, at a minimum, those specified in proposed Rules 901(c) and (d). The Commission expects that the policies and procedures adopted under proposed Rule 907(a)(1) would explain to reporting parties how to report if all the SBS transaction data required by Rules 901(c) and (d) is being reported simultaneously, and how to report if responsive data are being provided at separate times.[124]

Proposed Rule 907(a)(2) would require a registered SDR to establish and maintain written policies and procedures that specify one or more acceptable data formats (each of which must be an open-source structured data format that is widely used by participants), connectivity requirements, and other protocols for submitting information. The Commission preliminarily believes that a registered SDR should have reasonable flexibility to design its systems and develop ways for participants to input information into those systems.

Proposed Rule 907(a)(3) would require a registered SDR to establish and maintain written policies and procedures for specifying how reporting parties are to report corrections to previously submitted information, making corrections to information in its records that is subsequently discovered to be erroneous, and applying an appropriate indicator to any report required to be disseminated by proposed Rule 905(b)(2), which would denote that the report relates to a previously disseminated transaction. There could be a number of acceptable ways to carry out the general directive to correct erroneous information, and reasonable flexibility should be afforded a registered SDR in this regard. Use of transaction IDs assigned by the registered SDR would facilitate this process, as this would offer a clear way for participants and the registered SDR to refer to an earlier transaction.[125] The Commission preliminarily believes that a registered SDR should be required to have an appropriate means to confirm that the information provided by the reporting party is indeed correct.

Finally, the policies and procedures required by proposed Rule 907(a)(3) would have to address applying an appropriate indicator to any new transaction report required by proposed Rule 905(b)(2) that the report relates to a previously disseminated transaction. It is essential that market observers understand that the transaction report triggered by proposed Rule 905 does not represent a new transaction, but merely a correction to a previous transaction. Without some kind of indication to that effect, market observers could misunderstand the true state of the market. Therefore, the Commission preliminarily believes that the registered SDR must apply an appropriate indication to the publicly disseminated transaction report.

Proposed Rule 907(a)(4) would require a registered SDR to establish and maintain written policies and procedures describing how reporting parties shall report—and, consistent with the enhancement of price discovery, how the registered SDR shall publicly disseminate—reports of, and adjustments due to, life cycle events; SBS transactions that do not involve an opportunity to negotiate any material terms, other than the counterparty; and any other SBS transactions that, in the estimation of the registered SDR, do not accurately reflect the market. As noted above, all SBS transactions must be reported to a registered SDR, pursuant to proposed Rules 901(c) and (d). However, some SBSs might not involve arm's-length negotiations that reflect competitive price discovery.[126] Similarly, there might be no price discovery in the case of an assignment where the new counterparty to which a SBS is assigned has no opportunity to negotiate a different price. Proposed Rule 907(a)(4) would provide some flexibility to a registered SDR regarding how to publicly disseminate transaction reports for such SBSs. The registered SDR could determine in some cases that an indication should be provided that explains the circumstances. Publicly disclosed policies and procedures would permit market observers to understand which indicators applied to which circumstances. The Commission expects that the policies and procedures would direct reporting parties to provide additional information to the registered SDR about the existence of such circumstances. Furthermore, the Commission preliminarily believes that all transactions reported late (*i.e.,* over 15 minutes after time of execution) should bear an indicator so that market participants know that the transaction was reported late. While there is likely to be value in disseminating the transaction report, all market participants should understand that the report is no longer timely and thus would not reflect the current market at the time of dissemination.

Finally, the policies and procedures required by proposed Rule 907(a)(4) would be required to address applying an appropriate indicator to reports of, and adjustments due to, life cycle events. As with corrected transaction reports, it is essential that market observers understand that the transaction report triggered by a life cycle event does not represent a new transaction, but merely a change to the terms of a previously executed SBS. Without an indicator to that effect, market observers could misunderstand the true state of the market. Therefore, the Commission preliminarily believes that the registered SDR must apply an appropriate indicator to the publicly disseminated transaction report.

[122] *See* proposed Rule 907(c).

[123] *See* SDR Registration Proposing Release, *supra* note 6, proposed Rule 13n–10. Furthermore, proposed Form SDR would require all of the policies and procedures required by proposed Regulation SBSR be submitted by a data repository registering with the Commission. *See* SDR Registration Proposing Release, *supra* note 6, Exhibit GG to proposed Form SDR.

[124] In the latter case, the Commission expects that the registered SDR would provide the reporting party the transaction ID after the reporting party reports the information required by proposed Rule 901(c). The reporting party would then include the transaction ID with its submission of data required by proposed Rule 901(d), thereby allowing the registered SDR to match the real-time report and the subsequent regulatory report.

[125] *See supra* Section IV.E.2.

[126] This could be the case, for example, with an inter-affiliate transfer.

Proposed Rule 907(a)(5) would require a registered SDR to establish and maintain written policies and procedures for assigning: (1) A transaction ID to each SBS that is reported to it; and (2) UICs established by or on behalf of an IRSB (or, if such UICs are not yet able to be so assigned, for assigning UICs in a consistent manner using its own methodology). Proposed Rule 907(a)(6) would require a registered SDR to establish and maintain written policies and procedures for periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any other participant(s) with which the counterparty is affiliated, using ultimate parent IDs and participant IDs. The Commission expects that the registered SDR's policies and procedures would address the relationship between itself and an IRSB, and how UICs could be obtained from the IRSB or an agent or other person acting on its behalf. Furthermore, the Commission expects that, if an IRSB exists and the registered SDR is using UICs assigned by that IRSB or on its behalf, the registered SDR's policies and procedures should explain how a participant could obtain applicable UICs from the IRSB. To the extent that the IRSB cannot provide certain UICs required of a participant by proposed Regulation SBSR, the registered SDR's policies and procedures would be required to explain the process by which a participant could obtain such UICs from the registered SDR.

Proposed Rule 907(d) would require a registered SDR to review and, as necessary, update its policies and procedures required by proposed Regulation SBSR at least annually, and to indicate the date on which they were last reviewed. Periodic review should help ensure that a registered SDR's policies and procedures remain well-functioning over time. Indicating the date on which the policies and procedures were last reviewed would allow regulators and market participants to understand which version of the policies and procedures are current. The Commission is proposing recordkeeping and retention rules for registered SDRs in a separate rulemaking.[127] Prior versions of a registered SDR's policies and procedures would be records under that proposed rule, and thus would be required to be retained in accordance with those rules. Access to these records would permit the Commission, when conducting a review of past actions, to understand what policies and procedures were in force at the time.

Proposed Rule 907(e) would require 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 proposed Regulation SBSR and the registered SDR's policies and procedures thereunder.[128] Under Title VII of the Dodd-Frank Act, the Commission is responsible for regulating and overseeing the SBS market. The Commission preliminarily believes that, to carry out this responsibility, it could be valuable to obtain information from each registered SDR related to the timeliness, accuracy, and completeness of data reported to it. Required data submissions that are untimely, inaccurate, or incomplete could compromise the regulatory data that the Commission would utilize to carry out its oversight responsibilities. Furthermore, required data submissions that are untimely, inaccurate, or incomplete could diminish the value of publicly disseminated reports that promote transparency and price discovery. Information or reports provided to the Commission by a registered SDR related to the timeliness, accuracy, and completeness of data could assist the Commission in examining for compliance with proposed Regulation SBS and in bringing enforcement or other administrative actions as necessary and appropriate.

Request for Comment

The Commission requests comment on all aspects of the proposed policies and procedures for registered SDRs.

145. Do commenters agree, overall, with the proposed policies and procedures for registered SDRs? Why or why not?

146. Should proposed Rule 907 specify more detailed elements to be included in the required policies and procedures? If so, what should those elements be? Or, are the proposed policies and procedures too prescriptive? If so, in what way(s)?

147. Should a registered SDR have flexibility to specify acceptable data formats, connectivity requirements, and other protocols for submitting information? Why or why not? Are there disadvantages to this approach? If so, how should they be addressed?

148. Should all acceptable data formats be open-source structured data formats? What data formats are currently in use by SDRs? Would they qualify as open-source structured data formats?

149. Assuming special indicators on certain publicly disseminated trade reports may be necessary, do commenters agree that a registered SDR should have the flexibility to determine and apply those indicators? If not, can commenters suggest another system for assigning relevant indicators?

150. What kinds of special circumstances would warrant indicators for public dissemination? What should those indicators be? How should they be reflected on the publicly disseminated trade report?

151. Should inter-affiliate transactions be publicly disseminated with an indicator? Should they be disseminated at all? Why or why not?

152. Should portfolio compressions and terminations be publicly disseminated with an indicator? Should they be disseminated at all? Why or why not?

153. Should a registered SDR have the flexibility to determine whether a SBS transaction does not accurately reflect the market or would not enhance price discovery if disseminated? If so, how should the registered SDR exercise such flexibility? What criteria should it use? What are examples of transactions that commenters believe should be reported to a registered SDR but should not be publicly disseminated? Why should they not be publicly disseminated?

154. Multi-lateral netting and portfolio compression are post-trade processes designed to reduce gross exposure and leave only net exposure. These processes typically entail the termination of open contracts and the establishment of new contracts representing only the net position. How, if at all, should SBSs related to multi-lateral netting and portfolio compression be reported to and disseminated by a registered SDR? What if the netting involves a payment that is determined by market value?

155. How should a registered SDR's policies and procedures address the use of UICs assigned under the auspices of a voluntary consensus standards body?

156. What are the costs for registered SDRs to adopt and implement the proposed policies and procedures? What are the benefits of requiring registered SDRs to adopt and implement these policies and procedures?

157. Should a data repository seeking to register with the Commission be

[127] *See* SDR Registration Proposing Release, *supra* note 6, proposed Rule 13n-7 under the Exchange Act.

[128] *See id.,* proposed Rule 13n–8 under the Exchange Act (requiring every registered SDR to promptly report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission its duties under the Exchange Act and the rules and regulations thereunder).

required to provide the policies and procedures required by proposed Rule 907 as part of its Form SDR submission?

VII. Policies and Procedures of SBS Dealers and Major SBS Participants

For the proposed SBS reporting requirements established by the Dodd-Frank Act to achieve the objective of enhancing price transparency and providing regulators with access to data to help carry out their oversight responsibilities, the information that participants provide to registered SDRs must be reliable. Accordingly, proposed Rule 906(c) would require a participant that is a SBS dealer or major SBS participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with the SBS transaction reporting obligations set forth in proposed Regulation SBSR and the policies and procedures of any registered SDR in which it is a participant. Such policies and procedures are intended to provide a system of controls that facilitate complete and accurate reporting of SBS information by these participants, consistent with their obligations under the Dodd-Frank Act and proposed Regulation SBSR.

The Commission believes that proposed Rule 906(c) should result in greater accuracy and completeness of reported SBS transaction data. Without written policies and procedures, compliance with reporting obligations may depend too heavily on key individuals or unreliable processes. The Commission believes that requiring participants that are SBS dealers or major SBS participants to establish 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 adopt and maintain policies and procedures relevant to their reporting responsibilities, as required under proposed Rule 906(c), would help to improve the degree and quality of overall compliance with the reporting requirements set out in proposed Regulation SBSR.

The policies and procedures required by proposed Rule 906(c) should be designed to foster compliance with the real-time reporting requirements specified in proposed Rule 901(c), as well as the additional reporting requirements specified in proposed Rules 901(d) and (e). These policies and procedures, among other things, should address: (1) The reporting process and designation of responsibility for reporting SBS transactions; (2) the process for systematizing orally negotiated SBS transactions; (3) OMS outages or malfunctions, and when and how backup systems are to be used in connection with required reporting; (4) verification and validation of all information relating to SBS transactions reported to a registered SDR; (5) a training program for employees responsible for SBS transaction reporting; (6) control procedures relating to SBS transaction reporting and designation of personnel responsible for testing and verifying such policies and procedures; and (7) reviewing and assessing the performance and operational capability of any third party that carries out any duty required by proposed Regulation SBSR on behalf of the entity.[129]

Each participant that is a SBS dealer or major SBS participant also would be required to review and, as needed, update its policies and procedures at least annually.[130] Periodic review should help ensure that a participant's policies and procedures remain well functioning over time.

The value of requiring policies and procedures in promoting regulatory compliance is well-established. For example, internal control systems have long been used to strengthen the integrity of financial reporting. Congress recognized the importance of internal control systems in the Foreign Corrupt Practices Act, which requires public companies to maintain a system of internal accounting controls.[131] Broker-dealers also must maintain policies and procedures for various purposes.[132] The Commission preliminarily believes that requiring participants that are SBS dealers or major SBS participants to adopt and maintain policies and procedures designed to promote compliance with proposed Regulation SBSR and the policies and procedures of any registered SDR of which it is a participant would be consistent with Congress's goals in adopting the Dodd-Frank Act.

Request for Comment

The Commission requests comment on all aspects of the proposed requirement that participants that are SBS dealers or major SBS participants establish policies and procedures.

158. Do commenters think proposed Rule 906(c) is necessary? Would SBS dealers and major SBS participants otherwise implement written policies and procedures to ensure compliance with the reporting obligations in proposed Regulation SBSR?

159. Should proposed Rule 906(c) specify elements to be included in the required policies and procedures, such as those discussed above? If so, what elements should be included in the proposed rule, and why?

VIII. Jurisdictional Matters

Proposed Rule 908 is designed to clarify the application of proposed Regulation SBSR to cross-border SBS transactions and to non-U.S. persons.[133]

A. When is a SBS subject to Regulation SBSR?

Proposed Rule 908(a) would require a SBS to be reported if the SBS: (1) Has at least one counterparty that is a U.S. person; (2) was executed in the United States or through any means of interstate commerce; or (3) was cleared through a registered clearing agency having its principal place of business in the United States. In addition, any SBS that is required to be reported to a registered SDR pursuant to proposed Rule 908(a) also would be required to be publicly disseminated by the registered SDR. The Commission preliminarily believes that, if there are sufficient jurisdictional ties to the United States to warrant reporting of the SBS, other market participants should have knowledge of the SBS transaction.

The Commission preliminarily believes that, if a U.S. person executes a SBS anywhere in the world, that SBS should be reported to a registered SDR, pursuant to proposed Regulation SBSR. Because the U.S. person is assuming risk, U.S. regulators have an interest in ensuring that they have appropriate knowledge of the transaction. The Commission notes that it is proposing to define "U.S. person" in proposed Rule 900 to mean "a natural person that is a U.S. citizen or U.S. resident or a legal person that is organized under the corporate laws of any part of the United States or has its principal place of

[129] *See supra* Section II.B (noting that proposed Rule 901 would not prohibit a reporting party from having a third-party agent carry out reporting duties on its behalf).

[130] *See* proposed Rule 906(c).

[131] *See* 15 U.S.C. 78m(b)(2)(B).

[132] *See, e.g.,* FINRA Conduct Rule 3010(b) (requiring FINRA member broker-dealers to establish and maintain written procedures "that are reasonably designed to achieve compliance with applicable securities laws and regulations, and the applicable Rules of [the NASD]"; FINRA Conduct Rule 3012 (requiring FINRA member broker-dealers to establish and maintain written supervisory procedures to ensure that internal policies and procedures are followed and achieve their intended objectives).

[133] *See* proposed Rule 900 (defining "U.S. person" to mean a natural person that is a U.S. citizen or U.S. resident or a legal person that is organized under the corporate laws of any part of the United States or has its principal place of business in the United States).

business in the United States." The Commission intends for this proposed definition to include branches and offices of U.S. persons. Because a branch or office has no separate legal existence under corporate law, the branch or office would be an integral part of the U.S. person itself.

A SBS also would have to be reported if the SBS were executed in the United States or through any means of interstate commerce. For example, even if both counterparties are not U.S. persons, U.S. regulators have a strong interest in having knowledge of and being able to regulate any activity conducted within the United States or through any means of interstate commerce.

Under proposed Rule 908(a)(3), a SBS would have to be reported pursuant to proposed Regulation SBSR—even if both counterparties are not U.S. persons—if the SBS were cleared through a clearing agency having its principal place of business in the United States. It is possible that two counterparties, neither of whom is a U.S. person, could execute a SBS outside the United States, but clear the SBS through a clearing agency having its principal place of business in the United States. The Commission preliminarily believes that such SBS should be reported to a registered SDR. If a SBS is cleared by a clearing agency having its principal place of business in the United States, U.S. regulators should have access to information regarding the SBS through a registered SDR.[134] Moreover, if non-U.S. persons determined to clear a SBS through a clearing agency having its principal place of business in the United States, this suggests that the clearing agency has made the SBS eligible for clearing because at least some U.S. counterparties might wish to trade the SBS as well. Requiring the SBS to be reported to a registered SDR also would cause a transaction report of the SBS to be publicly disseminated, thus promoting price discovery for market participants in the United States and elsewhere.

It is possible that there could be a clearing agency registered with the Commission under Section 17A of the Exchange Act[135] but having its principal place of business outside the United States. Although that clearing agency might service U.S. persons, it also would likely provide clearing services to many non-U.S. persons. The Commission does not intend for proposed Regulation SBSR to apply to such non-U.S. persons solely because they clear a SBS through a clearing agency registered with the Commission but not having its principal place of business in the United States.[136] However, proposed Regulation SBSR would apply with respect to that SBS if either counterparty were a U.S. person, or if the SBS had been executed in the United States or through any means of interstate commerce (including by clearing through a clearing agency having its principal place of business in the United States).

It should be noted that a registered SDR could receive reports of foreign SBS transactions that are not required to be reported pursuant to proposed Rule 908(a). The registered SDR may determine to publicly disseminate reports of such foreign SBS transactions, but would not be required to do so by proposed Regulation SBSR.

B. When is a counterparty to a SBS subject to Regulation SBSR?

Proposed Rule 908(b) would provide that, notwithstanding any other provision of Regulation SBSR, no counterparty to a SBS would incur any obligation under Regulation SBSR unless it is: (1) A U.S. person; (2) a counterparty to a SBS executed in the United States or through any means of interstate commerce; or (3) a counterparty to a SBS cleared through a clearing agency having its principal place of business in the United States. For the reasons discussed above, the Commission preliminarily believes that, if a U.S. person executes a SBS anywhere in the world, that U.S. person should become subject to Regulation SBSR.

Non-U.S. persons who are counterparties to U.S. persons could, therefore, have SBSs to which they are counterparties reported to and held by a registered SDR. If none of these SBSs were executed in the United States or through any means of interstate commerce, however, the non-U.S. person would not become a "participant" of the registered SDR and would not become subject to proposed Regulation SBSR.[137] Thus, the non-U.S. person would not have to provide any UICs pursuant to proposed Rule 906(a) or parent and affiliate information to a registered SDR pursuant to proposed Rule 906(b).

C. An Example

Assume that X (a U.S. bank) enters into an SBS with Y (a Japanese bank). The SBS is effected in Japan, involves no means of interstate commerce, and is not cleared by a clearing agency having its principal place of business in the United States. Because the SBS has at least one counterparty that is a U.S. person, proposed Rule 908(a)—which describes when an SBS is *not* required to be reported because it is outside the jurisdiction of the Exchange Act—would not apply. Therefore, the SBS must be reported to a registered SDR. X would be the reporting party, as proposed Rule 901(a)(1) provides that, where only one counterparty to an SBS is a U.S. person, the U.S. person shall be the reporting party. X also would be a participant because it is a U.S. person that is a counterparty to an SBS that is required to be reported to a registered SDR. However, Y would not be a participant under proposed Rule 900, and would incur no obligations under proposed Regulation SBSR. Although the SBS is required to be reported to a registered SDR, the SBS was not executed in the United States or through any means of interstate commerce, or cleared through a clearing agency having its principal place of business in the United States. Thus, the Commission anticipates that there would be some SBSs reported to and captured by a registered SDR where only one counterparty of the SBS is a participant.

IX. Fair and Non-Discriminatory Access to SBS Market Data

A. SBS Market Data Disseminated by Registered SDRs

As noted above, the Commission preliminarily believes that post-trade transparency could spur significant improvements in the SBS market. Some of the benefits could include greater price competition, lower transaction

[134] While U.S. regulators also would have access to information about the SBS through the U.S. clearing agency, requiring the SBS to be reported to a registered SDR would reduce the fragmentation of the regulatory data.

[135] 15 U.S.C. 78q–1.

[136] For example, assume that Clearing Agency A has its principal place of business in an E.U. member state, but is also registered as a clearing agency in the United States under Section 17A of the Exchange Act because it has sufficient contacts with U.S. participants to require registration under Section 17A. Assume further that Counterparty X executes a SBS with Counterparty Y, both X and Y are each domiciled in an E.U. member state, the SBS is executed in an E.U. member state and does not involve any means of interstate commerce in the United States. Under proposed Rule 908, this SBS would not be required to be reported to a registered SDR solely because it was cleared by a clearing agency registered under Section 17A.

[137] *See* proposed Rule 900 (defining "participant" as (1) A U.S. person that is a counterparty to an SBS that is required to be reported to a registered SDR; or (2) A non-U.S. person that is a counterparty to an SBS that is (i) required to be reported to a registered SDR; and (ii) that is executed in the United States or through any means of interstate commerce, or cleared through a clearing agency having its principal place of business in the United States).

costs, enhanced liquidity, and improved ability of market participants to value their positions. Therefore, fair access to last-sale data appears critical—particularly since registered SDRs would collectively have data on all SBSs executed in the market. The Commission preliminarily believes that market observers should not be forced to pay excessive fees or be subject to unfair usage restrictions imposed by registered SDRs. The Commission therefore seeks to ensure that these data feeds would be available to all market observers on terms that are fair and reasonable and not unreasonably discriminatory.

In a separate rulemaking proposal regarding the registration and regulation of SDRs being issued today, the Commission is proposing rules that would require SDRs to comply with certain core principles. To comply with these core principles, an SDR would be required, among other things, to establish and enforce clearly stated and objective criteria that would permit fair, open, and not unreasonably discriminatory access to services offered and data that would be disseminated by the SDR, as well as fair, open, and not unreasonably discriminatory participation by market participants, market infrastructures, venues from which data could be submitted to the SDR, and third-party service providers that seek to connect or link with the SDR.[138] In addition, an SDR would be required to establish policies and procedures for reviewing any prohibition or limitation of any person's access to services offered, directly or indirectly, or data maintained and disseminated by the SDR, and—if it finds that the person has been discriminated against unfairly—granting to such person access to its services or data.[139]

A registered SDR also would become subject to certain provisions of Section 11A of the Exchange Act[140] because it would be a SIP, as defined by Section 3(a)(22)(A) of the Exchange Act.[141] Section 11A(c)(1) of the Exchange Act[142] provides that the Commission may prescribe rules applying to SIPs (among other entities) that would require them (among other things) to assure "the fairness and usefulness of the form and content" of the information that they disseminate,[143] and to assure "all other persons may obtain on terms which are not unreasonably discriminatory" the transaction information published or distributed by SIPs.[144] Section 11A(c)(1) applies regardless of whether a SIP is registered with the Commission as such.

Section 11A(b)(1) of the Exchange Act[145] provides that a SIP not acting as the "exclusive processor"[146] of any information with respect to quotations for or transactions in securities is exempt from the requirement to register with the Commission as a SIP unless the Commission, by rule or order, determines that the registration of such SIP "is necessary or appropriate in the public interest, for the protection of investors, or for the achievement of the purposes of [Section 11A]." Requiring a registered SDR to register with the Commission as a SIP would subject that entity to Section 11A(b)(5) of the Exchange Act,[147] which provides that a registered SIP must notify the Commission whenever it prohibits or limits any person's access to its services. Upon its own motion or upon application by any aggrieved person, the Commission could review the registered SIP's action.[148] If the Commission finds that the person has been discriminated against unfairly, it could require the SIP to provide access to that person.[149] Section 11A(b)(6) of the Exchange Act also provides the Commission authority to take certain regulatory action as may be necessary or appropriate against a registered SIP.[150]

The Commission preliminarily believes that the additional authority over a registered SDR/SIP provided by Sections 11A(b)(5) and 11A(b)(6) of the Exchange Act would help ensure that these entities offer their SBS market data on terms that the Commission believes would be fair and reasonable and not unreasonably discriminatory. Therefore, the Commission preliminarily believes that the registration of SDRs as SIPs would be necessary or appropriate in the public interest, for the protection of investors, or for the achievement of the purposes of Section 11A of the Exchange Act. Section 11A of the Exchange Act establishes broad goals for the development of the securities markets and charges the Commission with establishing rules and policies that are designed to further these objectives. Section 11A(a) states, among other things, that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions; the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities; and an opportunity for investors' orders to be executed without the participation of a dealer. SIP registration could assist in achieving these objectives in the still-developing SBS market. Therefore, the Commission preliminarily believes that the registration of SDRs as SIPs would be necessary or appropriate in the public interest, for the protection of investors, or for the achievement of the purposes of Section 11A. Accordingly, the Commission is proposing Rule 909, which would require a registered SDR to register with the Commission as a SIP.[151]

B. SBS Market Data Disseminated by Other Market Participants

The measures described above are designed to ensure that SBS market data

[138] *See* proposed Rule 13n–4(c)(1)(iv) under the Exchange Act.

[139] *See* proposed Rule 13n–4(c)(1)(v) under the Exchange Act.

[140] 15 U.S.C. 78k–1.

[141] 15 U.S.C. 78c(a)(22)(A) (defining SIP as "any person engaged in the business of (i) collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security (other than an exempted security) or (ii) distributing or publishing (whether by means of a ticker tape, a communications network, a terminal display device, or otherwise) on a current and continuing basis, information with respect to such transactions or quotations"). SBSs are securities under the Exchange Act. *See* 15 U.S.C. 78c(a)(10). Further, pursuant to proposed Regulation SBSR, a registered SDR would collect SBS transaction reports from participants and participate in the distribution of such reports and, thus, would be a SIP for purposes of the Exchange Act.

[142] 15 U.S.C. 78k–1(c)(1).

[143] 15 U.S.C. 78k–1(c)(1)(B).

[144] 15 U.S.C. 78k–1(c)(1)(D).

[145] 15 U.S.C. 78k–1(b)(1).

[146] 15 U.S.C. 78c(a)(22)(B) (defining "exclusive processor" as any securities information processor or self-regulatory organization which, directly or indirectly, engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication any information with respect to (1) transactions or quotations on or effected or made by means of any facility of such exchange or (2) quotations distributed or published by means of any electronic system operated or controlled by such association).

[147] 15 U.S.C. 78k–1(b)(5).

[148] *See* 15 U.S.C. 78k–1(b)(5)(A).

[149] *See* 15 U.S.C. 78k–1(b)(5)(B).

[150] *See* 15 U.S.C. 78k–1(b)(6) (providing that the Commission, by order, may censure or place limitations upon the activities, functions, or operations of any registered SIP or suspend for a period not exceeding 12 months or revoke the registration of any such processor, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest, necessary or appropriate for the protection of investors or to assure the prompt, accurate, or reliable performance of the functions of such SIP, and that such SIP has violated or is unable to comply with any provision of this title or the rules or regulations thereunder).

[151] A registered SDR would register as a SIP by filing (existing) Form SIP with the Commission.

disseminated by registered SDRs is available to the public on terms that are fair and reasonable and not unreasonably discriminatory. This is particularly important since all SBS must be reported to a registered SDR,[152] and registered SDRs exclusively would have the responsibility under proposed Regulation SBSR to publicly disseminate SBS transaction data to the public.

Nevertheless, other private sources of market data reflecting subsets of the SBS market could arise.[153] Differences in access to that market data—for example, if some market participants could obtain the data sooner than others—could create an unfair competitive landscape. Therefore, the Commission is proposing Rule 902(d), which would impose a partial and temporary restriction on sources of SBS market data other than registered SDRs. Proposed Rule 902(d) would provide that no person (other than a registered SDR) shall make available to one or more persons (other than a counterparty) a transaction report of a SBS before the earlier of: (1) 15 minutes after execution of the SBS; or (2) the time that a registered SDR publicly disseminates a report of that SBS.

Under proposed Rule 902(d), the temporary restriction on other market participants that may wish to disseminate information relating to a SBS transaction would last no longer than 15 minutes. Under proposed Regulation SBSR, a transaction report of a SBS would be expected to be publicly disseminated within 15 minutes of execution. The Commission preliminarily believes that it is not necessary or appropriate to require other sources of market data to withhold dissemination of a transaction report beyond 15 minutes if a registered SDR is not able to do so in a timely fashion. Proposed Rule 902(d) would, however, permit the transfer of information of a SBS before dissemination by a registered SDR to a counterparty to that SBS. Therefore, one counterparty would be permitted to pass details of the SBS to the other counterparty, or a SB SEF on which the SBS was executed could pass details of the SBS to either or both of the counterparties.

By proposing Rule 902(d), the Commission seeks to balance the goal of promoting robust and fair competition among all market participants—by allowing them to view the same comprehensive source of SBS market data at the same time—with that of allowing market participants to devise new value-added market data products.

Request for Comment

The Commission requests comment on all aspects of its proposal relating to fair and non-discriminatory access to SBS market data. In particular:

160. Do commenters have any potential concerns with market participants' access to data disseminated by registered SDRs? If so, what steps should the Commission do to address them?

161. Do commenters agree with the proposal to require registered SDRs to register with the Commission as SIPs? Why or why not?

162. Would SIP registration entail costs and burdens that are unreasonable or unnecessary in light of the requirements associated with SDR registration? What additional burdens, if any, would be associated with SIP registration?

163. In the SDR Registration Proposing Release, the Commission is proposing a Form SDR that is similar to but separate from existing Form SIP. Should the Commission combine Forms SIP and Form SDR such that an SDR would register as a SIP and SDR using only one form? Or should the elements necessary for registration as an SDR be a supplement to Form SIP? Are there any specific items on Form SIP that should be added to Form SDR that would help to facilitate the registration process?

164. Would it be beneficial for aggrieved persons to have the ability to request that the Commission review a registered SDR's prohibition or limitation on access its services, as contemplated by Section 11A(b)(5) of the Exchange Act? Are there any concerns with applying Section 11A(b)(5) to registered SDRs?

165. Are there additional means by which the Commission can or should attempt to ensure that the market data fees and usage restrictions imposed by registered SDRs are fair and reasonable and not unreasonably discriminatory? If so, please describe.

166. Should market participants other than a registered SDR be prohibited from distributing their SBS market data before transactions are disseminated by a registered SDR? Why or why not?

167. Do commenters anticipate that market participants other than registered SDRs will seek to sell SBS market data? Do commenters have a view as to whether those additional market data products would compete with or complement the required market data feed from registered SDRs?

168. Would proposed Rule 902(d) unnecessarily inhibit competition and innovation in the provision of value-added market data services or products? Please be specific in your response.

169. Are there alternative means to better ensure that all market participants have full and fair access to SBS market data other than placing a restriction on sources other than the registered SDRs? If so, what are they and why would they be preferable to the proposal?

170. Would competitive forces act to ensure that all market participants have full and fair access to SBS market data?

171. If commenters agree with proposed Rule 902(d), is 15 minutes an appropriate length to restrict market participants other than registered SDRs from disseminating SBS transaction data? Do commenters think that period is too long or too short? Please be specific in your response.

172. Should market participants other than registered SDRs that publicly disseminate SBS transaction information be subject to the same requirements regarding dissemination of block trades as registered SDRs?

X. Implementation Timeframes

Proposed Rule 910 is designed to provide clarity as to SBS reporting and dissemination timelines and to establish a phased-in compliance schedule for those subject to proposed Regulation SBSR. The Commission acknowledges that the system for reporting and dissemination described in proposed Regulation SBSR would take a significant amount of time and resources to implement effectively. While the Commission is committed to fully implementing Congress's directive to require real-time public reporting of all SBSs, market participants will need a reasonable period in which to acquire or configure the necessary systems, engage and train the necessary staff, and develop and implement the necessary policies and procedures to implement the proposed rules. The Commission preliminarily believes that the proposed compliance timeframes described below should provide sufficient time for reporting parties and SDRs to make the necessary technological and other preparations needed to begin reporting and disseminating SBS information, respectively, as required under proposed Regulation SBSR.

A. Compliance Schedule

The Commission is proposing a phased-in compliance schedule, with respect to a SDR that registers with the Commission, as follows:

[152] *See* 15 U.S.C. 78m(m)(1)(G).

[153] For example, a SB SEF would have information about SBSs executed on its systems and could find that commercial opportunities exist to sell such information.

• *Reporting of pre-enactment SBSs,* no later than January 12, 2012.

Proposed Rule 910(a) would require reporting parties to report to a registered SDR any pre-enactment SBSs subject to reporting under proposed Rule 901(i) no later than January 12, 2012 (180 days after the effective date of the Dodd-Frank Act).[154] Proposed Rule 900 would define pre-enactment SBS to mean any SBS executed before July 21, 2010 (the date of enactment of the Dodd-Frank Act), the terms of which had not expired as of that date. The Commission notes that Section 3C(e)(1) of the Exchange Act[155] requires SBSs entered into before the date of enactment of Section 3C to be reported to a registered SDR or the Commission no later than 180 days after the effective date of Section 3C (*i.e.,* no later than January 12, 2012). The proposed timeframe would help the Commission obtain relevant information about SBS transactions necessary to prepare reports required by the Dodd-Frank Act. Further, proposed Rule 910 would help promote timely implementation of Regulation SBSR, and thereby facilitate achievement of the goals articulated in the Dodd-Frank Act.

• *Phase 1,* six months after the registration date (*i.e.,* the effective reporting date):[156] Reporting parties shall begin reporting, pursuant to proposed Rule 901, all SBS transactions executed on or after the effective reporting date; reporting parties also shall report to the registered SDR any transitional SBSs;[157] SBS dealers and major SBS participants shall comply with proposed Rule 906(c);[158] participants and the registered SDR must comply with proposed Rule 905[159] (except with respect to dissemination) and proposed Rules 906(a) and (b).[160]

The Commission preliminarily believes that, before reporting parties and other participants could be expected to comply with proposed Regulation SBSR, they must first know the policies and procedures of the registered SDR that would receive and hold transaction information regarding their SBSs.[161] Phase 1 would provide time for SBS dealers and major SBS participants to establish their own policies and procedures, and implement necessary systems changes, for complying with proposed Regulation SBSR and the policies and procedures of the registered SDR. On the effective reporting date, participants would be required to begin reporting SBSs to the registered SDR in a manner consistent with proposed Rule 901, including providing the real-time reports required by proposed Rule 901(c) and the additional, regulatory SBS information required by proposed Rule 901(d). At that time, however, the registered SDR would not yet publicly disseminate any transaction reports.

Also on the effective reporting date, the registered SDR would be required to begin preparing reports to each participant of any missing UICs, and any participant receiving such a report would have to begin providing the missing UICs to the registered SDR. The registered SDR and its participants also would become subject to the error correction requirements of proposed Rule 905 at this time, except that the registered SDR would not yet be required to publicly disseminate any corrected transaction reports (since it would not have disseminated a report of the initial transaction).

Finally, the Commission notes that proposed Rules 901(i) (establishing reporting requirements for pre-enactment and transitional SBSs), 910(a) (requiring the reporting of pre-enactment SBSs by January 12, 2012), and 910(b)(2)(i) (requiring the reporting of transitional SBSs by the effective reporting date) are together designed to assure that a registered SDR would obtain a complete view of each participant's open SBS positions by the time that the registered SDR is about to both receive and publicly disseminate transaction reports of SBSs.

• *Phase 2,* nine months after the registration date: *Wave 1* of public dissemination; the registered SDR would be required to comply with proposed Rules 902 and 905 (with respect to dissemination of corrected transaction reports) for 50 SBS instruments.

Nine months after the registration date and three months after the effective reporting date, the registered SDR would be required to begin disseminating transaction reports as follows: The registered SDR, in consultation with the Commission's staff, would select 50 SBS instruments for which it receives and holds transaction data. Beginning on the date nine months after the registration date and continuing every day thereafter, the registered SDR would be required to publicly disseminate transaction reports in real time for those 50 SBS instruments, including with respect to block trades. The three-month period between the beginning of Phase 2 and the beginning of Phase 3 would allow the registered SDR a sufficient number of days to calculate and publish the block trade levels for those 50 SBS instruments. Also in Phase 2, the registered SDR would be required to begin disseminating any corrected reports required by proposed Rule 905 for those 50 SBS instruments. The Commission preliminarily believes, based on its experience implementing aspects of Regulation NMS, that the public dissemination of transaction reports for 50 SBS instruments is appropriate in Phase 2.

• *Phase 3,* 12 months after the registration date: *Wave 2* of public dissemination; the registered SDR must comply with proposed Rules 902 and 905 (with respect to dissemination of corrected transaction reports) for an additional 200 SBS instruments.

Twelve months after the registration date and six months after the effective reporting date, the registered SDR would be required, in consultation with the Commission's staff, to select an additional 200 SBS instruments for which to publicly disseminate transaction reports in real time, apply the block trade exception with respect to those 250 SBS instruments, and disseminate any corrected transaction reports required by proposed Rule 905 for those 250 SBS instruments. The Commission preliminarily believes, based on its experience implementing aspects of Regulation NMS, that the public dissemination of transaction reports for 250 SBS instruments is appropriate in Phase 3.

[154] *See supra* Section IV.F (discussing reporting requirements for pre-enactment SBSs).

[155] 15 U.S.C. 78c–3(e)(1).

[156] *See* proposed Rule 900 (defining "registration date," with respect to a SDR, as the date on which the Commission registers the SDR, or, if the Commission registers the SDR before the effective date of proposed Regulation SBSR, the effective date of proposed Regulation SBSR; and "effective reporting date," with respect to a SDR, as the date six months after the registration date).

[157] *See supra* Section IV.F (discussing reporting requirements for transitional SBSs).

[158] Proposed Rule 906(c) would require each SBS dealer and major SBS participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that it complies with any reporting obligations under proposed Regulation SBSR.

[159] Proposed Rule 905, among other things, would require a registered SDR to correct erroneous information with respect to SBSs.

[160] Proposed Rule 906(a) would require a registered SDR to notify participants at least once a day of SBSs for which the registered SDR lacks a participant ID, broker ID, desk ID, or trader ID. Proposed Rule 906(b) would require participants to provide to the registered SDR information sufficient to identify its ultimate parent(s) and any affiliate(s) of the participant that also are participants of the registered SDR.

[161] As discussed in the SDR Registration Proposing Release, a data repository seeking to register with the Commission would have to provide the policies and procedures required by proposed Rule 907 as part of its application for registration. *See* SDR Registration Proposing Release, *supra* note 6.

• *Phase 4,* 18 months after the registration date: *Wave 3* of public dissemination; All SBSs reported to the registered SDR shall be subject to real-time public dissemination as specified in Rule 902.

Eighteen months after the registration date, proposed Regulation SBSR would become operative with respect to every SBS transaction reported to and held by the registered SDR. The Commission preliminarily believes, based on its experience implementing aspects of Regulation NMS, that requiring public dissemination of all SBSs reported to the registered SDR is appropriate in Phase 4.

B. Prohibition During Phase-In Period

Proposed Rule 911 is designed to prevent evasion of the post-trade transparency rules. The rule would provide that a reporting party shall not report a SBS to a registered SDR in a phase-in period described in proposed Rule 910 during which the registered SDR is not yet required to publicly disseminate transaction reports for that SBS instrument unless: (1) The SBS also is reported to a registered SDR that is disseminating transaction reports for that SBS instrument, consistent with proposed Rule 902; or (2) no other registered SDR is able to receive, hold, and publicly disseminate transaction reports regarding that SBS instrument.

The Commission is concerned that the development of new SDRs not be used to undermine the goal of post-trade transparency for SBSs. This could occur, for example, if a SDR were registered with the Commission, and—pursuant to proposed Rule 910—the SDR were in a phase-in period when it was not yet required to publicly disseminate transactions. Participants in an existing registered SDR could seek to report their SBSs to the second instead of the first registered SDR during the former's phase-in period, to avoid having their SBS transactions publicly disseminated in real time.

Under proposed Rule 911, counterparties would be permitted to report any SBS to the first registered SDR, even though the first registered SDR was in a phase-in period and not yet publicly disseminating transaction reports, because no other registered SDR could do so, either. However, if a later SDR registers and enters a phase-in period, participants would not be permitted to report SBSs exclusively to the subsequent registered SDR before it is required or able under proposed Rule 910 to disseminate transaction reports, if an earlier registered SDR could receive, hold, and publicly disseminate transaction reports for that SBS. Thus, a participant could report the SBS to both registered SDRs: To the newer one, to assist with operational testing; and to the operating one, to ensure that a trade report for that SBS was publicly disseminated in real time.

Request for Comment

The Commission requests comment on all aspects of the proposed rules relating to the proposed implementation of proposed Regulation SBSR, as provided in proposed Rules 910 and 911.

173. Are the proposed timeframes for reporting with respect to pre-enactment SBSs sufficiently clear?

174. Are the obligations applicable to registered SDRs, counterparties, and participants in each phase of the proposed phase-in schedule sufficiently clear? If not, what obligations are unclear? Please be specific in your response.

175. Do commenters generally agree with the proposed phase-in approach to implementation of the reporting timeframes contained in proposed Rule 910? Is the proposed phase-in schedule generally appropriate to allow reporting parties and registered SDRs sufficient time to implement the requirements of proposed Regulation SBSR? If not, why not? What period of time would be sufficient?

176. Do commenters believe that registered SDRs would be able to meet the requirements of proposed Phase 1? Why or why not? If three months after the SDR's registration date is not a sufficient amount of time to comply with proposed Rule 907, what amount of time would be sufficient? Do commenters believe that registered SDRs would need additional time to develop and implement certain policies and procedures that would be required under proposed Rule 907? If so, why, and which policies and procedures would require additional time to develop and implement?

177. Do commenters believe that registered SDRs, reporting parties, and participants would be able to satisfy their respective obligations under proposed Phase 2 within the proposed time frame? Why or why not? Would SBS counterparties and participants be able to comply, respectively, with proposed Rules 901 and 906(b) and (c) within the time frame specified in Phase 2? Why or why not? If not, what amount of time would be sufficient? Would counterparties or participants require additional time to comply with certain requirements in proposed Phase 2? If so, which requirement(s), and what additional amount of time would be necessary? Would counterparties and participants have adequate time to make any necessary systems changes to comply with the requirements in proposed Phase 2?

178. Would registered SDRs be able to correct erroneous information and notify counterparties of missing UICs within the time frame specified in Phase 2? Why or why not? If not, what amount of time would be adequate?

179. Do commenters believe that registered SDRs would be able to begin publicly disseminating SBS information, including corrected reports, and publicizing block trade levels, as would be required in proposed Phase 3? Why or why not? Would any specific requirement in proposed Phase 3 require additional time to implement? If so, which requirement(s), and what amount of time would be sufficient?

180. Do commenters believe that real-time public dissemination of SBS transaction reports should be required to commence for 50 SBS instruments nine months after the registration date? Should that period be longer or shorter? For example, should it be 12 months after the registration date? If so, why? Should the first wave of public dissemination be for more SBS instruments—perhaps 100? 200? Why or why not?

181. Do commenters generally agree with the proposed implementation schedule that would require public dissemination of SBSs in three Waves, as provided in proposed Phases 3, 4, and 5? Why or why not? If not, what approach would be more appropriate?

182. Should there be longer periods between Waves? If so, how long?

183. Is 50 SBSs an appropriate number of SBSs to include in proposed Phase 3? Why or why not? If not, what number would be appropriate?

184. Is it appropriate to require public dissemination of an additional 200 SBSs in proposed Phase 4? Why or why not?

185. What criteria should be used to choose the first 50 and second 200 SBSs be publically disseminated?

186. Do commenters believe that registered SDRs would be able to begin publicly disseminating all SBSs reported to the SDR 18 months after registration, as would be required under proposed Phase 5? Why or why not? If 18 months is not a sufficient amount of time, what amount of time would be sufficient?

187. Do commenters agree with the objective of proposed Rule 911? Why or why not?

188. Do commenters agree with the requirements of proposed Rule 911? Why or why not? Please be specific in your response. Do commenters believe that the Commission should take a

different approach to preventing potential evasions of the post-trade transparency rules? If so, what approach would be more appropriate? Please be specific in your response.

189. Under proposed Rule 910, the Commission would require a newly registered SDR to begin publicly disseminating trade reports for 50 SBS instruments beginning nine months after its registration date, and for an additional 200 SBS instruments beginning 12 months after its registration date. The registered SDR would be required at those times to calculate block trade thresholds in accordance with proposed Rule 907(b) and to disseminate reports of block trades in accordance with proposed Rule 902(b) with respect to those initial 50 and subsequent 200 instruments. Under proposed Rule 902(b), the registered SDR would be required to publicly disseminate a transaction report of the block trade with all transaction details other than notional size, and to disseminate the full trade report (including the notional size) at a later time. Should the Commission instead, during the phase-in period, provide for different approaches to publicly disseminating block trades in order to measure their associated cost to market participants? The Commission could require—at least for the phase-in period, but perhaps beyond—that different SBS instruments or transactions be subject to different block trade dissemination rules, to provide the Commission and market participants the opportunity to assess the relative costs and benefits of different approaches. For example, one group of SBS instruments or transactions could be subject to block trade dissemination mechanism described in proposed Rule 902(b). A second group could be subject to a regime where the full details of the transaction (including notional size) were disseminated, but with a one-hour delay, a third group could be subject to a regime where the full details were disseminated with a three-hour delay, and so on. Would commentators support or oppose such an approach? Why? Are there other approaches that should be considered in order to evaluate the impact of different post-trade transparency regimes for block trades on market quality? How long should each portion of the phase-in continue and what variation in the number and type of SBS instruments or transactions would be needed in each group to support a statistical analysis to distinguish between the potentially different effects on the markets resulting from distinct post-trade dissemination requirements?

XI. Section 31 Fees

Section 31(c) of the Exchange Act [162] provides that a national securities association must pay fees based on the "aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange of securities * * * registered on a national securities exchange or subject to prompt last sale reporting pursuant to the rules of the Commission or a registered national securities association." Pursuant to Section 761(a) of the Dodd-Frank Act,[163] SBSs are securities.[164] When proposed Regulation SBSR becomes effective, SBSs will be subject to prompt last-sale reporting pursuant to the rules of the Commission because they will be subject to real-time public dissemination. Therefore, a national securities association the members of which effect SBS sales other than on an exchange (including on a SB SEF) would be liable for Section 31 fees for any such sales.[165] A national securities association typically obtains funds to pay its Section 31 fees by imposing on its members an offsetting fee on covered sales, and would likely take the same approach with respect to SBSs.

Under the Exchange Act, brokers and dealers are required to join a national securities association.[166] The Dodd-Frank Act also provides for the registration of SBS dealers [167] and correspondingly amends the definition of "dealer" under the Exchange Act to exempt from the definition of dealer any person engaged in the business of buying and selling SBSs, other than SBSs with or for persons that are not eligible contract participants.[168] Under the new definition of "dealer," a SBS dealer that buys and sells SBSs—other than with or for persons that are not eligible contract participants—would not be required to register as a dealer under the Exchange Act and thus would not be required to join a national securities association.

Because the Dodd-Frank Act did not make corresponding changes for SBS brokers, a SBS broker would be considered a broker for purposes of the Exchange Act.[169] Thus, brokers that buy or sell SBSs, SBS dealers that buy and sell SBSs with or for persons that are not eligible contract participants, and SBS dealers that buy and sell securities other than SBSs would be required to join a national securities association. However, SBS dealers that buy and sell only securities that are SBSs would not be required to register as dealers under the Exchange Act and thus would not be required to join a national securities association.

The Commission is proposing to exempt SBSs from the calculation of Section 31 fees.[170] This exemption is designed to provide a more level playing field among SBS market participants. A national securities association would be able to collect funds to pay its Section 31 fees only from SBS market participants that are required to register with it. It would be unable to collect such member fees from SBS dealers that are not required to register with it. Thus, absent an exemption for all SBSs, the burden of indirectly paying the Section 31 fees would fall on some SBS market participants but not others.

[162] 15 U.S.C. 78ee(c).

[163] 15 U.S.C. 78c(a).

[164] *See* 15 U.S.C. 78c(a)(10).

[165] National securities exchanges also would be liable for fees in connection with transactions in SBSs that they execute. *See* 15 U.S.C. 78ee(b).

[166] *See* 15 U.S.C. 78o(b)(8) ("It shall be unlawful for any registered broker or dealer to effect any transaction in, or induce or attempt to induce the purchase or sale of, any security (other than or [sic] commercial paper, bankers' acceptances, or commercial bills), unless such broker or dealer is a member of a securities association registered pursuant to section 78o–3 of this title or effects transactions in securities solely on a national securities exchange of which it is a member."). In addition, Rule 15b9–1(a) under the Exchange Act, 17 CFR 240.15b9–1(a), provides that any broker or dealer required by Section 15(b)(8) of the Exchange Act to become a member of a registered national securities association shall be exempt from such requirement if it (1) is a member of a national securities exchange, (2) carries no customer accounts, and (3) has annual gross income derived from purchases and sales of securities otherwise than on a national exchange of which it is a member in an amount no greater than $1,000. The gross income limitation does not apply to income derived from transactions (1) for the dealer's own account with or through another registered broker or dealer, or (2) through the Intermarket Trading System. *See* 17 CFR 240.15b9–1(b).

[167] *See* 15 U.S.C. 78o–8 ("The term 'dealer' means any person engaged in the business of buying and selling securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person's own account through a broker or otherwise"); 15 U.S.C. 78c(71) (defining a security-based swap dealer "any person who—(i) holds themself out as a dealer in security-based swaps; (ii) makes a market in security-based swaps; (iii) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps").

[168] *See* 15 U.S.C. 78c(a)(5).

[169] *See* 15 U.S.C. 78c(a)(4).

[170] 15 U.S.C. 78ee(f) ("The Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee or assessment imposed by this section, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system.").

In addition, the Commission proposes to revise Rule 31(a)(10)(ii) under the Exchange Act [171] to conform the definition of "due date" in that rule to Section 31(e)(2) of the Exchange Act, as amended by Section 991 of the Dodd-Frank Act. This amendment provides that certain fees and assessments required under Section 31 will be required to be paid by September 25, rather than September 30.[172] The Commission proposes to make a corresponding amendment to the definition of "due date" in Rule 31(a)(10)(ii) under the Exchange Act by replacing the reference to "September 30" in that rule with a reference to "September 25."

Request for Comment

190. Do commenters agree with the proposal to exempt SBSs from Section 31 fees? Why or why not?

191. How much transaction volume in SBSs would the Commission be exempting from Section 31 fees on an annual basis?

192. If the Commission did not exempt SBSs from Section 31 fees, how would a national securities association obtain funds to pay the fees? Would the offsetting fees imposed on members of the national securities association be fairly distributed?

193. Do commenters agree that the proposed exemption would create a more level playing field among SBS market participants? Why or why not?

194. Absent the proposed exemption from Section 31 fees for SBSs, would there be difficulties in collecting Section 31 fees for mixed swaps (which are included with the definition of "security-based swap" and are thus securities)?

XII. General Request for Comment

Title VII of the Dodd-Frank Act requires the SEC to consult and coordinate to the extent possible with the CFTC for the purposes of assuring regulatory consistency and comparability, to the extent possible,[173] and states that in adopting rules, the CFTC and SEC shall treat functionally or economically similar products or entities in a similar manner.[174]

The CFTC is adopting rules related to the reporting of swaps and the public dissemination of swap transaction, pricing, and volume data, as required under Sections 723, 727, and 729 of the Dodd-Frank Act. Understanding that the Commission and the CFTC regulate different products and markets and, as such, appropriately may be proposing alternative regulatory requirements, the Commission requests comment on the impact of any differences between the Commission and CFTC approaches to the regulation of the reporting of swaps and SBSs and the public dissemination of swap and SBS transaction, pricing, and volume information.

In addition, legislatures and regulators in other jurisdictions are undertaking efforts to improve regulation in the market for OTC derivatives, including security-based swaps. The Commission requests comment generally on the impact of any differences between the Commission's proposed approach to the reporting and public dissemination of SBSs and that of any relevant foreign jurisdictions.

195. Would the regulatory approaches under the Commission's proposed rulemaking pursuant to Sections 763 and 766 of the Dodd-Frank Act and the CFTC's proposed rulemaking pursuant to Sections 723, 727, and 729 of the Dodd-Frank Act result in duplicative or inconsistent efforts on the part of market participants subject to both regulatory regimes or result in gaps between those regimes? If so, in what ways do commenters believe that such duplication, inconsistencies, or gaps should be minimized?

196. Do commenters believe the approaches proposed by the Commission and the CFTC to regulate the reporting of swaps and SBSs, and the public dissemination of swap and SBS transaction, volume, and pricing information, are comparable? If not, why not?

197. Do commenters believe there are approaches that would make the regulation of swap and SBS reporting and the public dissemination of swap and SBS transaction, volume, and pricing information more comparable? If so, what?

198. Do commenters believe that it would be appropriate for the Commission to adopt an approach proposed by the CFTC that differs from our proposal? Is so, which one(s)? We request commenters to provide data, to the extent possible, supporting any such suggested approaches.

199. If registered SDRs would also be assuming real-time reporting obligations under the CEA, should the phase-in schedules for reporting obligations for swaps and SBSs be coordinated?

200. How will proposed Regulation SBSR interact with reporting and public dissemination regimes in other jurisdictions? Will there be significant differences? If so, would those differences result in regulatory arbitrage? If so, what steps, if any, should the Commission take to minimize opportunities for regulatory arbitrage?

XIII. Paperwork Reduction Act

Certain provisions of the proposed reporting rules proposed in this release contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[175] The Commission is therefore submitting relevant information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. Compliance with the collection of information requirements would be mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Specific collections of information are discussed further below.

A. Definitions—Rule 900

Proposed Rule 900 of Regulation SBSR contains only definitions of relevant terms and, thus, would not be a "collection of information" within the meaning of the PRA.

B. Reporting Obligations—Rule 901 of Regulation SBSR

Proposed Rule 901 of Regulation SBSR contains "collection of information requirements" within the meaning of the PRA. The title of this collection is "Rule 901—Reporting Obligations."

1. Summary of Collection of Information

The Dodd-Frank Act amended the Exchange Act to require the reporting of SBS transactions. Accordingly, the Commission is proposing Rule 901 under the Exchange Act to implement this requirement. Proposed Rule 901 would specify who reports SBS transactions, where such transactions are to be reported, what information is to be reported, and in what format. Counterparties to a SBS would be responsible for reporting the SBS to a registered SDR, or, if there is no registered SDR that would accept the SBS, to the Commission. Proposed Rule 901 generally would divide the SBS information that must be reported into three categories: (1) Information that must be reported in real time pursuant

[171] 17 CFR 240.31(a)(10)(ii).

[172] Section 991 of the Dodd-Frank Act provides, in relevant part: "(1) AMENDMENTS.—Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended * * * in subsection (e)(2), by striking 'September 30' and inserting 'September 25'."

[173] *See* Section 712(a)(2) of the Dodd-Frank Act.

[174] *See* Section 712(a)(7) of the Dodd-Frank Act.

[175] 44 U.S.C. 3501 *et seq.*

to proposed Rule 901(c);[176] (2) additional information that must be reported pursuant to proposed Rule 901(d) within specified timeframes;[177] and (3) life cycle events that must be reported pursuant to proposed Rule 901(e).[178]

Proposed Rule 901(i) would require the reporting of all of the information required by proposed Rules 901(c) and (d) for any pre-enactment SBSs or transitional SBSs, to the extent such information is available.

Proposed Rule 901 also would impose certain duties on a registered SDR that receives SBS transaction data. Proposed Rule 901(f) would require a registered SDR to time stamp, to the second, its receipt of any information submitted to it pursuant to proposed Rule 901(c), (d), or (e). Proposed Rule 901(g) would require a registered SDR to assign a transaction ID to each SBS reported by a reporting party.

2. Proposed Use of Information

The SBS transaction information required to be reported pursuant to proposed Rule 901 would be used by registered SDRs, market participants, the Commission, and other regulators. The information reported by reporting parties pursuant to proposed Rule 901 would be used by registered SDRs to publicly disseminate real-time reports of SBS transactions, as well as to offer a resource for regulators to obtain detailed information about the SBS market. Market participants would use the public market data feed to assess the current market for SBSs and for valuation purposes. The Commission and other regulators would use information about SBS transactions reported to and held by registered SDRs for prudential oversight and to monitor potential systemic risks, as well as to examine for improper behavior and to take enforcement actions, as appropriate.

The transaction ID would be used on any subsequent transaction report or information submitted by a reporting party regarding that SBS (*e.g.,* on an error report to identify the original transaction to which the error report pertains).

3. Respondents

Proposed Rule 901 would apply to reporting parties.[179] The Commission preliminarily believes that up to 1,000 entities could be reporting parties under proposed Rule 901(a), and that it is reasonable to use the figure of 1,000 respondents for estimating collection of information burdens under the PRA. The Commission preliminarily believes, based on information currently available to it, that there are and would continue to be approximately 1,000 entities regularly engaged in the CDS marketplace, and that most of these entities are likely to regularly participate in other SBS markets.[180] Accordingly, the Commission preliminarily believes that an estimate of 1,000 respondents (*i.e.,* reporting parties) is appropriate.

Proposed Rule 901 also would impose certain duties on registered SDRs. Pursuant to Section 13(n) of the Exchange Act, an SDR must register with the Commission.[181] The Commission preliminarily believes that the number of SDRs seeking to register would not exceed ten. Accordingly, for purposes of estimating collection of information burdens under proposed Regulation SBSR, including proposed Rule 901, the Commission believes that it is reasonable to use ten as an estimate of the number of registered SDRs.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

a. For Reporting Parties

Pursuant to proposed Rule 901, all SBS transactions must be reported to a registered SDR or to the Commission. Together, sections (a), (b), (c), (d), (e) and (h) of proposed Rule 901 set forth the parameters that market participants must follow to report SBS transactions. Proposed Rule 901(i) addresses the reporting of pre-enactment SBSs. The proposed SBS reporting requirements would impose initial and ongoing burdens on reporting parties. The Commission preliminarily believes that these burdens would be a function of, among other things, the number of reportable SBS transactions and the data elements required to be reported for each SBS transaction.

Based on publicly available information and consultation with industry sources, the Commission preliminarily believes that even the most active participants in the SBS market do not enter into a large number of new SBSs on a daily basis. Rather, most regularly active SBS market

[176] Proposed Rule 901(c) would provide that, for each SBS for which it is the reporting party, the reporting party shall report the following information in real time: (1) The asset class of the SBS and, if the SBS is an equity derivative whether it is a total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the SBS is based; (2) information that identifies the SBS instrument and the specific asset(s) or issuer of a security on which the SBS is based; (3) the notional amount(s), and the currenc(ies) in which the notional amount(s) is expressed; (4) the date and time, to the second, of execution, expressed using UTC; (5) the effective date; (6) the scheduled termination date; (7) the price; (8) the terms of any fixed or floating rate payments, and the frequency of any payments; (9) whether or not the SBS will be cleared by a clearing agency; (10) if both counterparties to a SBS are SBS dealers, an indication to that effect; (11) if applicable, an indication that the transaction does not accurately reflect the market; and (12) if the SBS is customized to the extent that the information provided in items (1) through (11) does not provide all of the material information necessary to identify such customized SBS or does not contain the data elements necessary to calculate the price, an indication to that effect. *See supra* Section III.B.

[177] Proposed Rule 901(d)(1) would provide that, in addition to the information required under proposed Rule 901(c), for each SBS for which it is the reporting party, the reporting party shall report: (1) The participant ID of each counterparty; (2) as applicable, the broker ID, desk ID, and trader ID of the reporting party; (3) the amount(s) and currenc(ies) of any up-front payment(s) and a description of the payment streams of each counterparty; (4) the title of any master agreement, or any other agreement governing the transaction (including the title of any document governing the satisfaction of margin obligations), incorporated by reference and the date of any such agreement; (5) the data elements necessary for a person to determine the market value of the transaction; (6) if the SBS will be cleared, the name of the clearing agency; (7) if the SBS is not cleared, whether the exception in Section 3C(g) of the Exchange Act was invoked; (8) if the SBS is not cleared, a description of the settlement terms, including whether the SBS is cash-settled or physically settled, and the method for determining the settlement value; and (9) the venue where the SBS was executed. Under proposed Rule 901(d)(2), any information required to be reported pursuant to paragraph (d)(1) must be reported promptly, but in no event later than: (1) 15 minutes after the time of execution for a SBS that is traded and confirmed electronically; (2) 30 minutes after the time of execution for a SBS that is confirmed electronically but not traded electronically; or (3) 24 hours after execution for a SBS that is not executed or confirmed electronically. *See supra* Sections IV.B. and C.

[178] Proposed Rule 901(e) would require that, for any life cycle event, and any adjustment due to a life cycle event, that results in a change to information previously reported pursuant to proposed Rule 901(c) or (d), the reporting party shall promptly provide updated information reflecting such change to the entity to which it reported the original transaction, using the transaction ID, subject to two enumerated exceptions. However, if a reporting party ceases to be a counterparty to a SBS due to an assignment or novation, the new counterparty shall be the reporting party following such assignment or novation, if the new counterparty is a U.S. person. If, following an assignment or novation, the new counterparty is not a U.S. person, the counterparty that is a U.S. person shall be the reporting party. *See supra* Section IV.D.

[179] *See* proposed Rule 900 (defining "reporting party" as the counterparty to an SBS with the duty to report information in accordance with proposed Regulation SBSR to a registered SDR, or if there is no registered SDR that would receive the information, to the Commission).

[180] The Commission includes in its estimate of reporting parties clearing agencies, which under proposed Rule 901(e)(i) could become the reporting parties for SBS transactions where the original reporting party ceases to be a counterparty to the SBS following a novation of the transaction. *See supra* Section IV.D.

[181] *See* 15 U.S.C. 78m(n). The Commission today is separately proposing several rules to implement this requirement. *See* SDR Registration Proposing Release, *supra* note 6.

participants enter into only a small number of new SBSs during any given time period, while a few larger dealers participate in the majority of SBS transactions. The Commission has sought available information in an effort to quantify the number of aggregate SBS transactions on an annual basis. According to publicly available data from DTCC, recently, there have been an average of approximately 36,000 CDS transactions per day,[182] corresponding to a total number of CDS transactions of approximately 13,140,000 per year. The Commission preliminarily believes that CDSs represent 85% of all SBS transactions.[183] Accordingly, and to the extent that historical market activity is a reasonable predictor of future activity,[184] the Commission preliminarily estimates that the total number of SBS transactions that would be subject to proposed Rule 901 on an annual basis would be approximately 15,460,000, which is an average of approximately 42 per reporting party per day.[185]

The Commission believes that reporting parties would face three categories of burdens to comply with proposed Rule 901 of Regulation SBSR. First, each reporting party would likely need to develop an internal order and trade management system ("OMS") capable of capturing relevant SBS transaction information. The OMS would have to include or be connected to a system designed to store SBS transaction information. The Commission understands that it is current industry practice, in many cases, to add SBS transaction details to the transaction record post-execution in a process known as "enrichment." Accordingly, the OMS would likely need to link both to the trade desk—to permit real-time transaction reporting under proposed Rule 901(c)—and to the back office—to facilitate reporting of complete transactions as required under proposed Rule 901(d).

Second, each reporting party would have to implement a reporting mechanism. This would include a system that "packages" SBS transaction information from the reporting party's OMS, sends such information, and tracks it. The reporting mechanism would also include necessary data transmission lines to the appropriate registered SDR.

Third, each reporting party would have to establish an appropriate compliance program and support for the operation of the OMS and reporting mechanism. Relevant elements of the compliance program would include transaction verification and validation protocols; the ability to identify and correct erroneous transaction reports; and necessary technical, administrative, and legal support. Additional operational support would include new product development, systems upgrades, and ongoing maintenance.

Internal Order Management. To comply with their reporting obligations, reporting parties would likely need to develop and maintain an internal OMS that can capture relevant SBS data. The Commission preliminarily estimates that capturing SBS data in a manner sufficient to comply with proposed Rule 901 would impose an initial one-time aggregate burden of approximately 355,000 burden hours, which corresponds to a burden of 355 hours for each reporting party.[186] This estimate includes an estimate of the number of potential burden hours required to amend internal procedures, design or reprogram systems, and implement processes to ensure that SBS transaction data are captured and preserved. The Commission further preliminarily estimates that capturing SBS data in a manner sufficient to comply with proposed Rule 901 would impose an annual aggregate burden of approximately 436,000 burden hours, 436 burden hours for each reporting party.[187] This figure would include day-to-day support of the OMS, as well as an estimate of the amortized annual burden associated with system upgrades and periodic "re-platforming" (*i.e.,* implementing significant updates based on new technology). The Commission preliminarily estimates that, to capture and maintain relevant information and documents, reporting parties could incur aggregate annual dollar cost burden (first-year and ongoing) of $1,000,000, which corresponds to $1,000 for each participant.[188] The figure is an estimate of the hardware and associated maintenance costs for sufficient memory to capture and store SBS transactions, including redundant back-up systems.

Summing these burdens, the Commission preliminarily estimates that the initial (*i.e.,* first-year) aggregate annualized burden on reporting parties for internal order management under proposed Rule 901 would be 791,000 burden hours, which corresponds to 791 burden hours for each reporting party.[189] The Commission preliminarily estimates that the initial aggregate annualized dollar cost burden would be $1,000,000, which would correspond to $1,000 for each reporting party.[190] The Commission further preliminarily estimates that the ongoing aggregate annualized burden on reporting parties for internal order management under proposed Rule 901 would be 436,000 burden hours, which corresponds to 436 burden hours for each reporting party.[191] The Commission preliminarily estimates that the ongoing aggregate annualized dollar cost burden would be $1,000,000, which corresponds to $1,000 for each reporting party.[192]

SBS Reporting Mechanism. Reporting parties would be required to incur

[182] *See, e.g., http://www.dtcc.com/products/derivserv/data_table_iii.php* (weekly data as updated by DTCC).

[183] The Commission's estimate is based on internal analysis of available SBS market data. The Commission is seeking comment about the overall size of the SBS market.

[184] The Commission notes that regulation of the SBS markets, including by means of proposed Regulation SBSR, could impact market participant behavior.

[185] These figures are based on the following: [13,140,000/0.85] = 15,458,824. [((15,458,824 estimated SBS transactions)/(1,000 estimated reporting parties))/(365 days/year)] = 42.35, or approximately 42 transactions per day. The Commission understands that many of these transactions may arise from previously executed SBS transactions.

[186] This figure is based on discussions of Commission staff with various market participants and is calculated as follows: [((Sr. Programmer at 160 hours) + (Sr. Systems Analyst at 160 hours) + (Compliance Manager at 10 hours) + (Director of Compliance at 5 hours) + (Compliance Attorney at 20 hours)) × (1,000 reporting parties)] = 355,000 burden hours, which is 355 hours per reporting party (assuming 1,000 reporting parties). The Commission preliminarily believes that information on SBS transactions is currently being retained by many market participants in the ordinary course of business. This may result in lesser burdens for those parties.

[187] This figure is based on discussions of Commission staff with various market participants and is calculated as follows: [((Sr. Programmer at 32 hours) + (Sr. Systems Analyst at 32 hours) + (Compliance Manager at 60 hours) + (Compliance Clerk at 240 hours) + (Director of Compliance at 24 hours) + (Compliance Attorney at 48 hours)) × (1,000 reporting parties)] = 436,000 burden hours, which is 436 hours per reporting party.

[188] This estimate is based on discussions of Commission staff with various market participants and is calculated as follows: [($250/gigabyte of storage capacity) × (4 gigabytes of storage) × (1,000 reporting parties)] = $1,000,000. The Commission preliminarily believes that storage costs associated with saving relevant SBS information and documents would not vary significantly between the first year and subsequent years. Accordingly, the Commission has preliminarily estimated the initial and ongoing storage costs to be the same. Moreover, the per-entity annual data storage figure of $1,000 is an average. Some parties may face higher costs, while others would simply use existing storage resources.

[189] This estimate is based on the following: [((355 one-time burden hours for systems development) + (436 burden hours for annual costs)) × (1,000 reporting parties)] = 791,000 burden hours, which corresponds to 791 burden hours per reporting party.

[190] *See supra* note 188.

[191] *See supra* note 187.

[192] *See supra* note 188.

initial one-time costs to establish connectivity to a registered SDR to report SBS transactions. Depending on the number of SBS asset classes that a reporting party transacts in, and which registered SDRs accept the resulting SBS transaction reports, multiple connections to different registered SDRs could be necessary. For purposes of estimating relevant burdens, the Commission preliminarily estimates that, on average, each reporting party would require connections to two registered SDRs. The Commission bases this estimate on discussions with market participants. We recognize that, in light of the developing SBS market and regulatory structure, the actual average number of SDR connections maintained by each reporting party may be different.

This estimate is based on the following factors. First, based on discussions with SBS market participants, the Commission understands that the majority of SBSs are comprised of CDS and equity-based swaps. Accordingly, the Commission preliminarily believes that transactions in these two asset classes would predominate. Moreover, the Commission preliminarily believes that SBS market participants may not all transact in each asset class. Thus, even if each registered SDR accepted transaction reports only for a single SBS asset class, the total number of connections needed by many reporting parties would likely be limited. Next, the Commission also preliminarily believes that, for operational efficiency, a reporting party would seek to use only one registered SDR per asset class for repository services. Accordingly, to the extent that a single registered SDR accepted SBSs in multiple asset classes, a reporting party would need fewer connections. Finally, a reporting party that required a significant number of connections to registered SDRs could engage a third party—for example, a dealer or connectivity services provider—instead of independently establishing its own connections. Accordingly, the Commission preliminarily believes that one connection may suffice for many reporting parties.

On this basis, the Commission preliminarily estimates that the cost to establish and maintain connectivity to a registered SDR to facilitate the reporting required by proposed Rule 901 would impose an annual dollar cost burden of approximately $200,000,000, which corresponds to a dollar cost burden of $200,000 for each reporting party.[193]

Moreover, the Commission believes that establishing a reporting mechanism for SBS transactions would impose internal burdens on each reporting party, including the development of systems necessary to capture and send information from the entity's OMS to the relevant registered SDR, as well as corresponding testing and support. The Commission preliminarily estimates an initial one-time aggregate burden of 172,000 burden hours, which corresponds to a burden of 172 burden hours for each reporting party.[194] In addition, the Commission preliminarily estimates that reporting specific SBS transactions to a registered SDR as required by proposed Rule 901 would impose an ongoing aggregate burden of 77,300 burden hours, which corresponds to a burden of approximately 80 burden hours for each reporting party.[195]

Thus, the Commission preliminarily estimates that the initial (first-year) aggregate annualized burden on reporting parties for reporting under proposed Rule 901 would be 249,300 burden hours, which corresponds to approximately 250 burden hours for each reporting party.[196] The Commission preliminarily estimates that the initial aggregate annualized dollar cost burden would be $200,000,000, which corresponds to $200,000 for each reporting party.[197] In addition, the Commission preliminarily estimates that the ongoing aggregate annualized burden on reporting parties under proposed Rule 901 would be 77,300 burden hours, which corresponds to approximately 80 burden hours for each reporting party.[198] The Commission preliminarily estimates that the ongoing aggregate annualized dollar cost burden would be $200,000,000, which corresponds to $200,000 for each reporting party.[199]

Compliance and Ongoing Support. As stated above, in complying with proposed Rule 901, each reporting party also would need to establish and maintain an appropriate compliance program and support for the operation of the OMS and reporting mechanism, which would include transaction verification and validation protocols, and necessary technical, administrative, and legal support. Additional operational support would include new product development, systems upgrades, and ongoing maintenance. The Commission preliminarily believes that initial burdens associated with this aspect of proposed Rule 901—*i.e.,* the establishment of relevant compliance capability—would in significant part involve the development of appropriate policies and procedures, which, for those participants who are SBS dealers or major SBS participants, is addressed in connection with proposed Rule 906(c).[200] A reporting party also would need to design its OMS to include tools to ensure accurate, complete reporting. On an ongoing basis, a reporting party would need to employ appropriate technical and compliance staff to maintain and support the operation of its order management and reporting systems over time.

The Commission preliminarily estimates that designing and implementing an appropriate compliance and support program would impose an initial, one-time aggregate burden of approximately 180,000 burden hours, which corresponds to a

[193] This estimate is based on discussions of Commission staff with various market participants, as well as the Commission's experience regarding connectivity between securities market participants for data reporting purposes. The Commission derived the total estimated expense from the following: [($100,000 hardware- and software-related expenses, including necessary back-up and redundancy, per SDR connection) × (2 SDR connections per reporting party) × (1,000 reporting parties)] = $200,000,000. The Commission understands that many reporting parties already have established linkages to entities that may register as SDRs, which could significantly reduce the out-of-pocket costs associated with this establishing the reporting function contemplated by proposed Rule 901.

[194] This figure is based on discussions with various market participants as follows: [((Sr. Programmer at 80 hours) + (Sr. Systems Analyst at 80 hours) + (Compliance Manager at 5 hours) + (Director of Compliance at 2 hours) + (Compliance Attorney at 5 hours)) × (1,000 reporting parties)] = 172,000 burden hours, which is 172 hours per reporting party. The Commission preliminarily believes that many dealers and major market participants already are reporting SBS data to some extent in the ordinary course of business. Thus, as a practical matter, these parties may face substantially lower burdens.

[195] This figure is based on discussions of Commission staff with various market participants, as well as the Commission's experience regarding connectivity between securities market participants, including alternative trading systems and self-regulatory organizations for data reporting purposes. The Commission derived the total estimated initial burden from the following: [(15,460,000 estimated total annual SBS transactions) × (0.005 hours/transaction)] = 77,300 burden hours, which is 77.3 burden hours per reporting party.

[196] This estimate is based on the following: [((172 one-time burden hours) + (77.3 burden hours for ongoing costs)) × (1,000 reporting parties)] = 249,300 burden hours, which corresponds to 249.3 burden hours per reporting party.

[197] *See supra* note 193.

[198] *See supra* note 195.

[199] *See supra* note 193.

[200] *See infra* Section XIII.G.

burden of 180 burden hours for each reporting party.[201]

The Commission further preliminarily estimates that maintaining a reporting party's compliance and support program would impose an ongoing aggregate burden of approximately 218,000 burden hours, which corresponds to a burden of 218 burden hours for each reporting party.[202] This figure includes day-to-day support of the OMS, as well as an estimate of the amortized annual burden associated with system upgrades and periodic re-platforming (*i.e.,* implementing significant updates based on new technology).

Therefore, the Commission preliminarily estimates the initial aggregate annualized burden on reporting parties for compliance and ongoing support under proposed Rule 901 would be 398,000 burden hours, which corresponds to 398 burden hours for each reporting party.[203] The Commission further preliminarily estimates that the ongoing aggregate annualized burden on reporting parties for compliance and ongoing support under proposed Rule 901 would be 218,000 burden hours, which corresponds to 218 burden hours for each reporting party.[204]

Aggregate Burdens. Thus, the Commission estimates that the total first-year burden—the initial aggregate annualized burden—on reporting parties associated with proposed Rule 901 would be 1,438,300 burden hours, which corresponds to approximately 1,438 burden hours per reporting party.[205] In addition, the Commission preliminarily estimates that the initial aggregate annualized dollar cost burden on reporting parties associated with proposed Rule 901 would be $301,000,000, which corresponds to a dollar cost burden of $301,000 per reporting party.[206]

Likewise, the Commission estimates that the ongoing aggregate annual burdens on reporting parties associated with proposed Rule 901 would be 731,300 burden hours, which corresponds to 731 burden hours per reporting party.[207] In addition, the Commission preliminarily estimates that the ongoing, aggregate annualized dollar cost burden on reporting parties associated with proposed Rule 901 would be $301,000,000, which corresponds to a dollar cost burden of $301,000 per reporting party.[208]

b. For Registered SDRs

Proposed Rule 901(f) would require a registered SDR to time-stamp information that it receives. Proposed Rule 901(g) would require a registered SDR to assign a unique transaction ID to each SBS it receives. The Commission preliminarily believes that a registered SDR would need to design its systems to include these capabilities, but that such design elements would not pose additional significant burdens to incorporate in the context of designing and building the technological framework that would be required of a SDR to become registered.[209] Therefore, the Commission preliminarily estimates that proposed Rules 901(f) and (g) would impose an initial one-time aggregate burden of 1,200 burden hours, which corresponds to 120 burden hours per registered SDR.[210] This figure is based on an estimate of ten registered SDRs. Once operational, these elements of each registered SDR's system would have to be supported and maintained. Accordingly, the Commission estimates that proposed Rule 901(f) and (g) would impose an annual aggregate burden of 1,520 burden hours, which corresponds to 152 burden hours per registered SDR.[211] This figure represents an estimate of the burden for a registered SDR for support and maintenance costs for the registered SDR's systems to time stamp incoming submissions and assign transaction IDs.

Thus, the Commission preliminarily estimates that the first-year aggregate annualized burden associated with proposed Rules 901(f) and (g) would be 2,820 burden hours, which corresponds to 282 burden hours per registered SDR.[212] Correspondingly, the Commission preliminarily estimates that the ongoing aggregate annualized burden associated with proposed Rules 901(f) and (g) would be 1,520 burden hours, which corresponds to 152 burden hours per registered SDR.[213]

5. Recordkeeping Requirements

Concurrently with proposed Regulation SBSR, the Commission is issuing the SDR Registration Proposing Release, which includes recordkeeping requirements for SBS transaction data received by a registered SDR pursuant to proposed Regulation SBSR. Specifically, proposed Rule 13n–5(b)(4) would require a registered SDR to maintain the transaction data that it collects for not less than five years after the applicable SBS expires, and historical positions and historical market values for not less than five years.[214] Accordingly, SBS transaction reports received by a registered SDR pursuant to proposed Rule 901 would be required to be retained by the SDR for not less than five years.

6. Collection of Information is Mandatory

Each collection of information discussed above would be a mandatory collection of information.

7. Confidentiality of Responses to Collection of Information

Information collected pursuant to proposed Rule 901(c) would be widely available to the public to the extent it is incorporated into SBS transaction reports that are publicly disseminated by a registered SDR pursuant to

[201] This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer at 100 hours) + (Sr. Systems Analyst at 40 hours) + (Compliance Manager at 20 hours) + (Director of Compliance at 10 hours) + (Compliance Attorney at 10 hours)) × (1,000 reporting parties)] = 180,000 burden hours, which corresponds to 180 hours per reporting party.

[202] This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer at 16 hours) + (Sr. Systems Analyst at 16 hours) + (Compliance Manager at 30 hours) + (Compliance Clerk at 120 hours) + (Director of Compliance at 12 hours) + (Compliance Attorney at 24 hours)) × (1,000 reporting parties)] = 218,000 burden hours, which is 218 hours per reporting party.

[203] This estimate is based on the following: [((180 one-time burden hours) + (218 annual burden hours)) × (1,000 reporting parties)] = 398,000 burden hours, which corresponds to 398 burden hours per reporting party.

[204] *See supra* note 202.

[205] This figure is based on summing the initial aggregate annualized burdens for reporting parties under proposed Rule 901: [(791,000) + (249,300) + (398,000)] = 1,438,300 burden hours.

[206] This figure is based on summing the estimated first-year aggregate annualized dollar cost burdens as follows: [($300,000,000) + ($1,000,000)] = $301,000,000.

[207] This figure is based on summing estimated ongoing annual aggregate burdens as follows: [(436,000) + (77,300) + (218,000)] = 731,300 burden hours.

[208] This figure is based on summing the estimated first-year aggregate annualized dollar cost burdens as follows: [($300,000,000) + ($1,000,000)] = $301,000,000.

[209] The Commission is proposing Rules 13n–4(b), 13n–5, and 13n–6 under the Exchange Act, which would relate to the duties, data collection and maintenance, and automated systems requirements for SDRs. *See* SDR Registration Proposing Release, *supra* note 6.

[210] This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer at 80 hours) + (Sr. Systems Analyst at 20 hours) + (Compliance Manager at 8 hours) + (Director of Compliance at 4 hours) + (Compliance Attorney at 8 hours)) × (10 registered SDRs)] = 1,200 burden hours, which is 120 hours per registered SDR.

[211] This figure is based on discussions with various market participants as follows: [((Sr. Programmer at 60 hours) + (Sr. Systems Analyst at 48 hours) + (Compliance Manager at 24 hours) + (Director of Compliance at 12 hours) + (Compliance Attorney at 8 hours)) x (10 SDRs)] = 1,520 burden hours, which is 152 hours per registered SDR.

[212] This figure is based on the following: [(1,200) + (1,520)] = 2,720 burden hours, which corresponds to 272 burden hours per registered SDR.

[213] *See supra* note 211.

[214] *See* SDR Registration Proposing Release, *supra* note 6.

proposed Rule 902. A registered SDR would be under an obligation to maintain the confidentiality of any information collected pursuant to proposed Rule 901(d), pursuant to Sections 13(n)(5) of the Exchange Act and proposed Rule 13n–9 thereunder.[215] To the extent that the Commission receives confidential information pursuant this collection of information, such information would be kept confidential, subject to the provisions of the Freedom of Information Act.

8. Request for Comment

The Commission requests public comment on its burden estimates. The Commission also solicits comment as follows:

201. Is the proposed collection of information necessary for the performance of the functions of the agency? Would the information have practical utility?

202. How accurate are the Commission's preliminary estimates of the burdens of the proposed collection of information associated with proposed Rule 901? In particular, how many entities would incur collection of information burdens pursuant to proposed Rule 901?

203. Would covered entities incur any initial burdens associated with systems design, programming, expanding systems capacity, and establishing compliance programs pursuant to proposed Rule 901?

204. Would there be different or additional burdens associated with the collection of information under proposed Rule 901 that a covered entity would not undertake in the ordinary course of business?

205. Are there additional burdens that the Commission has not addressed in its preliminary burden estimates?

206. Can you suggest any ways to enhance the quality, utility, and clarity of the information to be collected?

207. Can you suggest any ways to minimize the burden of collection of information on those who would be required to respond, including through the use of automated collection techniques or other forms of information technology?

208. What entities may be subject to proposed Rule 901, whether specific classes of entities may be impacted, how many entities may be impacted, and will any such entity or class of entities be impacted differently than others? In addition, the Commission seeks comment on the accuracy of its estimates as to the number of participants in the SBS market that would be required to report information pursuant to proposed Rule 901.

C. Public Dissemination of Transaction Reports—Rule 902 of Regulation SBSR

Certain provisions of proposed Rule 902 of Regulation SBSR contain "collection of information requirements" within the meaning of the PRA. The title of this collection is "Rule 902—Public Dissemination of Transaction Reports."

1. Summary of Collection of Information

Proposed Rule 902(a) generally would require that a registered SDR publicly disseminate a transaction report for each SBS transaction immediately upon receipt of information about the SBS submitted by a reporting party pursuant to proposed Rule 901(c), along with any indicator(s) contemplated by the registered SDR's policies and procedures.[216] If its systems are unavailable for publicly disseminating transaction data immediately upon receipt, the registered SDR would be required to disseminate the transaction data immediately upon re-opening.

Pursuant to Rule 902(b), a registered SDR would be required to publicly disseminate a transaction report of a SBS that constitutes a block trade immediately upon receipt of information about the block trade from the reporting party. The transaction report would consist of all the information reported by the reporting party pursuant to proposed Rule 901(c), except for the notional size, plus the transaction ID and an indicator that the report represents a block trade. The registered SDR would be required to publicly disseminate a complete transaction report for such block trade (including the transaction ID and the full notional size) at a later time.

Proposed Rule 902(c) would prohibit a registered SDR from disseminating: (1) the identity of either counterparty to a SBS; (2) with respect to a SBS that is not cleared at a registered clearing agency and that is reported to a registered SDR, any information disclosing the business transactions and market positions of any person; (3) any information regarding a SBS reported pursuant to proposed Rule 901(i).

2. Proposed Use of Information

The real-time public dissemination requirement contained in proposed Rule 902 would provide post-trade transparency for SBS transactions, as required by the Dodd-Frank Act. Publicly disseminated reports of SBS transactions that are not block trades would include the full notional size. Publicly disseminated reports of SBS transactions that are block trades would occur pursuant to a two-step process. First, a real-time report would be disseminated without the notional size, but with an indication that the trade is a block trade as well as a transaction ID. At a later time, a follow-on report would be disseminated, including the notional size, with the transaction ID used to connect the second report to the first report.

3. Respondents

The collection of information associated with the proposed Rule 902 would apply to registered SDRs. As noted above, the Commission preliminarily believes that an estimate of ten registered SDRs is reasonable for purposes of its analysis of potential burdens under the PRA.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

Although proposed Rule 902 would not prescribe a manner of public dissemination, the Commission anticipates that a registered SDR would establish a mechanism functionally similar to one established by TRACE, which is a system operated by FINRA for collecting and disseminating to the public reports of trades in corporate and agency debt securities.

Simultaneously with this proposal, the Commission is proposing new Rules 13n–1 through 13n–11 under the Exchange Act relating to the SDR registration process, the duties of SDRs, and their core principles.[217] The SDR Registration Proposing Release covers anticipated collections of information with respect to various aspects of establishing and operating an SDR, including its start-up and ongoing operations. Proposed Rule 13n–5(b)(1) would set forth parameters each registered SDR would be required to follow with regard to collecting and maintaining transaction data. Every SDR would be required to (i) establish, maintain, and enforce written policies and procedures for the reporting of transaction data to the SDR and shall accept all transaction data that is reported in accordance with such policies and procedures; (ii) accept all SBSs in any asset class that are reported to it in accordance with its policies and procedures to the extent that it accepts any SBS in a particular asset class; (iii) establish, maintain, and enforce written policies and procedures to verify the accuracy of the transaction data that has been submitted to the SDR, including

[215] *See id.*

[216] *See* proposed Rule 907(a)(4).

[217] *See* SDR Registration Proposing Release, *supra* note 6.

clearly identifying the source for each trade side and the pairing method (if any) for each transaction in order to identify the level of quality of the transaction data; and (iv) promptly record the transaction data it receives. The SDR Registration Proposing Release describes the relevant burdens and costs that complying with proposed Rule 13n–5(b)(1) would entail.

The Commission preliminarily believes that a registered SDR would be able to integrate the capability to publicly disseminate real-time SBS transaction reports required under proposed Rule 902 as part of its overall system development for transaction data. Accordingly, the Commission believes that the burdens associated with enabling and maintaining compliance with proposed Rule 902 would, as a practical matter, represent a portion of a registered SDR's overall systems development budget and process. Based on discussions with industry participants, the Commission preliminarily estimates that to implement and comply with the real-time public dissemination requirement of proposed Rule 902, each registered SDR would incur a burden equal to an additional 20% of the first-year and ongoing burdens discussed in the SDR Registration Proposing Release.[218]

On this basis, the Commission preliminarily estimates that the initial one-time aggregate burden imposed by the proposed Rule 902 for development and implementation of the systems needed to disseminate the required transaction information, including the necessary software and hardware, would be approximately 84,000 hours and a dollar cost of $20 million, which would correspond to a burden of 8,400 hours and a dollar cost of $2 million for each registered SDR.[219] In addition, the Commission preliminarily estimates that annual aggregate burden (initial and ongoing) imposed by the proposed Rule 902 would constitute approximately 50,400 hours and a dollar cost of $12 million, which would correspond to a burden of 5,040 hours and a dollar cost of $1.2 million for each registered SDR.[220] Thus, the Commission preliminarily estimates that the total first-year (initial) aggregate annualized burden on registered SDRs associated with real-time public dissemination requirement under proposed Rule 902 would be approximately 134,400 hours and a dollar cost of $32 million, which would correspond to a burden of 13,440 hours and a dollar cost of $3.2 million for each registered SDR.[221]

5. Recordkeeping Requirements

Pursuant to proposed Rule 13n–7(b) under the Exchange Act,[222] a registered SDR would be required to keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Exchange Act and the rules or regulations thereunder, for a period of not less than five years, the first two years in a place that is immediately available to the staff of the Commission for inspection and examination. This requirement would encompass real-time SBS transaction reports disseminated by the registered SDR. Accordingly, SBS transaction reports disseminated by a registered SDR pursuant to proposed Rule 902 would be required to be retained for not less than five years.

6. Collection of Information Is Mandatory

Each collection of information discussed above would be a mandatory collection of information.

7. Confidentiality of Responses to Collection of Information

Information collected pursuant to proposed Rule 902 would be widely available to the extent that it is incorporated into SBS transaction reports that are publicly disseminated by a registered SDR pursuant to proposed Rules 902(a) and (b). However, a registered SDR would be under an obligation to maintain the confidentiality of any information that is not subject to public dissemination. 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 the Freedom of Information Act.

8. Request for Comment

The Commission requests public comment on its burden estimates. The Commission also solicits comment as follows:

209. Is the proposed collection of information necessary for the performance of the functions of the agency? Would the information have practical utility?

210. How accurate are the Commission's preliminary estimates of the burdens of the proposed collection of information associated with proposed Rule 902? In particular, how many entities would incur collection of information burdens pursuant to proposed Rule 902?

211. Would registered SDRs incur any initial burdens associated with systems design, programming, expanding systems capacity, and establishing compliance programs pursuant to proposed Rule 902?

212. Would there be different or additional burdens associated with the collection of information under proposed Rule 902 that a registered SDR would not undertake in the ordinary course of business?

213. Are there additional burdens that the Commission has not addressed in its preliminary burden estimates?

214. Can you suggest any ways to enhance the quality, utility, and clarity of the information to be collected?

215. Can you suggest any ways to minimize the burden of collection of information on those who would be required to respond, including through the use of automated collection techniques or other forms of information technology?

D. Coded Information—Rule 903 of Regulation SBSR

The Commission does not believe that proposed Rule 903 would be a "collection of information" within the meaning of the PRA because the rule would merely permit reporting parties and registered SDRs to use codes in place of certain data elements, subject to

[218] *See* Section IV.D.2 (SDR Duties, Data Collection and Maintenance, Automated Systems, and Direct Electronic Access) of the SDR Registration Proposing Release. This estimate is based on discussions with industry members and market participants, including potential SDRs who would be required to register as SDRs under the Dodd-Frank Act, and includes time necessary to design and program a registered SDR's system to calculate and disseminate initial and subsequent trade reports as well as annual costs associated with systems testing and maintenance necessary for the special handling of block trades. These figures do not include the development of policies and procedures necessary to calculate block trade levels pursuant to proposed Rule 907(b).

[219] *See* SDR Registration Proposing Release, *supra* note 6 for the total burden associated with establishing SDR technology systems. The Commission derived this estimated burden from the following: [((Attorney at 1,400 hours) + (Compliance Manager at 1,600 hours) + (Programmer Analyst at 4,000 hours) + (Senior Business Analyst at 1,400 hours)) × (10 registered SDRs)] = 84,000 burden hours, which corresponds to 8,400 hours per registered SDR.

[220] *See* SDR Registration Proposing Release, *supra* note 6 for the total ongoing annual burdens associated with operating and maintaining SDR technology systems. The Commission derived this estimated burden from the following: [((Attorney at 840 hours) + (Compliance Manager at 960 hours) + (Programmer Analyst at 2,400 hours) + (Senior Business Analyst at 840 hours)) × (10 registered SDRs)] = 50,400 burden hours, which corresponds to 5,040 hours per registered SDR.

[221] These estimates are based on the following: [(84,000 one-time burden hours) + (50,400 annual burden hours)] = 134,400 burden hours, which corresponds to 13,440 hours per registered SDR; [($20 million one-time dollar cost burden) + ([$12] million annual dollar cost burden) = $32 million cost burden, which corresponds to $3.2 million per registered SDR.

[222] *See* SDR Registration Proposing Release, *supra* note 6.

certain conditions. The rule would offer subject entities greater flexibility in meeting the obligations specified elsewhere in proposed Regulation SBSR related to the reporting of SBS transactions.

E. Operating Hours of Registered Security-Based Swap Data Repositories—Rule 904 of Regulation SBSR

Certain provisions of proposed Rule 904 contain "collection of information requirements" within the meaning of the PRA. The title of this collection is "Rule 904—Operating Hours of Registered Security-Based Swap Data Repositories."

1. Summary of Collection of Information

Proposed Rule 904 would require a registered SDR to operate continuously, subject to two exceptions. First, a registered SDR could establish normal closing hours during periods when, in its estimation, the U.S. market and major foreign markets are inactive. A registered SDR would be required to provide reasonable advance notice to participants and to the public of its normal closing hours. Second, a registered SDR could declare, on an *ad hoc* basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. A registered SDR would, to the extent reasonably possible under the circumstances, be required to avoid scheduling special closing hours during when, in its estimation, the U.S. market and major foreign markets are most active; and provide reasonable advance notice of its special closing hours to participants and to the public.

Paragraphs (c) and (e) of proposed Rule 904 would specify requirements for handling and disseminating reported data during a registered SDR's normal and special closing hours. First, during normal closing hours and, to the extent reasonably practicable, during special closing hours, a registered SDR would be required to have the capability to receive and hold in queue transaction data it receives.[223] Second, if a registered SDR could not hold in queue transaction data to be reported, it would be required, immediately upon resuming normal operations, to send a notice to all participants that it has resumed normal operations and to immediately disseminate the transaction data required to be reported under proposed Rule 901(c) and received from the participants following the notice.[224]

Two of the requirements contained in Rule 904 constitute requirements already contained in other proposed rules. First, the requirement in Rule 904(d) that, immediately upon system re-opening, a registered SDR would be required to publicly disseminate any transaction data required to be reported under proposed Rule 901(c) and held in queue, is also contained in the proposed Rule 902(a). Second, the requirement in proposed Rule 904(e) that, if a reporting party that has an obligation to report transaction data could not to do so because a registered SDR's system was unavailable, it would be required to submit that information immediately after it receives a notice that it is possible to do so, is already implicitly contained in proposed Rule 901.

2. Proposed Use of Information

The information that would be provided pursuant to proposed Rule 904 is necessary to allow participants and the public to know the normal and special closing hours of the registered SDR, and to allow participants to take appropriate action in the event that the registered SDR cannot accept SBS transaction reports from participants.

3. Respondents

Proposed Rule 904 would apply to all registered SDRs. As noted above, the Commission preliminarily estimates that there would be ten registered SDRs.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

The Commission preliminarily estimates that that the one-time, initial burden, as well as ongoing annualized burden for each registered SDR associated with proposed Rule 904 would be minimal, because registered SDRs would already have undertaken necessary steps in compliance with other proposed rules. First, simultaneously with this proposal, the Commission is proposing the SDR Registration Proposed Rules, including proposed Rules 13n–1 through 240–13n–11.[225] The SDR Registration Proposed Rules cover collections of information with respect to various aspects of establishing and operating a registered SDR, including, implicitly, its hours of operation.[226]

The Commission preliminarily believes that the requirements for a registered SDR to provide reasonable advance notice to participants and to the public of its normal and special closing hours, as well as to provide a notice to participants that it is possible to report transaction data to a registered SDR after its system was unavailable, would entail a minor burden. On this basis, the Commission preliminarily estimates that the annual aggregate burden (first-year and ongoing) imposed by proposed Rule 904 would be 360 hours, which corresponds to 36 hours per registered SDR.[227]

5. Recordkeeping Requirements

Concurrently with proposed Regulation SBSR, the Commission is proposing the SDR Registration Proposed Rules.[228] Proposed Rule 13n–7(b) would require a registered SDR to keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Exchange Act and the rules or regulations thereunder, for a period of not less than five years, the first two years in a place that is immediately available to the staff of the Commission for inspection and examination.[229] This requirement would encompass notices issued by a registered SDR to participants under proposed Rule 904.

6. Collection of Information is Mandatory

Each collection of information discussed above would be a mandatory collection of information.

7. Confidentiality of Responses to Collection of Information

The Commission anticipates that any notices issued by a registered SDR to its participants would be publicly available.

8. Request for Comment

The Commission requests public comment on its burden estimates. The Commission also solicits comment as follows:

216. Is the proposed collection of information necessary for the performance of the functions of the agency? Would the information have practical utility?

217. How accurate are the Commission's preliminary estimates of the burdens of the proposed collection of information associated with proposed Rule 904? In particular, how many

[223] *See* proposed Rule 904(c).

[224] *See* proposed Rule 904(e).

[225] *See* SDR Registration Proposing Release, *supra* note 6.

[226] The requirement in proposed Rule 904(e) for the participants to report information to the registered SDR upon receiving a notice that the registered SDR resumed its normal operations is already part of the participant's reporting obligations under proposed Rule 901 and is already contained in the burden estimate for the proposed Rule 901.

[227] This figure is based on the Commission's experience as follows: [(Operations Specialist at 3 hours/month) × (12 months/year) × (10 registered SDRs)] = 360 burden hours.

[228] *See* SDR Registration Proposing Release, *supra* note 6.

[229] *See id.*, proposed Rule 13n–7(b) under the Exchange Act.

entities would incur collection of information burdens pursuant to proposed Rule 904?

218. Would the burdens imposed under proposed Rule 904 be different or additional to those that a registered SDR would undertake in the ordinary course of business?

219. Are there additional burdens that the Commission has not addressed in its preliminary burden estimates?

220. Can you suggest any ways to enhance the quality, utility, and clarity of the information to be collected?

221. Can you suggest any ways to minimize the burden of collection of information on those who would be required to respond, including through the use of automated collection techniques or other forms of information technology?

F. Correction of Errors in Security-Based Swap Information—Rule 905 of Regulation SBSR

Certain provisions of proposed Rule 905 of Regulation SBSR contain "collection of information requirements" within the meaning of the PRA. The title of this collection is "Rule 905—Correction of Errors in Security-Based Swap Information."

1. Summary of Collection of Information

Proposed Rule 905 would establish duties for SBS counterparties and registered SDRs to correct errors in information that previously has been reported.

Counterparty Reporting Error. Under proposed Rule 905(a)(1), where a counterparty that was not the reporting party for a SBS discovers an error in the information reported with respect to such SBS, the counterparty shall promptly notify the reporting party of the error. Under proposed Rule 905(a)(2), where a reporting party for a SBS transaction discovers an error in the information reported with respect to a SBS, or receives notification from its counterparty of an error, the reporting party shall promptly submit to the entity to which the SBS was originally reported an amended report pertaining to the original transaction report. The reporting party would submit an amended report to the registered SDR in a manner consistent with the policies and procedures of the registered SDR required pursuant to proposed Rule 907(a)(3).

Duty of Registered SDR to Correct. Proposed Rule 905(b) would set 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 counterparty, proposed Rule 905(b)(1) would require the registered SDR to verify the accuracy of the terms of the SBS and, following such verification, promptly correct the erroneous information contained in its system. Proposed Rule 905(b)(2) would further require that, if the erroneous transaction information contained any data that fall into the categories enumerated in proposed Rule 901(c) as information required to be reported in real time, the registered SDR would be required to publicly disseminate a corrected transaction report of the SBS promptly following verification of the SBS by the counterparties to the SBS, with an indication that the report relates to a previously disseminated transaction.

2. Proposed Use of Information

The SBS transaction information required to be reported pursuant to proposed Rule 905 would be used by registered SDRs, participants, the Commission, and other regulators. Participants would 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 would need the required information to correct its own records, in order to maintain an accurate record of a participant's positions as well as to disseminate corrected information. The Commission and other regulators would need the corrected information to have an accurate understanding of the market for surveillance and oversight purposes.

3. Respondents

Proposed Rule 905 would apply to participants of a registered SDR. As noted above, the Commission has estimated that there may be 1,000 entities regularly engaged in the CDS marketplace. In addition, the Commission estimates that there may be up to 4,000 SBS counterparties that transact SBSs much less frequently. The Commission preliminarily believes that these SBS counterparties would not be reporting parties. However, these additional 4,000 counterparties would be "participants" as defined by proposed Rule 900. Accordingly, with respect to burdens applicable to all SBS counterparties, the Commission preliminarily believes that it is reasonable to use the estimate of 5,000 respondents for purposes of estimating collection of information burdens under the PRA.

Proposed Rule 905 also would apply to registered SDRs. As noted above, the Commission preliminarily estimates there would be ten registered SDRs.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

The Commission preliminarily believes that promptly submitting an amended transaction report to the appropriate registered SDR after discovery of an error as required under proposed Rule 905(a)(2) would impose a burden on reporting parties. Likewise, the Commission preliminarily believes that promptly notifying the relevant reporting party after discovery of an error as required under proposed Rule 905(a)(1) would impose a burden on non-reporting-party participants.

With respect to reporting parties, the Commission preliminarily believes that proposed Rule 905(a) would impose an initial, one-time burden associated with designing and building the reporting party's reporting system to be capable of submitting amended SBS transactions to a registered SDR. In addition, reporting parties would be required to support and maintain the error reporting function.[230]

The Commission preliminarily believes that designing and building appropriate reporting system functionality to comply with proposed Rule 905(a)(2) would 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 proposed Rule 901. Based on discussions with industry participants, the Commission preliminarily estimates this incremental burden to be equal to 5% of the one-time and annual burdens associated with designing and building a reporting system that is in compliance with proposed Rule 901,[231] plus 10% of the corresponding one-time and annual burdens associated with developing the reporting party's overall compliance program required under proposed Rule 901.[232] Thus, for reporting parties, the Commission preliminarily estimates that proposed Rule 905(a) would impose an initial (first-year) aggregate burden of 52,400 hours, which is 52.4 burden hours per reporting party,[233] and an

[230] The Commission preliminarily believes that the actual submission of amended transaction reports required under proposed Rule 905(a)(2) would not result in a material burden because this would be done electronically though the reporting system that the reporting party must develop and maintain to comply with proposed Rule 901. The burdens associated with such a reporting system are addressed in the Commission's analysis of proposed Rule 901. *See supra* Section XIII.B.4.a and notes 193–195.

[231] *See supra* notes 194 and 198.

[232] *See supra* notes 201 and 202.

[233] This figure is calculated as follows: [(((172 burden hours one-time development of reporting system) × (0.05)) + ((80 burden hours annual maintenance of reporting system) × (0.05)) + ((180

ongoing aggregate annualized burden of 25,800 hours, which is 25.8 burden hours per reporting party.[234]

With regard to non-reporting-party participants, the Commission preliminarily believes that proposed Rule 905(a) would impose an initial and ongoing burden associated with promptly notifying the relevant reporting party after discovery of an error as required under proposed Rule 905(a)(1). The Commission preliminarily estimates that the annual burden would be 2,920,000 hours, which corresponds to 730 burden hours per non-reporting-party participant.[235] This figure is based on the Commission's preliminary estimates of (1) 4,000 non-reporting-party participants; (2) 11 transactions per day per non-reporting-party participant;[236] and (3) an error rate of one-third (33%),[237] or approximately 4 transactions per day per non-reporting-party participant.

Proposed Rule 905(b) would require a registered SDR to develop protocols regarding the reporting and correction of erroneous information. The Commission preliminarily believes, however, that this duty would represent only a minor extension of other duties for which the Commission is estimating burdens, and consequently, would not impose substantial additional burdens on a registered SDR. A registered SDR would be required to have the ability to collect and maintain SBS transaction reports and update relevant records under the SDR Registration Proposing Release.[238] Likewise, a registered SDR would have the capacity to disseminate additional, corrected SBS transaction reports under proposed Rule 902. The Commission preliminarily believes that the burdens associated with proposed Rule 905—including systems development, support, and maintenance—are addressed in the Commission's analysis of those other rules. Thus, the Commission preliminarily believes that proposed Rule 905(b) would impose only an incremental additional burden on registered SDRs. The Commission preliminarily estimates that to develop and publicly provide the necessary protocols would impose on each registered SDR an initial one-time burden of approximately 730 burden hours.[239] The Commission estimates that to review and update such protocols on an ongoing basis would impose an annual burden on each SDR of approximately 1,460 burden hours.[240]

Accordingly, the Commission preliminarily estimates that the initial (first-year) aggregate annualized burden on registered SDRs under proposed Rule 905 would be 21,900 burden hours, which corresponds to 2,190 burden hours for each registered SDR.[241] The Commission further preliminarily estimates that the ongoing aggregate annualized burden on registered SDRs under proposed Rule 905 would be 14,600 burden hours, which corresponds to 1,460 burden hours for each registered SDR.[242]

5. Recordkeeping Requirements

Concurrently with proposed Regulation SBSR, the Commission is proposing the SDR Registration Proposed Rules, which would include recordkeeping requirements for SBS transaction data received by a registered SDR pursuant to proposed Regulation SBSR.[243] Specifically, proposed Rule 13n–5(b)(5) under the Exchange Act would require a registered SDR to maintain the transaction data for not less than five years after the applicable SBS expires and historical positions and historical market values for not less than five years. Accordingly, SBS transaction reports received by a registered SDR pursuant to proposed Rule 905 would be required to be retained for not less than five years.

With respect to information disseminated by a registered SDR in compliance with proposed Rule 905(b)(2), proposed Rule 13n–7(b) under the Exchange Act would require a registered SDR to keep and preserve at least one copy of all documents, including all policies and procedures required by the Exchange Act and the rules or regulations thereunder for a period of not less than five years, the first two years in a place that is immediately available to the staff of the Commission for inspection and examination.[244] This requirement would encompass amended real-time SBS transaction reports disseminated by the registered SDR. Accordingly, SBS transaction reports disseminated by a registered SDR pursuant to proposed Rule 905(b)(2) would be required to be retained for not less than five years.

6. Collection of Information Is Mandatory

Each collection of information discussed above would be a mandatory collection of information.

7. Confidentiality of Responses to Collection of Information

Information collected pursuant to proposed Rule 905 would be widely available to the extent that it corrects information previously reported pursuant to proposed Rule 901(c) and incorporated into SBS transaction reports that are publicly disseminated by a registered SDR pursuant to proposed Rule 902. Generally, however, a registered SDR would be under an obligation to maintain the confidentiality of any information collected pursuant to proposed Rule 901, pursuant to Sections 13(n)(5) of the Exchange Act and proposed Rule 13n–9 thereunder.[245] To the extent that the Commission receives confidential information pursuant this collection of

burden hours one-time compliance program development) × (0.1)) + ((218 burden hours annual support of compliance program) × (0.1))) × (1,000 reporting parties)] = 52,400 burden hours, which is 52.4 burden hours per reporting party.

[234] This figure is calculated as follows: [((((80 burden hours annual maintenance of reporting system) × (0.05)) + ((218 burden hours annual support of compliance program) × (0.1))) × (1,000 reporting parties)] = 25,800 burden hours, which is 25.8 burden hours per reporting party.

[235] This figure is based on the following: [(4 error notifications per non-reporting-party participant per day) × (365 days/year) × (Compliance Clerk at 0.5 hours/report) × (4,000 non-reporting-party participants)] = 2,920,000 burden hours, which corresponds to 730 burden hours per non-reporting-party participant. The Commission preliminarily believes that participants already monitor their SBS transactions and positions in the ordinary course of business. Thus, the Commission preliminarily believes that, as a practical matter, proposed Rule 905 would not result in any significant new burdens for these participants.

[236] This figure is based on the following: [((15,458,824 estimated annual SBS transactions)/(4,000 estimated non-reporting-party participants))/(365 days/year)] = 10.58, or approximately 11 transactions per day. *See supra* note 185. The Commission understands that many of these transactions may arise from previously executed SBS transactions.

[237] In other words, the Commission is estimating that one-third of all SBS transactions will require an amended report to be submitted to the registered SDR pursuant to proposed Rule 905(a). For purposes of its PRA analysis, the Commission is further assuming that the both the non-reporting-party participant and the reporting party discover all errors. The Commission recognizes that, as a practical matter, there may be instances where one party fails to detect an error.

[238] *See supra* note 6.

[239] This figure is based on the following: [(Sr. Programmer at 80 hours) + (Compliance Manager at 160 hours) + (Compliance Attorney at 250 hours) + (Compliance Clerk at 120 hours) + (Sr. System Analyst at 80 hours) + (Director of Compliance at 40 hours)] = 730 burden hours.

[240] This figure is based on the following: [(Sr. Programmer at 160 hours) + (Compliance Manager at 320 hours) + (Compliance Attorney at 500 hours) + (Compliance Clerk at 240 hours) + (Sr. System Analyst at 160 hours) + (Director of Compliance at 80 hours)] = 1,460 burden hours.

[241] This figure is based on the following: [(730 burden hours to develop protocols) + (1,460 burden hours annual support)) × (10 registered SDRs)] = 21,900 burden hours, which corresponds to 2,190 burden hours per registered SDR.

[242] This figure is based on the following: [(1,460 burden hours annual support) × (10 registered SDRs)] = 14,600 burden hours, which corresponds to 1,460 burden hours per registered SDR.

[243] *See* SDR Registration Proposing Release, *supra* note 6.

[244] *See id.*

[245] *See* SDR Registration Proposing Release, *supra* note 6.

information, such information would be kept confidential, subject to the provisions of the Freedom of Information Act.

8. Request for Comment

The Commission requests public comment on its burden estimates. The Commission also solicits comment as follows:

222. Is the proposed collection of information necessary for the performance of the functions of the agency? Would the information have practical utility?

223. How accurate are the Commission's preliminary estimates of the burdens of the proposed collection of information associated with proposed Rule 905? In particular, how many entities would incur collection of information burdens pursuant to proposed Rule 905?

224. Would covered entities incur any initial burdens associated with systems design, programming, expanding systems capacity, and establishing compliance programs pursuant to proposed Rule 905?

225. What entities may be subject to proposed Rule 905? In what ways would these entities be impacted? Would any such entity or class of entities be impacted differently than others?

226. How many entities might be impacted by proposed Rule 905? Are the Commission's preliminary estimates as to the number of participants in the SBS market that would be required to report and retain information pursuant to the proposed rule accurate?

227. Are there additional burdens that the Commission has not addressed in its preliminary burden estimates?

228. Can you suggest any ways to enhance the quality, utility, and clarity of the information to be collected?

229. Can you suggest any ways to minimize the burden of collection of information on those who would be required to respond, including through the use of automated collection techniques or other forms of information technology?

G. Other Duties of Participants—Rule 906 of Regulation SBSR

Certain provisions of proposed Rule 906 of Regulation SBSR contain "collection of information requirements" within the meaning of the PRA. The title of this collection is "Rule 906—Duties of All Participants."

1. Summary of Collection of Information

Proposed Rule 906(a) would set forth a procedure designed to ensure that a registered SDR obtains relevant ID information for both counterparties to a SBS, not just the IDs of the reporting party. Proposed Rule 906(a) would require a registered SDR to identify any SBS reported to it for which it does not have participant ID and (if applicable) broker ID, desk ID, and trader ID of each counterparty. Proposed Rule 906(a) would further require the registered SDR, once a day, to send a report to each participant identifying, for each SBS to which that participant is a counterparty, the SBS(s) for which the registered SDR lacks participant ID and (if applicable) broker ID, desk ID, and trader ID. Additionally, under proposed Rule 906(a), a participant that receives such a report would be required to provide the missing ID information to the registered SDR within 24 hours.

Proposed Rule 906(b) would require a participant to provide a registered SDR with information identifying the participant's ultimate parent(s) and affiliate(s) that may also be participants of the registered SDR. Additionally, under proposed Rule 906(b), the participant would be required to promptly notify the registered SDR of any changes to the information provided.

Proposed Rule 906(c) would require each participant that is a SBS dealer or major SBS participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any SBS transaction reporting obligations in a manner consistent with proposed Regulation SBSR and the registered SDR's applicable policies and procedures. In addition, proposed Rule 906(c) would require each such participant to review and update its policies and procedures at least annually.

2. Proposed Use of Information

The information required to be provided by participants pursuant to proposed Rule 906(a) would complete missing elements of SBS transaction reports so that the registered SDR would have, and could make available to regulators, accurate and complete records for reported SBS.

Similarly, proposed Rule 906(b) would be used to ensure that the registered SDR would have, and could make available to regulators, accurate and complete records for reported SBS regarding participant parents and affiliates. The Commission would use this information in its ongoing efforts to monitor and enforce compliance with the federal securities laws, including proposed Regulation SBSR.

The policies and procedures required under proposed Rule 906(c) would be used by participants to aid in their compliance with proposed 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 proposed Regulation SBSR.

3. Respondents

Proposed Rules 906(a) and (b) would apply to all participants of registered SDRs. Based on the information currently available to the Commission, the Commission preliminarily estimates that there may be up to 5,000 participants. Proposed Rule 906(c) would apply to participants that are SBS dealers or major SBS participants. The Commission believes that such entities would constitute the majority of reporting parties, so that it is reasonable to use the figure of 1,000 respondents for purposes of estimating collection of information burdens under the PRA.

Proposed Rule 906 also imposes certain duties on registered SDRs. As noted above, the Commission is preliminarily estimating that there would be ten registered SDRs.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

Proposed Rule 906(a) would require a registered SDR, once a day, to send a report to each participant identifying, for each SBS to which that participant is a counterparty, the SBS(s) for which the registered SDR lacks participant ID and (if applicable) broker ID, desk ID, and trader ID. The Commission preliminarily estimates that there would 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 proposed Rule 906(a).[246] Further, the Commission preliminarily estimates that there would 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.[247]

Accordingly, the Commission preliminarily estimates that the initial

[246] The Commission has derived the total estimated burdens based on the following estimates, which are based on the information provided to the Commission: (Senior Systems Analyst at 40 hours) + (Sr. Programmer at 40 hours) + (Compliance Manager at 16 hours) + (Director of Compliance at 8 hours) + (Compliance Attorney at 8 hours) = 112 burden hours.

[247] The Commission has derived the total estimated burdens based on the following estimates, which are based on the information provided to the Commission: (Senior Systems Analyst at 24 hours) + (Sr. Programmer at 24 hours) + (Compliance Clerk at 260 hours) = 308 burden hours.

aggregate annualized burden for registered SDRs under proposed Rule 906(a) would be 4,200 burden hours, which corresponds to 420 burden hours per registered SDR.[248] The Commission preliminarily estimates that the ongoing aggregate annualized burden for registered SDRs under proposed Rule 906(a) would be 3,080 burden hours, which corresponds to 308 burden hours per registered SDR.[249]

In addition, proposed Rule 906(a) would require any participant that receives a daily report from a registered SDR to provide the missing UICs to the registered SDR within 24 hours. The Commission preliminarily estimates participants that are reporting parties would bear no initial or ongoing burdens under proposed Rule 906(a). This estimate is based on the Commission's preliminary belief that a reporting party would structure its reporting program to be in compliance with proposed Regulation SBSR, and consequently, would send complete information as relates to itself for each SBS transaction submitted to a registered SDR. The Commission further preliminarily estimates that the initial and ongoing annualized burden under proposed Rule 906(a) to participants that are not reporting parties would be 1,277,500 burden hours, which corresponds to 255.5 burden hours per participant.[250] This figure is based on the Commission's preliminary estimates of (1) 5,000 participants; (2) 9 transactions per day per participant;[251] and (3) a missing information rate of 80%,[252] or approximately 7 transactions per day per participant.

Proposed Rule 906(b) would require every participant to provide the registered SDR an initial parent/affiliate report and subsequent reports, as needed. The Commission preliminarily estimates that each participant would submit two reports each year.[253] In addition, the Commission preliminarily estimates that there would be 5,000 participants and that each one may connect to two registered SDRs. Accordingly, the Commission preliminarily estimates that the initial and ongoing aggregate annualized burden associated with proposed Rule 906(b) would be 10,000 burden hours, which corresponds to 2 burden hours per participant.[254]

Proposed Rule 906(c) would require each participant that is a SBS dealer or major SBS participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any SBS transaction reporting obligations in a manner consistent with proposed Regulation SBSR and the registered SDR's applicable policies and procedures. Proposed Rule 906(c) would also require the review and updating of such policies and procedures at least annually. The Commission preliminary estimates that the one-time, initial burden for each covered participant to adopt written policies and procedures as required under proposed Rule 906(c) would be approximately 216 burden hours.[255] Drawing on the Commission's experience with other rules that require entities to establish and maintain policies and procedures,[256] 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 preliminarily estimates the burden of maintaining such policies and procedures, including a full review at least annually, as required by proposed Rule 906(c), would be approximately 120 burden hours for each covered participant.[257] 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 preliminarily estimates that the initial aggregate annualized burden associated with proposed Rule 906(c) would be 336,000 burden hours, which corresponds to 336 burden hours per covered participant.[258] The Commission preliminarily estimates that the ongoing aggregate annualized burden associated with proposed Rule 906(c) would be 120,000 burden hours, which corresponds to 120 burden hours per covered participant.[259]

Therefore, the Commission preliminarily estimates that the initial aggregate annualized burden associated with proposed Rule 906 would be 1,518,200 burden hours,[260] and the ongoing aggregate annualized burden would be 1,301,080 burden hours for all covered entities.[261]

5. Recordkeeping Requirements

Concurrently with proposed Regulation SBSR, the Commission is issuing the SDR Registration Proposing Release, which would include recordkeeping requirements for SBS transaction data received by a registered SDR pursuant to proposed Regulation SBSR.[262] Specifically, proposed Rule 13n–5(b)(5) under the Exchange Act would require a registered SDR to

[248] The Commission derived its estimate from the following: [(112 + 308 burden hours) × (10 registered SDRs)] = 4,200 burden hours, which corresponds to 420 burden hours per registered SDR.

[249] The Commission derived its estimate from the following: [(308 burden hours) × (10 registered SDRs)] = 3,080 burden hours, which corresponds to 308 burden hours per registered SDR.

[250] This figure is based on the following: [(7 missing information reports per non-reporting-party participant per day) × (365 days/year) × (Compliance Clerk at 0.1 hours/report) × (5,000 participants)] = 1,277,500 burden hours, which corresponds to 255.5 burden hours per participant.

[251] This figure is based on the following: [((15,458,824 estimated annual SBS transactions)/5,000 estimated participants))/(365 days/year)] = 8.47, or approximately 9 transactions per day. *See supra* note 185. The Commission understands that many of these transactions may arise from previously executed SBS transactions.

[252] In other words, the Commission is estimating that 80% of the time the reporting party would not know and thus would not be able to report the necessary UICs of its counterparty. Therefore, a registered SDR would have to obtain the missing UICs through the process described in proposed Rule 906(a).

[253] During the first year, the Commission preliminarily estimates each participant would submit its initial report and one update report. In subsequent years, the Commission preliminarily estimates that each participant would submit two update reports.

[254] This figure is based on the following: [(Compliance Clerk at 0.5 hours per report) × (2 reports/year/SDR connection) × (2 SDR connections/participant) × (5,000 participants)] = 10,000 burden hours, which corresponds to 2 burden hours per participant.

[255] 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.

[256] *See* Securities Exchange Act Release Nos. 62174 (May 26, 2010), 75 FR 32556 (June 8, 2010) (proposing Rule 613 of Regulation NMS); 61908 (April 14, 2010), 75 FR 21456 (proposing large trader reporting system).

[257] 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.

[258] This figure is based on the following: [(216 + 120 burden hours) × (1,000 covered participants)] = 336,000 burden hours.

[259] This figure is based on the following: [(120 burden hours) × (1,000 covered participants)] = 120,000 burden hours.

[260] This figure is based on the following: [(4,200 burden hours for registered SDRs under proposed Rule 906(a)) + (1,277,500 burden hours for non-reporting-party participants under proposed Rule 906(a)) + (10,000 burden hours for participants under proposed Rule 906(b)) + (336,000 burden hours for covered participants under proposed Rule 906(c))] = 1,627,700 burden hours.

[261] This figure is based on the following: [(3,080 burden hours for registered SDRs under proposed Rule 906(a)) + (1,277,500 burden hours for non-reporting-party participants under proposed Rule 906(a)) + (10,000 burden hours for participants under proposed Rule 906(b)) + (120,000 burden hours for covered participants under proposed Rule 906(c))] = 1,410,580 burden hours.

[262] *See supra* note 6.

maintain the transaction data for not less than five years after the applicable SBS expires and historical positions and historical market values for not less than five years.

With regard to other information that a registered SDR may receive from participants pursuant to proposed Rule 906, proposed Rule 13n–7(b) would require a registered SDR to keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Exchange Act and the rules or regulations thereunder for a period of not less than five years, the first two years in a place that is immediately available to the staff of the Commission for inspection and examination.[263] This requirement would encompass materials received by a registered SDR from participants pursuant to proposed Rule 906.

6. Collection of Information Is Mandatory

Each collection of information discussed above would be a mandatory collection of information.

7. Confidentiality of Responses to Collection of Information

A registered SDR would be under an obligation to maintain the confidentiality of any information collected pursuant to proposed Rule 906. To the extent that the Commission receives confidential information pursuant this collection of information, such information would be kept confidential, subject to the provisions of the Freedom of Information Act.

8. Request for Comment

The Commission requests public comment on its burden estimates. The Commission also solicits comment as follows:

230. Is the proposed collection of information necessary for the performance of the functions of the agency? Would the information have practical utility?

231. In what ways would entities covered by Rule 906 be impacted? Would any such entity or class of entities be impacted differently than others?

232. What would be the burdens on participants to provide to a registered SDR and keep updated information about their ultimate parents and affiliates that are also participants?

233. How many entities might be impacted by proposed Rule 906? Are the Commission's preliminary estimates as to the number of participants in the SBS market that would be required to report and retain information pursuant to the proposed rule accurate?

234. Can you suggest any ways to enhance the quality, utility, and clarity of the information to be collected?

235. Can you suggest any ways to minimize the burden of collection of information on those who would be required to respond, including through the use of automated collection techniques or other forms of information technology?

236. Would proposed Rule 906 create any additional burdens not discussed here? If so, please identify and quantify these burdens.

H. Policies and Procedures of Registered Security-Based Swap Data Repositories—Rule 907 of Regulation SBSR

Certain provisions of proposed Rule 907 of Regulation SBSR contain "collection of information requirements" within the meaning of the PRA. The title of this collection is "Rule 907—Policies and Procedures of Registered Security-Based Swap Data Repositories." The Commission is applying for a new OMB Control Number for this collection in accordance with 44 U.S.C. 3507(j) and 5 CFR 1320.13.

1. Summary of Collection of Information

Proposed Rule 907 would require a registered SDR to establish and maintain compliance with written policies and procedures: (1) That enumerate the specific data elements of a SBS or a life cycle event that a reporting party would report; (2) that specify data formats, connectivity requirements, and other protocols for submitting information; (3) for specifying how reporting parties are to report corrections to previously submitted information, making corrections to information in its records that is subsequently discovered to be erroneous, and applying an appropriate indicator to any transaction report required to be disseminated by proposed Rule 905(b)(2), which would denote that the report relates to a previously disseminated transaction; (4) describing how reporting parties shall report and, consistent with the enhancement of price discovery, how the registered SDR shall publicly disseminate, reports of, and adjustments due to, life cycle events; SBS transactions that do not involve an opportunity to negotiate any material terms, other than the counterparty; and any other SBS transactions that, in the estimation of the registered SDR, do not accurately reflect the market; (5) for assigning transaction IDs and UICs related to its participants; and (6) for periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any other participant(s) with which the counterparty is affiliated, using applicable UICs.

In addition, proposed Rule 907(b)(1) would require a registered SDR to establish and maintain written policies and procedures for calculating and publicizing block trade thresholds for all SBS instruments reported to the registered SDR in accordance with the criteria and formula for determining block size as specified by the Commission.

Under proposed Rules 907(c) and (d), a registered SDR would be required to make its policies and procedures publicly available on its website, and review, and update as necessary, its policies and procedures at least annually, indicating the date on which they were last reviewed. Finally, proposed Rule 907(e) would require 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 proposed Regulation SBSR and the registered SDR's policies and procedures thereunder.

2. Proposed Use of Information

The policies and procedures required under proposed Rule 907 would be used by registered SDRs 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 proposed Regulation SBSR. These policies and procedures also would be used by participants of a registered SDR to understand the specific data elements of SBS transactions that they must report, the specific data formats they would be required to use, and for understanding what constitutes a block trade in a SBS instrument. Furthermore, market participants would use the information about block trades calculated and publicized by a registered SDR to understand the block trade thresholds for specific SBS instruments, and for understanding the registered SDR's dissemination protocols generally. Finally, any information or reports provided to the Commission pursuant to proposed Rule 907(e) would be used by the Commission to assess the timeliness, accuracy, and completeness of data reported pursuant to proposed Regulation SBSR and as part of its general oversight of the SBS markets.

[263] *See id.*

3. Respondents

As noted above, the Commission preliminarily estimates that ten registered SDRs would be subject to proposed Rule 907.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

The Commission preliminarily estimates that the one-time, initial burden for a registered SDR to adopt written policies and procedures as required under proposed Rule 907 would be approximately 15,000 hours.[264] Drawing on the Commission's experience with other rules that require entities to establish and maintain policies and procedures,[265] 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.[266] In addition, the Commission preliminarily estimates the annual burden of maintaining such policies and procedures, including a full review at least annually, making available its policies and procedures on the registered SDR's website, and compiling statistics on non-compliance, as required under proposed Rule 907, would be approximately 30,000 hours for each registered SDR.[267] 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, calculating and publishing block trade thresholds, performing necessary testing, monitoring participants, and compiling data.

The Commission preliminarily believes that, as part of its core functions, a registered SDR would 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 proposed Regulation SBSR and the registered SDR's policies and procedures. Proposed Rule 13n–5(b) would require a registered SDR to establish, maintain, and enforce written policies and procedures to satisfy itself by reasonable means that the transaction data that has been submitted to the security-based swap data repository is accurate, and also to ensure that the transaction data and positions that it maintains are accurate.[268] The Commission preliminarily believes that these capabilities would enable a registered SDR to provide the Commission information or reports as may be requested pursuant to proposed Rule 907(e). Thus, the Commission does not believe that proposed Rule 907(e) would impose any additional burdens on a registered SDR.

Based on the Commission's experience and input from self-regulatory organizations, the Commission preliminarily believes that a registered SDR would need to hire 15 full-time staff to fulfill the obligations outlined in proposed Rule 907. Accordingly, the Commission preliminarily estimates that the initial annualized burden associated with proposed Rule 907 would be approximately 45,000 hours per registered SDR, which corresponds to an initial annualized aggregate burden of approximately 450,000 hours.[269] The Commission preliminarily estimates that the ongoing annualized burden associated with proposed Rule 907 would be approximately 30,000 hours per registered SDR,[270] which corresponds to an ongoing annualized aggregate burden of approximately 300,000 hours.[271]

5. Recordkeeping Requirements

Concurrently with proposed Regulation SBSR, the Commission is proposing the SDR Proposed Rules.[272] Specifically, proposed Rule 13n–7(b) would require a registered SDR to keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Exchange Act and the rules or regulations thereunder, for a period of not less than five years, the first two years in a place that is immediately available to the staff of the Commission for inspection and examination.[273] This requirement would encompass policies and procedures established by a registered SDR pursuant to proposed Rule 907. This requirement would also encompass any information or reports provided to the Commission pursuant to proposed Rule 907(e).

6. Collection of Information Is Mandatory

Each collection of information discussed above would be a mandatory collection of information.

7. Confidentiality of Responses to Collection of Information

All of the policies and procedures required by proposed Rule 907 would have to be made available by a registered SDR on its website and would not, therefore, be confidential. Any information obtained by the Commission from a registered SDR pursuant to proposed Rule 907(e) relating to the timeliness, accuracy, and completeness of data reported to the registered SDR would be for regulatory purposes and would be kept confidential.

8. Request for Comment

The Commission requests public comment on its burden estimates. The Commission also solicits comment as follows:

1. Is the proposed collection of information necessary for the performance of the functions of the agency? Would the information have practical utility?

2. How many entities might be impacted by proposed Rule 907? Are the Commission's preliminary estimates as to the number of registered SDRs that would be subject to proposed Rule 907 accurate?

3. How accurate are the Commission's preliminary estimates of the burdens of

[264] This figure is based on the following: [(Sr. Programmer at 1,667 hours) + (Compliance Manager at 3,333 hours) + (Compliance Attorney at 5,000 hours) + (Compliance Clerk at 2,500 hours) + (Sr. System Analyst at 1,667 hours) + (Director of Compliance at 833 hours)] = 15,000 burden hours per registered SDR.

[265] *See infra* at note 256.

[266] This figure includes time necessary to design and program systems and implement policies and procedures to calculate and publish block trade thresholds for all SBS instruments reported to the registered SDR, as would be required by proposed Rule 907(b). It also includes time necessary to design and program systems and implement policies and procedures to determine which reported trades would not be considered block trades. This figure also includes time necessary to design and program systems and implement policies and procedures to assign certain IDs, as would be required by proposed Rule 907(a)(5).

[267] 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.

[268] *See* SDR Registration Proposing Release, *supra* note 6, proposed Rules 13n–5(b)(1)(iii) and 13n–5(b)(3) under the Exchange Act.

[269] This figure is based on the following: [((15,000 burden hours per registered SDR) + (30,000 burden hours per registered SDR)) × (10 registered SDRs)] = 450,000 initial annualized aggregate burden hours during the first year.

[270] 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.

[271] This figure is based on the following: [(30,000 burden hours per registered SDR) × (10 registered SDRs)] = 300,000 ongoing, annualized aggregate burden hours.

[272] *See* SDR Registration Proposing Release, *supra* note 6.

[273] *See id.*, proposed Rule 13n–7(b) under the Exchange Act.

the proposed collection of information associated with proposed Rule 907?

4. Can you suggest any ways to enhance the quality, utility, and clarity of the information to be collected?

5. Does the Commission's proposed Rule 907 minimize burdens by reserving to registered SDRs the flexibility to develop and implement tailored policies and procedures, or would more specificity in the rule text better minimize associated burdens?

6. Can you suggest any ways to minimize the burden of collection of information on those who would be required to respond, including through the use of automated collection techniques or other forms of information technology?

7. Would proposed Rule 907 create any additional burdens not discussed here? If so, please identify and quantify these burdens.

I. Jurisdictional Matters—Rule 908 of Regulation SBSR

The Commission preliminarily does not believe that proposed Rule 908 would be a "collection of information" within the meaning of the PRA, as the rule would merely describe the jurisdictional reach of proposed Regulation SBSR. The Commission requests comment on this preliminary assessment of proposed Rule 908. Would proposed Rule 908 impose any collection of information requirements that the Commission has not considered?

J. Registration of Security-Based Swap Data Repository as Securities Information Processor—Rule 909 of Regulation SBSR

Certain provisions of proposed Rule 909 contain "collection of information requirements" within the meaning of the PRA. The title of this collection is "Rule 909—Registration of Security-Based Swap Data Repository as Securities Information Processor."

1. Summary of Collection of Information

Proposed Rule 909 would require a registered SDR to register with the Commission as a SIP. To comply with this requirement, a registered SDR would need to submit a Form SIP.[274] As a registered SIP, a registered SDR would be required to keep its Form SIP current, and submit amendments as required by Rule 609(b) of Regulation NMS under the Exchange Act.[275]

2. Proposed Use of Information

The information required by proposed Rule 909 would permit the Commission to register a registered SDR as a SIP, and to maintain updated information about the registered SDR/SIP over time.

3. Respondents

The Commission preliminarily estimates that there would be ten registered SDRs. Thus, the Commission preliminarily estimates that ten entities would have to register as SIPs as required by proposed Rule 909.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

As described in the SDR Registration Proposing Release,[276] an entity wishing to register with the Commission as a registered SDR would have to submit proposed Form SDR, which is modeled after existing Form SIP. The Commission has estimated the burden for completing Form SIP to be 400 hours. Therefore, the Commission also has estimated the burden for completing proposed Form SDR to be 400 hours (specifically, 150 hours of legal compliance work and 250 hours of clerical compliance work).[277] Any entity that is required to complete proposed Form SDR also would have to complete Form SIP. Because of the substantial overlap in the forms, much of the burden for completing Form SIP would be subsumed in completing proposed Form SDR. Therefore, the Commission preliminarily estimates that, having completed a proposed Form SDR, an entity would need only one-quarter of the time to then complete Form SIP, or 100 hours (specifically, 37.5 hours of legal compliance work and 62.5 hours of clerical compliance work). Accordingly, the Commission is preliminarily estimating that the one-time initial registration burden for all registered SDR/SIPs would be 1,000 hours.[278]

With regard to ongoing burdens, the Commission preliminarily estimates that the aggregate annualized burden for providing amendments to Form SIP would be one-tenth of the burden to complete the initial form or 400 burden hours, which corresponds to 40 burden hours for each registered SDR. This figure is based on a preliminary estimate that each of ten registered SDRs would submit one amendment on Form SIP each year. SIP registration also would require a registered SDR to provide notice to the Commission of prohibitions or limitations on access to its services. The Commission preliminarily believes that the notice would be a simple form, and that prohibitions or limitations on access to information provided by a registered SDR would be not be prevalent. Thus, the Commission does not believe that providing such notice would result in any material burden. The Commission solicits comments as to the accuracy of these estimates.

5. Recordkeeping Requirements

Pursuant to proposed Rule 13n–7(b) under the Exchange Act,[279] a registered SDR would be required to keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Exchange Act and the rules or regulations thereunder, for a period of not less than five years, the first two years in a place that is immediately available to the staff of the Commission for inspection and examination. This requirement would encompass any regulatory documents and related work papers completed by the registered SDR as part of its business, including Form SIP as required by proposed Rule 909.

6. Collection of Information Is Mandatory

Each collection of information discussed above would be a mandatory collection of information.

7. Confidentiality of Responses to Collection of Information

Form SIP is not confidential.

8. Request for Comment

The Commission requests public comment on its burden estimates. The Commission also solicits comment as follows:

8. How many entities might be impacted by proposed Rule 909? Are the Commission's preliminary estimates as to the number of registered SDRs that would be subject to proposed Rule 909 accurate?

9. How accurate are the Commission's preliminary estimates of the burdens of the proposed collection of information associated with proposed Rule 909? Given that a SDR would be required to complete Form SDR to register with the Commission, how long would it take to also complete Form SIP?

10. How many amendments per year would a registered SDR/SIP have to file to Form SIP? What would be the average burden per amendment?

[274] 17 CFR 249.1001.

[275] 17 CFR 242.609(b).

[276] *See supra* note 6.

[277] This figure is based on the following: [(Compliance Attorney at 150 hours) + (Compliance Clerk at 250 hours)] = 400 burden hours per SDR. *See* SDR Registration Proposing Release, *supra* note 6 at notes 183 and 234.

[278] This figure is based on the following: [(Compliance Attorney at 37.5 hours) + (Compliance Clerk at 62.5 hours) × (10 registrants)] = 400 burden hours.

[279] *See* SDR Registration Proposing Release, *supra* note 6.

11. Can you suggest any ways to enhance the quality, utility, and clarity of the information to be collected?

12. Can you suggest any ways to minimize the burden of collection of information on those who would be required to respond, including through the use of automated collection techniques or other forms of information technology?

13. Would proposed Rule 909 or SIP registration create burdens for registered SDRs or other entities not contemplated here? If so, please identify and quantify these burdens.

K. Phase-In Period—Rule 910 of Regulation SBSR

The Commission preliminarily does not believe that proposed Rule 910 would be a "collection of information" within the meaning of the PRA. Proposed Rule 910 merely describes when a registered SDR and its participants would be required to comply with the various parts of proposed Regulation SBSR, and would not create any additional collection of information requirements. The Commission requests public comment on its burden estimates. The Commission also solicits comment whether proposed Rule 910 imposes any collection of information requirements that the Commission has not considered.

L. Prohibition During Phase-In Period—Rule 911 of Regulation SBSR

The Commission preliminarily does not believe that proposed Rule 911 would be a "collection of information" within the meaning of the PRA. Proposed Rule 911 would restrict the ability of a reporting party to report a SBS to one registered SDR rather than another, but would not otherwise create any duties or impose any collection of information requirements beyond those already required by proposed Rule 901. The Commission requests public comment on its burden estimates. The Commission also solicits comment whether proposed Rule 911 imposes any collection of information requirements that the Commission has not considered.

M. Amendments to Rule 31

The proposed amendments to Rule 31 under the Exchange Act do not contain any "collection of information requirements" within the meaning of the PRA. Rule 31(a)(11) sets forth a list of "exempt sales" to which Section 31 fees do not apply. The proposed amendment of Rule 31 would add "security-based swaps" to the list of "exempt sales," and thereby exempt SBSs from Section 31 fees. The proposed amendment would require no collection of information, nor would it impose any burden on parties to SBS transactions. The Commission requests public comment on its burden estimates. The Commission also solicits comment whether the proposed amendment to Rule 31 imposes any collection of information requirements that the Commission has not considered.

XIV. Cost-Benefit Analysis

On July 21, 2010, the President signed the Dodd-Frank Act into law. The Dodd-Frank Act was enacted to, among other things, promote the financial stability of the United States by improving accountability and transparency in the financial system.[280] Subtitle B of Title VII designates the Commission to oversee the SBS markets and develop appropriate regulations.

The OTC derivatives markets, which have been described as opaque,[281] have grown exponentially in recent years [282] and are capable of affecting significant sectors of the U.S. economy. One of the primary goals of Title VII is to increase the transparency and efficiency of the OTC derivatives market and to reduce the potential for counterparty and systemic risk.[283]

The Dodd-Frank Act amends the Exchange Act to require the Commission to adopt rules providing for, among other things: (1) The reporting of SBS to a registered SDR or to the Commission; and (2) real-time public dissemination of SBS transaction, volume, and pricing information. To accomplish this mandate, the Commission today is proposing Regulation SBSR, a set of reporting and related rules for SBS transactions.

In general, proposed Regulation SBSR would provide for the reporting of SBS information that falls into three broad categories: (1) Information that must be reported in real time pursuant to proposed Rule 901(c); (2) additional information that must be reported pursuant to proposed Rule 901(d) within specified timeframes, depending on whether the transaction is traded or confirmed electronically or manually; and (3) life cycle events that must be reported pursuant to proposed Rule 901(e). Proposed Regulation SBSR would require registered SDRs to publicly disseminate certain SBS information in real time. Proposed Regulation SBSR would identify the SBS information that would be required to be reported, establish reporting obligations, and specify the timeframes for reporting and disseminating information. Proposed Regulation SBSR would require SBS market participants and registered SDRs to establish appropriate policies and procedures governing the transaction reporting process. In addition, proposed Regulation SBSR would require each registered SDR to register with the Commission as a SIP. Together, Regulation SBSR is designed to provide a more transparent market for SBSs.

Broadly, the Commission anticipates that Regulation SBSR may have several overarching benefits to the SBS markets. These include the following:

Improvements in Market Quality. The Commission's rules on reporting and public dissemination of SBS transaction data could have very significant benefits to the SBS market. Comprehensive, timely, and accurate reporting should allow for better regulation of the SBS market, which should promote greater confidence and participation in the market. Post-trade transparency could result in lower transaction costs, greater price competition, and greater participation in the market. These benefits could extend beyond the SBS market to the securities markets more generally, which are increasingly interconnected.

Improved Risk Management. As SBS market participants implement transaction reporting programs, they would be required to review their current positions in SBSs and report those open positions to a registered SDR. Incorporating all positions into an OMS sufficient to permit ongoing reporting as required under proposed Regulation SBSR could result in a direct and immediate benefit to market

[280] *See* Public Law 111–203 Preamble.

[281] With respect to CDSs, for example, the Government Accountability Office found that "comprehensive and consistent data on the overall market have not been readily available," that "authoritative information about the actual size of the CDS market is generally not available," and that regulators currently are unable "to monitor activities across the market." Government Accountability Office, "Systemic Risk: Regulatory Oversight and Recent Initiatives to Address Risk Posed by Credit Default Swaps," GAO–09–397T (March 2009), at 2, 5, 27. *See* Robert E. Litan, "The Derivatives Dealers' Club and Derivatives Market Reform," Brookings Institution (April 7, 2010) at 15–20; Michael Mackenzie, *Era of an opaque swaps market ends,* Fin. Times (June 25, 2010).

[282] The BIS semi-annual reports on the swap markets summarizes developments in the OTC derivatives markets. The report breaks down trading volumes and other statistics for various classes of derivatives, including CDS, interest rate and foreign exchange derivatives, and equity and commodity derivatives. The report covers derivatives trading within the G10 countries. The most recent report, available at *http://www.bis.org/statistics/derstats.htm,* covers the period through the last quarter of 2009.

[283] *See* "Financial Regulatory Reform—A New Foundation: Rebuilding Financial Supervision and Regulation," U.S. Department of the Treasury, at 47–48 (June 17, 2009).

participants by potentially reducing the risk associated with current open positions. Further, because proposed Regulation SBSR would require market participants to inventory their positions in SBS to determine what needs to be reported, the proposal should enable more robust risk monitoring and management going forward.

Economies and Greater Efficiency. Automation and systems development associated with SBS transaction reporting required by proposed Regulation SBSR could provide market participants new tools to process transactions at a lower expense per transaction. Such increased efficiency would enable participants to handle increased volumes of SBSs with less marginal expense, or existing volumes of SBSs with greater efficiency. In addition, proposed Regulation SBSR is designed to further the development of internationally recognized standards for establishing reference identifiers in the financial services industry. A common set of reference identifiers for participants and products could yield significant efficiencies in both the public and private sectors. Information about financial firms operating in different functional areas and different jurisdictions could more readily be identified by regulators. In addition, financial firms could eliminate the use of multiple proprietary reference systems and move to a single, widely accepted system.

Improved Commission Oversight. SBS transaction reporting under proposed Regulation SBSR would provide a means for the Commission to gain a better understanding of the SBS market—including aggregate positions both in specific SBS instruments and positions taken by individual entities or groups—by requiring transaction data both on newly executed SBS and unexpired pre-enactment SBS to be reported to a registered SDR. The reporting of SBS transactions should thus provide the Commission and other regulators a better understanding of the current risks in the SBS market. For example, having such data available would help Commission staff to analyze the SBS market as a whole in a manner that is not possible currently. In this way, Regulation SBSR would support the Commission's supervisory function over the SBS market, as required by Congress in the Dodd-Frank Act.

Further, proposed Regulation SBSR should facilitate completing the reports the Commission is required to provide to Congress on SBSs and the SBS marketplace.[284]

[284] *See* Section 719 of the Dodd-Frank Act.

While the Commission believes that proposed Regulation SBSR would result in significant benefits to SBS market participants, the Commission is cognizant that the proposed rules would entail costs, as more fully discussed below. The proposed rules could, for example, require market participants to begin retaining additional data related to SBS transactions. The rules also could require market participants to modify existing internal processes and systems. The Commission estimates that the rules comprising proposed Regulation SBSR could affect 5,000 participants, including 1,000 reporting parties, and several million SBSs annually.

The Commission is sensitive to the costs and benefits associated with proposed Regulation SBSR. The Commission requests comment on the costs and benefits associated with the individual rules, and its cost-benefit analysis thereof, including identification and assessments of any costs and benefits not discussed in this analysis. The Commission also seeks comment on the accuracy of any of the benefits identified and also welcomes comments on the accuracy of any of the cost estimates. Finally, the Commission encourages commenters to identify, discuss, analyze, and supply relevant data, information, or statistics regarding any such costs or benefits.

A. Definitions—Rule 900 of Regulation SBSR

1. Benefits

By defining key terms, proposed Rule 900 would provide increased clarity about the scope and application of proposed Regulation SBSR. This should help market participants subject to the proposal understand their obligations and make appropriate compliance plans. Clearly defined terms should also help the Commission in its oversight responsibilities.

2. Costs

The Commission preliminarily believes that proposed Rule 900 would not entail any material costs to market participants. Proposed Rule 900 would define terms used in Regulation SBSR. The rule would not impose any obligation or duty.

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 900 discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

248. How can the Commission more accurately estimate the costs and benefits of proposed Rule 900?

249. Would proposed Rule 900 create any additional costs or benefits not discussed here?

B. Reporting Obligations—Rule 901 of Regulation SBSR

Pursuant to proposed Rule 901, all SBS transactions must be reported. Together, sections (a), (b), (c), (d), (e), (h), and (i) of proposed Rule 901 set forth the parameters that SBS counterparties must follow to report SBS transactions to a registered SDR or, if there is no registered SDR that would accept the information, to the Commission. Proposed Rule 901(a) would specify which counterparty would be the "reporting party" for a SBS transaction. Proposed Rule 901(b) would require a reporting party to report the information required under proposed Rule 901 to a registered SDR or, if there is no registered SDR that would accept the information, to the Commission. Proposed Rule 901 divides the SBS information that would be required to be reported into three broad categories: (1) Information that would be required to be reported in real time pursuant to proposed Rule 901(c) and publicly disseminated pursuant to proposed Rule 902; (2) additional information that would be required to be reported pursuant to proposed Rule 901(d)(1) within the timeframes specified in proposed Rule 901(d)(2); and (3) life cycle events that must be reported pursuant to proposed Rule 901(e), the timeframes for which would vary depending on whether the transaction was executed and confirmed electronically or manually. The information that would be reported under proposed Rule 901(d)(1) would not be publicly disseminated. Proposed Rule 901(i) would require the reporting of the information detailed in proposed Rules 901(c) and (d), to the extent such information is available, for pre-enactment SBSs and transitional SBSs.

Proposed Rule 901(f) would require a registered SDR to time stamp, to the second, its receipt of any information submitted to it pursuant to proposed Rules 901(c), (d), or (e). Proposed Rule 901(g) would require a registered SDR to assign a transaction ID to each SBS reported by a reporting party.

1. Benefits

The SBS transaction information required to be reported pursuant to proposed Rule 901 would benefit market participants and the SBS

marketplace. First, the Commission preliminarily believes that, by setting out the requirements for the reporting of each SBS transaction to a registered SDR, proposed Rule 901 would provide the registered SDR with the SBS transaction information necessary to support public dissemination, as required by proposed Rule 902. Additionally, by requiring real-time reporting of certain SBS transaction data, proposed Rule 901, together with proposed Rule 902, would provide the necessary framework to enable public dissemination of SBS transactions in real time as required under proposed Rule 902. Together, proposed Rules 901 and 902 will enable market participants and regulatory authorities to know the current state of the SBS markets and track it over time.

To comply with proposed Rule 901, reporting parties—which are the largest and most actively engaged participants in the SBS market—would likely need to establish and maintain OMSs capable of supporting real-time and additional reporting. The Commission anticipates that proposed Rule 901 would have the effect of promoting efforts by reporting parties to inventory their positions in SBSs, as each determines what information needs to be reported. This effect could encourage management review of internal procedures and controls by these reporting parties.

In addition, proposed Rule 901 would provide a means for the Commission to gain a better understanding of the SBS market, including the size and scope of that market, as the Commission would have access to data held by a registered SDR.[285] Having such data available should help Commission staff to analyze the SBS market as a whole and identify risks. In this way, proposed Rule 901 would support the Commission's supervisory function over the SBS market as required by Congress in the Dodd-Frank Act. Proposed Rule 901 also could facilitate the reports the Commission is required to provide to Congress on SBS and the SBS marketplace.[286]

The information reported by reporting parties pursuant to proposed Rule 901 would be used by registered SDRs to publicly disseminate real-time reports of SBS transactions, and to retain SBS transaction and position information for use by regulators. The reporting requirements of proposed Rule 901 are designed to ensure that important information about SBSs is reported and, ultimately available to market participants, through the market data feed disseminated by a registered SDR.

The Commission further preliminarily believes that the time stamp and transaction ID required to be added by the registered SDR under proposed Rules 901(f) and (g) would facilitate data management by the registered SDR, as well as market supervision and oversight by the Commission and other regulatory authorities.

Generally, the availability of additional market information, along with the ability of the Commission and other regulators to use information about SBS transactions reported to and held by registered SDRs, would result in more robust prudential and systemic regulation. The Commission and other regulators would use information about SBS transactions reported to and held by registered SDRs to conduct both prudential and systemic regulation, as well as to examine for improper behavior and to take enforcement actions, as appropriate. Specifying general types of information to be reported and publicly disseminated could increase the efficiency and level of standardization in the SBS market.

Proposed Rule 901 would prescribe only broad categories of SBS data to be reported. However, proposed Rule 907(a)(1) would require each registered SDR to enumerate specific data elements to be reported, and to specify acceptable data formats. This approach would provide for the efficient accommodation of evolving industry conventions in the reporting of SBS data. The requirement that all trades be reported to a registered SDR for public dissemination, regardless of trading venue, would reduce the coordination costs that would exist if numerous parties were independently disseminating SBS data. In this way, proposed Rule 901 would increase the uniformity in the SBS data that is disseminated under proposed Rule 902.

Proposed Rule 901(i) would also provide important benefits. By requiring reporting of pre-enactment and transitional SBS transactions, proposed Rule 901(i) would provide the Commission with insight as to outstanding notional size, number of transactions, and number and type of participants in the SBS market. This would provide a starting benchmark against which to assess the development of the SBS market over time and, thus, represents a first step toward a more transparent and well regulated market for SBSs. The data reported pursuant to proposed Rule 901(i) also could help the Commission prepare the reports that it is required to provide to Congress. Further, proposed Rule 901(i) would require market participants to inventory their positions in SBS to determine what information needs to be reported, which could benefit market participants by encouraging management review of their internal procedures and controls.

The transaction ID required by proposed Rule 901(g) also would provide an important benefit by facilitating the reporting of subsequent, related SBS transactions that may be submitted to a registered SDR (*e.g.,* a transaction report regarding a SBS life cycle event, or report to correct an error in a previously submitted report). Regulators also would benefit by having an easy way to refer to specific prior transactions.

Proposed Rule 901 would require reporting parties, to the extent they do not already possess systems for electronically capturing and transmitting data about their SBS transactions, to build or otherwise obtain such systems. Such systems would be necessary to report data within the timeframes set forth in proposed Rules 901(c) and (d), because it is unlikely that manual processes could capture and report in real time the numerous data elements relating to a SBS. There could be substantial benefits in the form of reduced operational risk in requiring all reporting parties to have such capability. Systematizing all SBS transaction information more quickly would support effective risk management, as counterparties, registered SDRs, clearing agencies (in some cases), and regulators would obtain accurate knowledge of new SBS transactions more quickly. Reporting parties that obtain such systems could see additional benefits in being able to process and risk manage their existing positions more effectively, or use their expanded capability to participate further in the SBS market.

Finally, proposed Rule 901 could result in significant benefits by encouraging the creation and widespread use of generally accepted standards for reference information. Proposed Rule 901 would require the reporting of a participant ID of each counterparty and, as applicable, the broker ID, desk ID, and trader ID of the reporting party or its broker. The Commission preliminarily believes that reporting of this information would help ensure effective oversight, enforcement, and surveillance of the SBS market by the Commission and other regulators. For example, activity could be tracked by a particular participant, a particular desk, or a particular trader. Regulators could observe patterns and connections in trading activity, or examine whether

[285] *See, e.g.,* 15 U.S.C. 78m(n)(5)(D) (requiring a registered SDR to provide the Commission with direct electronic access to its data).

[286] *See* Section 719 of the Dodd-Frank Act.

a trader had engaged in questionable trading activity across different SBS instruments. These identifiers also would facilitate aggregation and monitoring of the positions of SBS counterparties, which could be of significant benefit for prudential oversight and systemic risk management.

The Commission understands that some efforts have been undertaken—in both the private and public sectors, both domestically and internationally—to establish a comprehensive and widely accepted system for identifying entities that participate not just in the SBS market, but in the financial markets generally. Such a system would be of significant benefit to regulators worldwide, as each market participant could readily be identified using a single reference code regardless of the jurisdiction or product market in which the market participant was engaging. Such a system also could be of significant benefit to the private sector, as market participants would have a common identification system for all counterparties and reference entities, and would no longer have to use multiple proprietary nomenclature systems. The enactment of the Dodd-Frank Act and the establishment of a comprehensive system for reporting and dissemination of SBSs—and for reporting and dissemination of swaps, under jurisdiction of the CFTC—offer a unique opportunity to facilitate the establishment of a comprehensive and widely accepted system for identifying entities that participate not just in the SBS market, but in the financial markets generally.

2. Costs

a. For Reporting Parties

The proposed SBS reporting requirements would impose initial and ongoing costs on reporting parties. The Commission preliminarily believes that these costs would be a function of, among other things, the number of reportable SBS transactions and the data elements required to be collected for each SBS transaction.

The Commission obtained information from publicly available sources and consulted with industry participants in an effort to quantify the number of aggregate SBS transactions on an annual basis. According to publicly available data from DTCC, recently, there have been an average of approximately 36,000 CDS transactions per day,[287] corresponding to a total number of CDS transactions of approximately 13,140,000 per year. The Commission preliminarily believes that CDSs represent 85% of all SBS transactions.[288] Accordingly, and to the extent that historical market activity is a reasonable predictor of future activity,[289] the Commission preliminarily estimates that the total number of SBS transactions that would be subject to proposed Rule 901 on an annual basis would be approximately 15,460,000, which is an average of approximately 42 per reporting party per day.[290]

The Commission believes that SBS market participants would face three categories of costs to comply with proposed Rule 901. First, each market participant would have to develop an internal OMS capable of capturing relevant SBS transaction information so that it can be reported. The Commission understands that, because of the manner in which participants transact certain SBSs with certain transaction details being added post-execution, an OMS would likely need to link both to a market participant's trade desk—to permit real-time transaction reporting—and to the market participant's back office—to facilitate reporting of complete transactions as required under proposed Rule 901. The OMS would also have to include or be connected to a system designed to store SBS transaction information.

Second, each reporting party would have to implement a reporting mechanism. This would include a system that "packages" SBS transaction information from the entity's OMS, sends the information, and tracks it. The reporting mechanism would also include necessary data transmission lines to the appropriate registered SDR.

Third, each reporting party would have to establish an appropriate compliance program and support for the operation of the OMS and reporting mechanism. Relevant elements of the compliance program would include transaction verification and validation protocols, the ability to identify and correct erroneous transaction reports, necessary technical, administrative, and legal support. Additional operational support would include new product development, systems upgrades, and ongoing maintenance.

Based on conversations with industry participants, the Commission preliminarily believes that the reporting timeframes mandated by proposed Rules 901(c), (d), and (e) may be costly to achieve for reporting parties that do not currently have the capabilities to perform those functions in those time frames, requiring additional expenditure of resources to satisfy these requirements. For example, reporting parties that do not currently have the capability to capture SBS trade information and provide it to a registered SDR in real time would be required by proposed Regulation SBSR to obtain such capability.

Proposed Rule 901 would not provide an explicit list of data elements. Instead, proposed Regulation SBS would provide a registered SDR with flexibility to determine the specifics of the form and format for data to be reported under proposed Rule 901. Thus, to the extent reported and disseminated SBS transaction data are not uniform, market participants and regulators could face a cost to standardize and interpret them.

Internal Order Management. To comply with their reporting obligations, reporting parties would be required to develop and maintain an internal OMS that can capture relevant SBS data. The Commission preliminarily estimates that, to capture SBS data in a manner sufficient to facilitate reporting under proposed Rule 901 would impose an initial one-time aggregate cost of approximately $96,650,000, which corresponds to $96,650 for each reporting party.[291] This estimate includes an estimate of the costs required to amend internal procedures, design or reprogram systems, and implement processes to ensure that SBS transaction data are captured and preserved. The Commission further preliminarily estimates that capturing SBS data in a manner sufficient to facilitate reporting under proposed Rule 901 would impose an ongoing annual aggregate cost of approximately $73,144,000, which corresponds to

[287] *See, e.g., http://www.dtcc.com/products/derivserv/data_table_iii.php* (weekly data as updated by DTCC).

[288] The Commission's estimate is based on internal analysis of available SBS market data. The Commission is seeking comment about the overall size of the SBS market.

[289] The Commission notes that regulation of the SBS markets, including by means of proposed Regulation SBSR, could impact market participant behavior.

[290] These figures are based on the following: [13,140,000/0.85] = 15,458,824. [((15,458,824 estimated SBS transactions)/(1,000 estimated reporting parties))/(365 days/year)] = 42.35, or approximately 42 transactions per day. The Commission understands that many of these transactions may arise from previously executed SBS transactions.

[291] This estimate is based on the following: [((Sr. Programmer (160 hours) at $285 per hour) + (Sr. Systems Analyst (160 hours) at $251 per hour) + (Compliance Manager (10 hours) at $294 per hour) + (Director of Compliance (5 hours) at $426 per hour) + (Compliance Attorney (20 hours) at $291 per hour) × (1,000 reporting parties)] = $96,650,000. The Commission preliminarily believes that information on SBS transactions is currently being retained by counterparties in the ordinary course of business, and as a practical matter should not result in any significant new burdens.

$73,144 for each reporting party.[292] This figure would include day-to-day support of the OMS, as well as an estimate of the amortized annual cost associated with system upgrades and periodic "re-platforming" (*i.e.,* implementing significant updates based on new technology). In addition, to capture and maintain relevant information and documents, the Commission preliminarily estimates that all reporting parties could incur an initial and ongoing aggregate annualized cost of $1,000,000, which corresponds to $1,000 for each reporting party.[293] The figure is an estimate of the hardware and associated maintenance costs for sufficient memory to capture and store SBS transactions, including redundant back-up systems.

Summing these costs, the Commission preliminarily estimates the initial aggregate annualized cost for reporting parties for internal order management under proposed Rule 901 would be $170,794,000, which corresponds to $170,794 for each reporting party.[294] The Commission further preliminarily estimates that the ongoing aggregate annualized costs on reporting parties for internal order management under proposed Rule 901 would be $74,144,000, which corresponds to $74,144 for each reporting party.[295]

SBS Reporting Mechanism. Each reporting party would incur initial one-time costs to establish connectivity with and report SBS transactions to a registered SDR. Depending on the number of SBS asset classes that a reporting party transacts in and which registered SDRs accept the resulting SBS transaction reports, multiple connections to different registered SDRs could be necessary. For purposes of estimating relevant costs, the Commission preliminarily estimates that, on average, each reporting party would require connections to two registered SDRs.[296]

On this basis, the Commission preliminarily estimates that the cost to establish and maintain connectivity to a registered SDR to facilitate the reporting required by proposed Rule 901 would impose an annual (first-year and ongoing) aggregate cost of approximately $200,000,000, which corresponds to $200,000 for each reporting party.[297] The Commission understands that many reporting parties already have established linkages to entities that may register as SDRs, which could significantly reduce the out-of-pocket costs associated with this establishing the reporting function contemplated by proposed Rule 901.

Moreover, the Commission believes that establishing a reporting mechanism for SBS transactions would impose internal costs on each reporting party, including the development of systems necessary to capture and send information from the entity's OMS to the relevant registered SDR, as well as corresponding testing and support. The Commission preliminarily estimates an initial one-time aggregate cost of $46,657,000, which corresponds to an initial one-time cost of $46,657 for each reporting party.[298] In addition, the Commission preliminarily estimates that reporting specific SBS transactions to a registered SDR as required by proposed Rule 901 would impose an annual aggregate cost (first-year and ongoing) of approximately $5,400,000, which corresponds to approximately $5,400 for each reporting party.[299]

Thus, the Commission preliminarily estimates the initial, aggregate annualized cost for reporting parties submitting SBS transaction reports under proposed Rule 901 would be $252,057,000, which corresponds to $252,057 for each reporting party.[300] The Commission further preliminarily estimates that the ongoing, aggregate annualized cost on reporting parties for submitting SBS transaction reports under proposed Rule 901 would be $205,400,000, which corresponds to $205,400 for each reporting party.[301]

Compliance and Ongoing Support. As stated above, in complying with proposed Rule 901, each reporting party also would need to establish and maintain an appropriate compliance program and support for the operation of the OMS and reporting mechanism, which would include transaction verification and validation protocols and necessary technical, administrative, and legal support. Additional operational support would include new product development, systems upgrades, and ongoing maintenance. The Commission preliminarily believes that initial costs associated with this aspect of proposed Rule 901—*i.e.,* the establishment of relevant compliance capability—would also involve in significant part the development of

[292] This estimate is based on the following: [((Sr. Programmer (32 hours) at $285 per hour) + (Sr. Systems Analyst (32 hours) at $251 per hour) + (Compliance Manager (60 hours) at $294 per hour) + (Compliance Clerk (240 hours) at $59 per hour) + (Director of Compliance (24 hours) at $426 per hour + (Compliance Attorney (48 hours) at $291 per hour) × (1,000 reporting parties)] = $73,144,000.

[293] This estimate is based on discussions of Commission staff with various market participants and is calculated as follows: [$250/gigabyte of storage capacity × (4 gigabytes of storage) × (1,000 participants)] = $1,000,000. The Commission preliminarily believes that storage costs associated with saving relevant SBS information and documents would not vary significantly between the first year and subsequent years. Accordingly, the Commission has preliminarily estimated the initial and ongoing storage costs to be the same. Moreover, the Commission believes the per-entity annual data storage figure of $1,000 to be a reasonable average. Some reporting parties may face higher costs, while others would simply use existing storage resources.

[294] This estimate is based on the following: [(($96,650 + $73,144 + $1,000) × (1,000 reporting parties)] = $170,794,000, which corresponds to $170,794 burden hours per reporting party.

[295] This is estimate is based on the following: (($73,144 + $1,000) × 1,000 reporting parties) = $74,144,000.

[296] The Commission derived this estimate as follows. First, the Commission believes that initially there would be only a limited number of registered SDRs, and that the number would not exceed ten. Many reporting parties might transact in only some classes of SBSs. Thus, even if each registered SDR accepted transaction reports only for a single SBS asset class, the total number of connections needed by many reporting parties would likely be limited. The Commission also preliminarily believes that, for operational efficiency, a participant would seek to use only one registered SDR per asset class to obtain repository services. Next, reporting parties that required a significant number of connections to registered SDRs could engage a third party—a dealer or connectivity services provider—instead of independently establishing their own connections. Accordingly, the Commission preliminarily believes that one connection may suffice for many reporting parties.

[297] This estimate is based on discussions of Commission staff with various market participants, as well as the Commission's experience regarding connectivity between securities market participants for data reporting purposes. The Commission derived the total estimated expense from the following: ($100,000 hardware- and software-related expenses, including necessary backup and redundancy, per SDR connection) × (2 SDR connections per reporting party) × (1,000 reporting parties) = $200,000,000.

[298] This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer (80 hours) at $285 per hour) + (Sr. Systems Analyst (80 hours) at $251 per hour) + (Compliance Manager (5 hours) at $294 per hour) + (Director of Compliance (2 hours) at $426 per hour) + (Compliance Attorney (5 hours) at $291 per hour) × (1,000 reporting parties)] = $46,657,000. The Commission preliminarily believes that information on SBS transactions is currently being retained by market participants in the ordinary course of business, and as a practical matter should not result in any significant new costs.

[299] The Commission preliminarily believes that the costs of having an operational reporting system capable of effectively processing these transactions are covered in the cost estimates for a compliance and ongoing support system. *See infra* notes 302 to 305. The Commission preliminarily believes that the actual reporting of transactions represents an incremental additional cost. The referenced figure is based on discussions with various market participants and is calculated as follows: [(Compliance Clerk (40 hours) at $59 per hour) + (Sr. Computer Operator (40 hours) at $76 per hour)) × (1,000 reporting parties)] = $5,400,000.

[300] This estimate is based on the following: (($46,657 + $5,400 + $200,000) × (1,000 reporting parties)) = $252,057,000, which corresponds to $252,057 per reporting party.

[301] This estimate is based on the following: (($5,400 + $200,000) × (1,000 reporting parties)) = $205,400,000, which corresponds to $205,400 per reporting party.

appropriate policies and procedures, which, for those participants who are SBS dealers or major SBS participants, is addressed in connection with proposed Rule 906(c). A reporting party would need to design its OMS to include tools to ensure accurate, complete reporting and employ appropriate technical and compliance staff to maintain and support the operation of its OMS on an ongoing basis.

The Commission preliminarily estimates that designing and implementing an appropriate compliance and support program would impose an initial one-time aggregate cost of approximately $51,590,000, which corresponds to a cost of $51,590 for each reporting party.[302] The Commission further preliminarily estimates that maintaining its compliance and support program would impose an ongoing annual aggregate cost of approximately $36,572,000, which corresponds to a cost of $36,572 for each reporting party.[303] This figure includes day-to-day support of the OMS, as well as an estimate of the amortized annual cost associated with system upgrades and periodic "re-platforming."

Therefore, the Commission preliminarily estimates the initial aggregate annualized costs to reporting parties for compliance and ongoing support under proposed Rule 901 would be $88,162,000, which corresponds to $88,162 for each reporting party.[304] The Commission further preliminarily estimates that the ongoing aggregate annualized cost on reporting parties for compliance and ongoing support under proposed Rule 901 would be $36,572,000, which corresponds to $36,572 for each reporting party.[305]

Summing these costs, the Commission preliminarily estimates that the initial, aggregate annualized costs associated with proposed Rule 901 would be $511,013,000, which corresponds to $511,013 per reporting party.[306] The Commission preliminarily estimates that the ongoing aggregate annualized costs associated with proposed Rule 901 would be $316,116,000, which corresponds to $316,116 per reporting party.[307]

Finally, the Commission notes that it is possible that the costs associated with required reporting pursuant to proposed Regulation SBSR could represent a barrier to entry for new, smaller firms that might not have the ability or desire to comply with these reporting requirements. To the extent that proposed Regulation SBSR causes new firms not to enter the SBS market, this would be a cost of the proposal. Nevertheless, the Commission preliminarily believes that firms would be able to contract with third-party service providers, which could facilitate their compliance with proposed Regulation SBSR. Accordingly, the Commission preliminarily does not believe it likely that proposed Rule 901 would, as a practical matter, act as a barrier to new entrants. The Commission requests comment on this issue.

Reference information. The Commission, in proposed Regulation SBSR, is not requiring the development of internationally recognized standards for reference information that could be used across the financial services industry. Therefore, the Commission believes that the costs of developing and sustaining such a system should not be considered costs of proposed Regulation SBSR. However, proposed Regulation SBSR would require a registered SDR and its participants to use UICs generated by such a system, if such system is able to generate such UICs. Although the Commission believes there would be long-term benefits for using UICs generated by such a system, there could be short-term costs imposed on reporting parties to convert to such a system. In addition, under these internationally recognized standards, users of the reference information could have to pay reasonable fees to support the system. These fees also would represent costs of proposed Rule 901. The Commission requests comment on this issue and any potential costs associated with the potential future use of internationally recognized standards.

b. For Registered SDRs

Proposed Rule 901(f) would require a registered SDR to time stamp, to the second, its receipt of any information submitted to it pursuant to proposed Rules 901(c), (d), or (e). Proposed Rule 901(g) would require a registered SDR to assign a transaction ID to each SBS reported by a reporting party. The Commission preliminarily believes that these requirements would not be significant in the context of designing and building the technological framework that would be required of an SDR to become registered.[308] Therefore, the Commission preliminarily estimates that proposed Rules 901(f) and (g) would impose an initial aggregate one-time cost of $342,040, which corresponds to $34,204 per registered SDR.[309] This figure is based on an estimate of ten registered SDRs. With regard to ongoing costs, the Commission preliminarily estimates that proposed Rules 901(f) and (g) would impose an ongoing aggregate annual cost of $436,440, which corresponds to $43,644 per registered SDR.[310] This figure represents an estimate of the support and maintenance costs for the time stamp and transaction ID assignment elements of a registered SDR's systems.

Thus, the Commission preliminarily estimates that the initial aggregate annualized cost associated with proposed Rules 901(f) and (g) would be $778,480, which corresponds to $77,848 per registered SDR.[311] Correspondingly, the Commission preliminarily estimates that the ongoing aggregate annualized cost associated with proposed Rules 901(f) and (g) would be $436,440, which corresponds to $43,644 per registered SDR.[312]

[302] This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer (100 hours) at $285 per hour) + (Sr. Systems Analyst (40 hours) at $251 per hour) + (Compliance Manager (20 hours) at $294 per hour) + (Director of Compliance (10 hours) at $426 per hour) + (Compliance Attorney (10 hours) at $291 per hour) × (1,000 reporting parties)] = $51,590,000.

[303] This figure is based on discussions with various market participants and is calculated as follows: [((Sr. Programmer (16 hours) at $285 per hour) + (Sr. Systems Analyst (16 hours) at $251 per hour) + (Compliance Manager (30 hours) at $294 per hour) + (Compliance Clerk (120 hours) at $59 per hour) + (Director of Compliance (12 hours) at $426 per hour) + (Compliance Attorney (24 hours) at $291 per hour) × (1,000 reporting parties)] = $36,572,000.

[304] This estimate is based on the following: (($51,590 + $36,572) × (1,000 reporting parties)] = $88,162,000, which corresponds to $88,162 per reporting party.

[305] *See supra* note 303.

[306] This estimate is based on the following: (($170,794 + $252,057 + $88,162) × (1,000 reporting parties)) = $511,013,000, which corresponds to $511,013 per reporting party.

[307] This estimate is based on the following: (($74,144 + $205,400 + $36,572) × (1,000 reporting parties)) = $316,116,000, which corresponds to $316,116 per reporting party.

[308] *See* SDR Registration Proposing Release, *supra* note 6.

[309] This figure is based on discussions with various market participants and is calculated as follows: [(Sr. Programmer (80 hours) at $285 per hour) + (Sr. Systems Analyst (20 hours) at $251 per hour) + (Compliance Manager (8 hours) at $294 per hour) + (Director of Compliance (4 hours) at $426 per hour) + (Compliance Attorney (8 hours) at $291 per hour) × (10 registered SDRs)] = $342,040.

[310] This figure is based on discussions with various market participants and is calculated as follows: [(Sr. Programmer (60 hours) at $285 per hour) + (Sr. Systems Analyst (48 hours) at $251 per hour) + (Compliance Manager (24 hours) at $294 per hour) + (Director of Compliance (12 hours) at $426 per hour) + (Compliance Attorney (8 hours) at $291 per hour) × (10 registered SDRs)] = $436,440.

[311] This figure is based on the following: ($34,016 + $42,240) × (10 registered SDRs) = $778,480, which corresponds to $77,848 per registered SDR.

[312] *See supra* note 310.

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 901 discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

250. How can the Commission more accurately estimate the costs and benefits?

251. What are the costs currently borne by entities covered by proposed Rule 901 with respect to the retention of records of SBS transactions?

252. How many entities would be affected by the proposed rule? How many transactions would be subject to the proposed rule?

253. Are there additional costs involved in complying with the rule that have not been identified? What are the types, and amounts, of the costs?

254. Would the obligations imposed on reporting parties by proposed Rule 901 be a significant enough barrier to entry to cause some firms not to enter the SBS market? If so, how many firms might decline to enter the market? How can the cost of their not entering the market be tabulated? How should the Commission weigh such costs, if any, against the anticipated benefits from increased transparency to the SBS market from the proposal, as discussed above?

255. Can commenters assess the benefits of having comprehensive and accurate reporting of SBS transactions to registered SDRs, which would provide access to such information to the Commission and other regulators? What would have been the benefits to the SBS market if such regulatory oversight had been in place sooner?

256. What benefits and costs would there be to converting to a reference identification system established by or on behalf of an IRSB? What fees might be charged to support such a system? How much would those fees be? Who would have to pay them?

257. Would there be additional benefits from the proposed rule that have not been identified?

C. Public Dissemination of Transaction Reports—Rule 902 of Regulation SBSR

Generally, proposed Rule 902 would require the public dissemination of SBS transaction information. Proposed Rule 902(a) would set out the core requirement that a registered SDR, immediately upon receipt of a SBS transaction report of a SBS, must publicly disseminate information about the SBS, except in the case of a block trade, that must consist of all the information reported by the reporting party pursuant to proposed Rule 901, plus any indicator or indicators contemplated by the registered SDR's policies and procedures that are required by proposed Rule 907.[313]

Proposed Rule 902(b) would require a registered SDR to publicly disseminate a transaction report of a block trade immediately upon receipt of information about the block trade from the reporting party. The transaction report would consist of all the information reported by the reporting party pursuant to proposed Rule 901(c), except for the notional size, plus the transaction ID and an indicator that the report represents a block trade. The registered SDR would be required to publicly disseminate a complete transaction report for such block trade (including the transaction ID and the full notional size) at a later time.

1. Benefits

By reducing information asymmetries, post-trade transparency has the potential to lower transaction costs, improve confidence in the market, encourage participation by a larger number of market participants, and increase liquidity in the SBS market. The current market is opaque. Market participants, even dealers, lack an effective mechanism to learn the prices at which other market participants transact. In the absence of post-trade transparency, market participants do not know whether the prices they are paying or would pay are higher or lower than what others are paying for the same SBS instruments. Currently, market participants resort to "screen-scraping" e-mails containing indicative quotation information to develop a sense of the market. Supplementing that effort with prompt last-sale information would provide all market participants with more extensive and more accurate information on which to make trading and valuation determinations.

SBSs are complex derivative instruments, and there exists no single accepted way to model a SBS for pricing purposes. Post-trade pricing and volume information could allow valuation models to be adjusted to reflect how SBS counterparties have valued a SBS instrument at a specific moment in time. Public, real-time dissemination of last-sale information also could aid dealers in deriving better quotations, because they would know the prices at which other market participants have recently traded. This information could aid end users in evaluating current quotations, because they could inquire from dealers why the quotations that the dealers are providing them differ from the prices of recently executed transactions. Furthermore, end users would be afforded the means of testing whether quotations offered by dealers before the last sale were close to the price at which the last sale was executed. In this manner, post-trade transparency could promote price competition and more efficient price discovery, and ultimately lower transaction costs in the SBS market.

Post-trade transparency of SBSs, as required by proposed Rule 902, could benefit the financial markets generally by improving market participants' ability to value SBSs, particularly if the trade information is used as an input to, rather than as a substitute for, independent valuations and pricing decisions by other market participants. In transparent markets with sufficient liquidity, valuations generally can be derived from recent quotations and/or last-sale prices. However, in opaque markets or markets with low liquidity, recent quotations or last-sale prices may not exist or, if they do exist, may not be widely available. Therefore, market participants holding assets that trade in opaque markets or markets with low liquidity frequently rely instead on pricing models. These models might be based on assumptions subject to the evaluator's discretion, and can be imprecise. Thus, market participants holding the same asset but using different valuation models might arrive at significantly different values for the same asset.

Valuation models could be improved to the extent that they consider last-sale reports of the asset to be valued, reports of related assets, or reports of benchmark products that include the asset to be valued or closely related assets, even if those reports are dated. There is evidence to suggest that post-trade transparency helps reduce the range of valuations of assets that trade in illiquid markets.[314] Thus, post-trade transparency in the SBS market could result in more accurate valuations of SBSs generally—particularly if trade information is used as an input to,

[313] In the circumstances necessitating a registered SDR's systems to be unavailable for publicly disseminating transaction data, the registered SDR would have to disseminate the transaction data immediately upon its re-opening. Proposed Rule 902(c) would prohibit the dissemination of certain information. *See supra* note 100 and accompanying text.

[314] *See* Gjergji Cici, Scott Gibson, John J. Merrick, Jr., "Missing the Marks? Dispersion in Corporate Bond Valuations Across Mutual Funds," draft paper available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1104508.*

rather than a substitute for, independent valuations by other market participants—as it would allow all market participants to know how SBS counterparties priced the SBS at a specific point in time. Especially with complex instruments, investment decisions generally are predicated a significant amount of due diligence to value the instruments properly. A post-trade transparency system permits other market participants to derive at least some informational benefit from obtaining the views of the two counterparties who did a particular trade.

Furthermore, better valuations could create a benefit in the form of more efficient capital allocation, which is premised on accurate knowledge of asset prices. Asset prices that are too high could result in a misallocation of capital, as investors demand more of an asset that cannot deliver an economic risk-adjusted return. By the same token, assets that are inappropriately undervalued could represent investment opportunities that will likely not receive enough capital because investors do not realize that a good risk-adjusted return is available. To the extent that post-trade transparency of SBS transactions enables asset valuations to move closer to their fundamental value, capital could be more efficiently allocated.

Better valuations resulting from post-trade transparency of SBSs also could reduce prudential and systemic risks. Some financial institutions, including many of the most systemically important financial institutions, have large portfolios of SBSs. The financial system could benefit if the portfolios of these institutions were more accurately valued. To the extent that post-trade transparency affirms the valuation of an institution's portfolio, regulators, the individual firm, and the market as a whole could be more certain as to whether the firm would or would not pose prudential or systemic risks. In some cases, however, post-trade transparency in the SBS market might cause an individual firm to revalue its positions and lower the overall value of its portfolio. The sooner that accurate valuations can be made, the more quickly that regulators and the individual firm could take appropriate steps to minimize the firm's prudential risk profile, and the more quickly that regulators and other market participants could take appropriate steps to address any systemic risk concerns raised by that firm.

In addition, proposed Rule 902 is designed to maximize the availability of information regarding SBS transactions to all market participants in a way that the Commission preliminarily believes "take[s] into account whether the public disclosure will materially reduce market liquidity." [315] Post-trade transparency, as contemplated by proposed Rule 902, could reduce information asymmetries among SBS market participants and thereby benefit market liquidity in at least two ways. First, it could reduce the informational asymmetries between market participants, allowing dealers to set quotes using information beyond their own order flow. This could help smaller dealers or other market participants to enter the market by reducing the informational advantage and bargaining power of large dealers. Second, investors with hedging needs who are at an informational disadvantage to dealers and would have more information as to trade prices. Such investors also could more accurately price the trade, which would encourage their participation in the SBS market. Better informed market participation by both dealers and investors—through greater fairness in access to relevant pricing information—could result in benefits in the form of an increase in overall market liquidity.

Finally, real-time public dissemination of SBS transaction reports could have effects on the overall volume of the SBS market, which could have certain benefits. Greater transparency could result in greater confidence in the SBS market, resulting in more market participants being willing to trade, or the same number of market participants being willing to trade more often. These additional transactions could result in better allocation of risk across the financial system. On the other hand, there could be a benefit even if fewer SBS transactions occur because of proposed Regulation SBSR. This could be the case if market participants that are unable or unwilling to properly manage the attendant risks of participation in the SBS market are deterred from participating, or if there were a reduction in the number of SBS transactions where there is a significant information asymmetry between the counterparties. In the latter case, there could be a benefit if uninformed parties are deterred from unwittingly taking on imprudent positions in SBSs.

2. Costs

A potential cost of post-trade transparency that is often cited by market participants, particularly dealers, is that it increases inventory risks. Dealers often enter trades with their customers as a liquidity supplier. A potential consequence of post-trade transparency is that dealers trying to hedge inventory following a trade are put in a weaker bargaining position relative to subsequent counterparties, and will either raise the liquidity fee charged to their clients or refuse to accommodate such trades. Such behavior could lead to lower trading volume and reduce the ability of market participants to manage risk, both of which could have a negative welfare effect on all market participants.

In an opaque market, market participants have to rely primarily on their understanding of the market's fundamentals to arrive at a price at which they would be willing to assume risk. With immediate real-time public dissemination of a block trade, however, market participants who might be willing to offset that risk—*i.e.,* other dealers and natural shorts—could extract rents from a dealer that takes a large risk position from a counterparty. Because the initial dealer would not internalize those higher costs, it would most likely seek to pass those costs on to the counterparty in the form of a higher price for the initial SBS. This could lead to less liquidity in the SBS market, and thus lower trading volume and less ability for market participants to manage risk. It also might be argued that increased post-trade transparency could drive large trades to other markets that offer the opacity desired by traders, creating fragmentation and harming price efficiency and liquidity. This possibility is consistent with the argument that large, informed traders may prefer a less transparent trading environment that allows them to minimize the price impact of their trades. Real-time public dissemination of SBS transaction information, therefore, could cause certain market participants to trade less frequently or to exit the market completely. It would be difficult at this stage to estimate the likelihood of this occurring and, if does occur, what the costs would be. The Commission invites comment on this issue.

Another potential cost of post-trade transparency in the SBS market, as contemplated by proposed Rule 902, is that last-sale prints, particularly in infrequently traded products, could be the result of unusual conditions that do not reflect the economic fundamentals of the SBS instrument. For instance, if a large market participant failed resulting in the liquidation of its portfolio, fire sale prices could have the effect of requiring other market participants to unduly mark down the value of their portfolios. This could cause additional market stress,

[315] 15 U.S.C. 78m(m)(1)(E)(iv).

particularly through the triggering of additional margin calls. In these circumstances, independent evaluations and decision-making that incorporates post-trade information can be important to stabilizing the markets.

Simultaneously with this proposal, the Commission is proposing new Rules 13n–1 through 13n–11 under the Exchange Act relating to the SDR registration process, the duties of SDRs, and their core principles.[316] The SDR Registration Proposing Release covers anticipated collections of information with respect to various aspects of establishing and operating an SDR, including its start-up and ongoing operations, and describes the costs that complying with the proposed rules would entail. The Commission preliminarily believes that a registered SDR would be able to integrate the functions outlined in new Rules 13n–1 through 13n–11 with the capability to publicly disseminate real-time SBS transaction reports required under proposed Rule 902 as part of its overall system development. Accordingly, the Commission believes that the costs associated with enabling and maintaining compliance with proposed Rule 902 would, as a practical matter, represent a portion of the SDR's overall systems development budget and process. For purposes of the PRA, the Commission preliminarily estimated that implementing and complying with the real-time public dissemination requirement of proposed Rule 902 would add an additional 20% to the start-up and ongoing operational expenses that would otherwise be required of a registered SDR.[317]

On this basis, the Commission preliminarily estimates that the initial one-time aggregate costs associated with real-time public dissemination for development and implementation of the systems needed to disseminate the required transaction information and for necessary software and hardware would be $40,004,000 million, which corresponds to $4,000,400 per registered SDR.[318] In addition, the Commission preliminarily estimates that aggregate annual costs for systems and connectivity upgrades associated with real-time public dissemination would be $24,002,400 million, which corresponds to $2,400,240 per registered SDR.[319] Thus, the initial aggregate costs associated with proposed Rule 902 would be $64,006,400, which corresponds to $6,400,640 per registered SDR.[320]

The SDR Registration Proposed Rules also address additional costs on registered SDRs that are not included here.[321]

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 902 discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

258. What would be the costs and benefits of post-trade transparency in the SBS market, both in the long and the short term? How would post-trade transparency alter the existing market structure?

259. How would post-trade transparency in the SBS market affect the ability to hedge? Would hedging become more costly or less costly over time? Why?

260. Would post-trade transparency have the same costs and benefits on the SBS market similar as on other securities markets? Why or why not?

261. The SBS market is currently almost wholly institutional. Would this characteristic impact the costs and benefits of post-trade transparency on the SBS market? If so, how and how much? Are the needs of market participants in the SBS market for access to transaction information different than the needs of market participants in other securities markets for access to transaction information?

262. A significant amount of trading in the SBS market is currently carried out by only a limited number of market participants. Would this characteristic impact the costs and benefits of post-trade transparency on the SBS market? If so, how and how much? For example, is there a concern that it would be easier to determine the identity of the counterparties to a SBS transaction in certain instances based on the real-time transaction report? If so, what would be the harm, if any, of such knowledge? Would the answer differ depending upon the liquidity of the SBS instrument, or whether it was a customized SBS or not?

263. The SBS market is generally more illiquid than other securities markets that have post-trade transparency regimes. How would this characteristic impact, if at all, the effect the costs and benefits of post-trade transparency on the SBS market? Do commenters believe that post-trade transparency could materially reduce market liquidity in the SBS market, or particular subsets thereof? Why and how? Please be specific in your response and provide data to the extent possible.

264. How would a post-trade transparency regime in SBSs affect the costs of trading in the underlying securities? For example, how, if at all, would the post-trade transparency regime affect liquidity in the corporate bond market?

265. Academic studies of other securities markets generally have found that post-trade transparency reduces transaction costs and has not reduced market liquidity. How do those markets differ or compare to the SBS market? How would those similarities or differences affect post-trade transparency in the SBS market?

266. Do commenters believe that post-trade transparency could materially reduce market liquidity in the SBS market, or particular subsets thereof? Why and how?

267. Would proposed Rule 902 create any additional costs or benefits not discussed here?

268. Are there any ways that the Commission can study the costs and benefits of the dissemination delay for the size of a block trade by creating different initial requirements by entities

[316] *See* SDR Registration Proposing Release, *supra* note 6.

[317] *See* Section V.D.2 (SDR Duties, Data Collection and Maintenance, Automated Systems, and Direct Electronic Access) of the SDR Registration Proposing Release. This estimate is based on the input from potential SDRs and includes time necessary to design and program a registered SDR's system to calculate and disseminate initial and end of day block trade reports as well as annual costs associated with systems testing and maintenance necessary for the special handling of block trades. These figures do not include the development of policies and procedures necessary to calculate block trade thresholds pursuant to proposed Rule 907(b).

[318] The Commission derived this estimate from the following: [(Attorney (1,400 hours) at $316 per hour) + (Compliance Manager (1,600 hours) at $294 per hour) + (Programmer Analyst (4,000 hours) at $190 per hour) + (Senior Business Analyst (1,400 hours) at $234 per hour) × (10 registered SDRs)) + ($2,000,000 for necessary hardware and software)] = $40,004,000. *See* SDR Registration Proposing Release, *supra* note 6 at Section VI.B.2 (estimating the total cost associated with establishing SDR technology systems).

[319] The Commission derived this estimate from the following: [(Attorney (840 hours) at $316 per hour) + (Compliance Manager (960 hours) at $294 per hour) + (Programmer Analyst (2,400 hours) at $190 per hour) + (Senior Business Analyst (840 hours) at $234 per hour) × (10 registered SDRs)) + ($1,200,000 for necessary hardware and software upgrades)] = $24,002,400. *See* SDR Registration Proposing Release, *supra* note 6, at Section VI.B.2 (estimating the annual ongoing cost associated with operating and maintaining SDR technology systems).

[320] This estimate is based on the following: [(($4,000,400) + ($2,400,240)) × (10 registered SDRs)] = $64,006,400, which corresponds to $6,400,640 per registered SDR.

[321] *See* SDR Registration Proposing Release, *supra* at note 6.

or assets classes as part of the phase-in of the rule?

D. Coded Information—Rule 903 of Regulation SBSR

To facilitate the reporting and dissemination of SBS transactions, as would be required under proposed Rules 901 and 902, the Commission understands that there may—or could be developed—industry conventions for identifying SBSs or reference entities on which SBS are based through readily available reference codes. Proposed Rule 903 addresses this possibility. Specifically, proposed Rule 903 would provide that a reporting party could provide information to a registered SDR pursuant to proposed Rule 901, and a registered SDR could publicly disseminate information pursuant to proposed Rule 902, using codes in place of certain data elements, provided that the information necessary to interpret such codes is widely available on a non-fee basis.

1. Benefits

The use of such codes by a registered SDR and its participants could give rise to significant potential benefits. First, the use of codes could greatly improve the efficiency and accuracy of the trade reporting system by streamlining the provision of data to the registered SDR. Reporting just the code could replace several data elements that otherwise would have to be reported separately. Second, the development of a public coding system could also support greater transparency. Coded transaction reports with key identifying information for SBS transactions could facilitate the aggregation of market transactions, particularly when the records are dispersed across different registered SDRs. Third, the aggregation of SBS transaction data through codes would also facilitate more efficient market analysis studies, surveillance activities, and system risk monitoring by regulators by streamlining the presentation of the SBS transaction data. Without robust, common identifying information, the process of aggregating market data across asset classes and entities could be impaired, increasing the effort required for market analysis activities.

2. Costs

Proposed Rule 903 could impose certain costs on current SBS market participants. Some SBS market participants have developed private coding systems.[322] To the extent that these systems are not widely available, proposed Rule 903 would prohibit their adoption for use by registered SDRs and their participants in connection with the reporting and dissemination of SBS transactions required under proposed Regulation SBSR. Consequently, the owners of these systems may no longer be able to market and generate income (*i.e.,* licensing fees) from these systems, or recover development costs associated with their systems.

The Commission preliminarily believes that proposed Rule 903 would not impose any material costs on registered SDRs or their participants. The development and use of a coding system that is widely available on a non-fee basis would instead likely reduce the costs associated with reporting and disseminating SBS transactions as required under proposed Rules 901 and 902, as market participants would not have to incur any fees to use codes.

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 903 discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

269. How can the Commission more accurately estimate the costs and benefits?

270. Would proposed Rule 903 entail any benefits or costs not considered by the Commission?

271. Are there costs the Commission has not considered with respect to the use of coding systems that are widely available on a non-fee basis? Would the use of these coding systems in fact reduce the costs associated with the obligations under proposed Rules 901 and 902?

272. Are there coding systems that are widely available on a non-fee basis? What, if any, costs may be associated with requiring the use of a coding system that is widely available on a non-fee basis?

273. What would be the costs and benefits of permitting the use of codes that are available for a fee? Could allowing the use of such codes create a regulatory monopoly in favor of the owner of the code's intellectual property?

E. Operating Hours of Registered SDRs—Rule 904 of Regulation SBSR

Proposed Rule 904 would require a registered SDR to design its systems to allow for continuous receipt and dissemination of SBS data, except that a registered SDR would be permitted to establish "normal closing hours." Such normal closing hours may occur only when, in the estimation of the registered SDR, the U.S. markets and other major markets are inactive. In addition, a registered SDR would be permitted to declare, on an *ad hoc* basis, special closing hours to perform routine system maintenance, subject to certain requirements.

1. Benefits

The Commission preliminarily believes that it would be beneficial to require a registered SDR to continuously receive and disseminate SBS transaction information. The market for SBS is global, and the Commission believes the public interest would be served by requiring continuous real-time dissemination of any SBS transactions (with a sufficient nexus to the United States to require reporting into a registered SDR), no matter when they are executed. Thus, if U.S. participants execute SBSs in Japan while the U.S. markets are closed, market participants around the word would still be able to view real-time reports of such transactions. Further, the Commission believes a continuous dissemination regime would eliminate the temptation for market participants to defer execution of SBS transactions until after regular business hours to avoid real-time post-trade transparency.

Paragraphs (c) to (e) of proposed Rule 904 would specify requirements for handling and disseminating reported data during a registered SDR's normal and special closing hours. The Commission believes that these provisions would provide benefits in that they clarify how SBSs executed while a registered SDR is in normal or special closing hours would be reported and disseminated.

2. Costs

The Commission believes that a registered SDR would not incur significant costs in connection with proposed Rule 904. The Commission today is also proposing Rules 13n–1 through 13n–11 under the Exchange Act that would deal with SDR registration, duties, data collection and maintenance, automated systems and other issues.[323] That proposal covers expenses with

[322] The Commission is aware of one such product identification system that involves six-digit reference entity identifiers and three-digit reference obligations identifiers as well as a standard three-digit maturity identifier.

[323] *See* SDR Registration Proposing Release, *supra* note 6.

respect to many aspects of establishing and operating an SDR, including, implicitly, its hours of operation.

The requirement for a registered SDR to provide reasonable advance notice to participants and to the public of its normal and special closing hours, and to provide notice to participants that the SDR is available to accept transaction data after its system was unavailable would likely entail a only a modest annual cost. The Commission preliminarily estimates that the initial and ongoing aggregate annual cost would be $27,360, which corresponds to $2,736 per registered SDR.[324]

There would be additional costs, but these costs are subsumed in the costs associated with proposed Rules 901 and 902. For example, the requirement for reporting parties to report information to the registered SDR upon receiving a notice that the registered SDR has resumed its normal operations would be part of the reporting parties' reporting obligations under proposed Rule 901. The requirement to disseminate transaction reports held in queue should not present any costs in addition to those already contained in proposed Rule 902.

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 904 discussed above, as well as any costs and benefits not already described. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

274. How can the Commission more accurately estimate the costs and benefits for handling and disseminating reported SBS transaction data during a registered SDR's normal and special closing hours?

275. Would proposed Rule 904 create any additional costs or benefits not discussed here?

F. Correction of Errors in Security-Based Swap Information—Rule 905 of Regulation SBSR

Proposed Rule 905(a) would establish procedures for correcting errors in reported and disseminated SBS information, recognizing that that any system for transaction reporting must accommodate for the possibility that certain data elements may be incorrectly reported. Proposed Rule 905(b) would set forth the duties of a registered SDR to verify disputed information and make necessary corrections. If the registered SDR either discovers an error in a transaction on its system or receives notice of an error from a counterparty, proposed Rule 905(b)(1) would require the registered SDR to verify the accuracy of the terms of the SBS and, following such verification, promptly correct the erroneous information contained in its system. Proposed Rule 905(b)(2) would further require that, if the erroneous transaction information contained any data that fall into the categories enumerated in proposed Rule 901(c) as information required to be reported in real time, the registered SDR would be required to publicly disseminate a corrected transaction report of the SBS promptly following verification of the trade by the counterparties to the SBS.

1. Benefits

The Commission preliminarily believes that proposed Rule 905 would enhance the overall reliability of SBS transaction data that would be required to be reported. Requiring participants to promptly correct erroneous transaction information should help ensure the timeliness, accuracy, and completeness of reported transaction information. Providing more accurate SBS transaction data to a registered SDR could benefit participants by helping them ensure that their books are marked accurately and reduce operational risks that arise when counterparties do not have the same understanding of the details of a SBS transaction. Furthermore, requiring corrected SBS transaction information be reported to a registered SDR helps ensure that the Commission and other regulars have an accurate view of the prudential and systemic risks in the SBS market.

2. Costs

The Commission preliminarily believes that promptly submitting an amended transaction report to the appropriate registered SDR after discovery of an error as required under proposed Rule 905(a)(2) would impose costs on reporting parties. Likewise, the Commission preliminarily believes that promptly notifying the relevant reporting party after discovery of an error as required under proposed Rule 905(a)(1) would impose costs on non-reporting-party participants.

With respect to reporting parties, the Commission preliminarily believes that proposed Rule 905(a) would impose an initial, one-time cost associated with designing and building the reporting party's reporting system to be capable of submitting amended SBS transactions to a registered SDR. In addition, reporting parties would face ongoing costs associated with supporting and maintaining the error reporting function.[325]

The Commission preliminarily believes that designing and building appropriate reporting system functionality to comply with proposed Rule 905(a)(2) would 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 proposed Rule 901.

Based on discussions with industry participants, the Commission preliminarily estimates this incremental burden to be equal to 5% of the one-time and annual costs associated with designing and building a reporting system that is in compliance with proposed Rule 901,[326] plus 10% of the corresponding one-time and annual costs associated with developing the reporting party's overall compliance program required under proposed Rule 901.[327] Thus, for reporting parties, the Commission preliminarily estimates that proposed Rule 905(a) would impose an initial (first-year) aggregate cost of $11,419,000, which is $11,419 per reporting party,[328] and an ongoing aggregate annualized burden of $3,927,000, which is $3,927 per reporting party.[329]

With regard to non-reporting-party participants, the Commission preliminarily believes that proposed Rule 905(a) would impose an initial and ongoing cost associated with promptly notifying the relevant reporting party after discovery of an error as required under proposed Rule 905(a)(1). The Commission preliminarily estimates that such annual cost would be $172,280,000, which corresponds to $43,070 per non-reporting-party

[324] The Commission derived this number as follows: [(Operations Specialist (24 hours) at $114 per hour) × (10 potential registered SDRs)] = $27,360, which corresponds to $2,736 per registered SDR.

[325] The Commission preliminarily believes that the actual submission of amended transaction reports required under proposed Rule 905(a)(2) would not result in material, independent costs because this would be done electronically though the reporting system that the reporting party must develop and maintain to comply with proposed Rule 901. The costs associated with such a reporting system are addressed in the Commission's analysis of proposed Rule 901. *See supra* Section XIV.B.2 and notes 298–301.

[326] *See supra* notes 298 and 299.

[327] *See supra* notes 302 and 303.

[328] This figure is calculated as follows: [(((($46,657 one-time development of reporting system) × (0.05)) + (($5,400 annual maintenance of reporting system) × (0.05)) + (($51,590 one-time compliance program development) × (0.1)) + (($36,572 annual support of compliance program) × (0.1))) × (1,000 reporting parties)] = $11,419,000, which is $11,419 per reporting party.

[329] This figure is calculated as follows: [(((($5,400 annual maintenance of reporting system) × (0.05)) + (($36,572 annual support of compliance program) × (0.1))) × (1,000 reporting parties)] = $3,927,000, which is $3,927 per reporting party.

participant.[330] This figure is based on the Commission's preliminary estimates of (1) 4,000 non-reporting-party participants; (2) 11 transactions per day per non-reporting-party participant;[331] and (3) an error rate of one-third (33%),[332] or approximately 4 transactions per day per non-reporting-party participant.

For registered SDRs, the ability to verify disputed information, process a transaction report cancellation, accept a new SBS transaction report, and update relevant records are all capabilities that the registered SDR would have to implement to comply with its obligations under proposed Regulation SDR.[333] Likewise, a registered SDR would be required to have the capacity to re-disseminate SBS transaction reports pursuant to proposed Rule 902. The Commission preliminarily believes that the costs associated with establishing these capabilities, including systems development, support, and maintenance, are largely addressed in the Commission's analysis of those rules.[334] The Commission preliminarily estimates that to develop and publicly provide the necessary protocols for carrying out these functions would impose on each registered SDR a cost of $186,790.[335] The Commission estimates that to review and update such protocols would impose an annualized cost on each registered SDR of $373,580.[336]

Accordingly, the Commission preliminarily estimates that the initial aggregate annualized cost on registered SDRs under proposed Rule 905 would be $5,603,700, which corresponds to $560,370 for each registered SDR.[337] The Commission further preliminarily estimates that the ongoing aggregate annualized cost on registered SDRs under proposed Rule 905 would be $3,735,800, which corresponds to $373,580 for each registered SDR.[338]

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 905 discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

276. How can the Commission more accurately estimate the costs and benefits related to correcting errors in reported and disseminated SBS information?

277. Would proposed Rule 905 create any additional costs or benefits not discussed here?

G. Other Duties of Participants—Rule 906 of Regulation SBSR

Proposed Rule 906(a) would set forth a procedure designed to ensure that a registered SDR obtains relevant ID information for both counterparties to a SBS, not just the IDs of the reporting party. Proposed Rule 906(a) would require a registered SDR to identify any SBS reported to it for which it does not have participant ID and (if applicable) broker ID, desk ID, and trader ID of each counterparty. For such transactions, the registered SDR would be required to send a report, once a day, to each participant seeking the missing information. Under proposed Rule 906(a), a participant that receives such a report would be required to provide the missing ID information to the registered SDR within 24 hours.

Proposed Rule 906(b) would require participants to provide a registered SDR with information identifying the participant's affiliate(s) that may also be participants of the registered SDR, as well as its ultimate parent(s). Additionally, under proposed Rule 906(b) participants would be required to promptly notify the registered SDR of any changes to the information previously provided.

Proposed Rule 906(c) would require a participant that is a SBS dealer or major SBS participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any SBS transaction reporting obligations in a manner consistent with proposed Regulation SBSR and the registered SDR's applicable policies and procedures. In addition, proposed Rule 906(c) would require each such participant to review and update its policies and procedures at least annually.

1. Benefits

The Commission preliminarily believes that proposed Rule 906(a) would enable each registered SDR to obtain more complete records, consistent with the goals of the Dodd-Frank Act. Also, proposed Rule 906(a) would provide regulators with a more comprehensive picture of SBS transactions, thus enabling more robust surveillance and supervision of the SBS markets. More complete SBS records would provide the Commission necessary information to investigate specific transactions and respond effectively when issues arise in the SBS markets.

Proposed Rule 906(b) is designed to enhance the Commission's ability to monitor and surveil the SBS markets. Obtaining this ultimate parent(s) and affiliate(s) information would be helpful for understanding the risk profile of not only individual counterparties, but for large financial groups. The Commission further preliminarily believes that it is important that the participants promptly notify the registered SDR of any changes to the information regarding ultimate parent(s) and affiliate(s), as this would impact the value of the data that the registered SDR would be retaining for regulatory purposes.

Furthermore, proposed Rule 906(b) could result in significant benefits by encouraging the creation and widespread use of generally accepted standards for reference information. The Commission understands that some efforts have been undertaken—in both

[330] This figure is based on the following: [(4 error notifications per non-reporting-party participant per day) × (365 days/year) × (Compliance Clerk (0.5 hours/report) at $59 per hour) × (4,000 non-reporting-party participants)] = $172,280,000, which corresponds to $43,070 per non-reporting-party participant. The Commission preliminarily believes that participants already monitor their SBS transactions and positions in the ordinary course of business. Thus, the Commission preliminary believes that, as a practical matter, proposed Rule 905 would not result in any significant new burdens for these participants.

[331] This figure is based on the following: [((15,458,824 estimated annual SBS transactions)/(4,000 estimated non-reporting-party participants))/(365 days/year)] = 10.58, or approximately 11 transactions per day. *See supra* note 185. The Commission understands that many of these transactions may arise from previously executed SBS transactions.

[332] In other words, the Commission is estimating that one-third of all SBS transactions will require an amended report to be submitted to the registered SDR pursuant to proposed Rule 905(a). For purposes of its PRA analysis, the Commission is further assuming that both the non-reporting-party participant and the reporting party discover all errors. The Commission recognizes that, as a practical matter, there may be instances where one party fails to detect an error.

[333] *See* SDR Registration Proposing Release, *supra* note 6.

[334] *See id.*

[335] This figure is based on the following: [(Sr. Programmer (80 hours) at $285 per hour) + (Compliance Manager (160 hours) at $294 per hour) + (Compliance Attorney (250 hours) at $291 per hour) + (Compliance Clerk (120 hours) at $59 per hour) + (Sr. Systems Analyst (80 hours) at $251 per hour) + (Director of Compliance (40 hours) at $426 per hour) = $186,790.

[336] This figure is based on the following: [(Sr. Programmer (160 hours) at $285 per hour) + (Compliance Manager (320 hours) at $294 per hour) + (Compliance Attorney (500 hours) at $291 per hour) + (Compliance Clerk (240 hours) at $59 per hour) + (Sr. Systems Analyst (160 hours) at $251 per hour) + (Director of Compliance (80 hours) at $426 per hour)] = $373,580.

[337] This figure is based on the following: [($186,790 to develop protocols) + ($373,580 for annual support)) × (10 registered SDRs)] = $5,603,700, which corresponds to $560,370 per registered SDR.

[338] This figure is based on the following: [($373,580 for annual support per registered SDR) × (10 registered SDRs)] = $3,735,800, which corresponds to $373,580 per registered SDR.

the private and public sectors, both domestically and internationally—to establish a comprehensive and widely accepted system for identifying entities that participate not just in the SBS market, but in the financial markets generally. Such a system would be of significant benefit to regulators worldwide, as each market participant could readily be identified using a single reference code regardless of the jurisdiction or product market in which the market participant was engaging. Such a system also could be of significant benefit to the private sector, as market participants would have a common identification system for all counterparties and reference entities, and would no longer have to use multiple proprietary nomenclature systems. The enactment of the Dodd-Frank Act and the establishment of a comprehensive system for reporting and dissemination of SBSs—and for reporting and dissemination of swaps, under jurisdiction of the CFTC—offer a unique opportunity to facilitate the establishment of a comprehensive and widely accepted system for identifying entities that participate not just in the SBS market, but in the financial markets generally.

The Commission preliminarily believes that proposed Rule 906(c) could provide benefits to SBS market participants and the market as a whole. Proposed Rule 906(c) would enhance the overall reliability SBS transaction data that is required to be reported to a registered SDR pursuant to proposed Rule 901. Requiring SBS dealers and major SBS participants to adopt and maintain written policies and procedures addressing compliance with proposed Regulations SBSR should result in more reliable reporting of SBS transaction data. More reliable reporting would benefit counterparties to SBS transactions, and the market more generally, by increasing the usefulness of the disseminated data, and would benefit regulators using and analyzing the reported data. In addition, requiring participants that are SBS dealers or major SBS participants—the entities that engage in the most SBS transactions—to implement policies and procedures could reduce the incidence of outages, reporting system malfunctions, or interruptions by addressing how they may be prevented and, in the event one occurs, how it could be resolved with the least negative impact.

The Commission preliminarily believes that requiring each participant that is a SBS dealer or major SBS participant to adopt and maintain written policies and procedures related to the reporting of SBS transactions may have additional benefits. Proposed Rule 906(c) should foster compliance efforts more generally among participants. With written policies and procedures, a participant's compliance with its reporting obligations would not be overly dependent on any specific individual. Higher quality reporting of SBS transaction data should generate greater confidence among SBS market participants and benefit the market as a whole. Over time, participants and the Commission also would be able to compare different approaches and develop best practices for the reporting of SBS transactions. Best practices would be valuable to the participants, the Commission, and market as a whole by supporting more complete and accurate SBS transaction reporting. Comparing the written policies and procedures adopted and maintained by covered participants would also support Commission supervision and oversight of SBS transaction reporting. For example, the failure of a SBS dealer or major SBS participant to adopt and maintain appropriate policies and procedures as required under proposed Rule 906(c) could serve as an important indicator of other compliance issues. Proposed Rule 906(c) could thus provide the Commission a means to address such concerns proactively.

2. Costs

Proposed Rule 906(a) would require a registered SDR, once a day, to send a report to each participant identifying, for each SBS to which that participant is a counterparty, the SBS(s) for which the registered SDR lacks participant ID and (if applicable) broker ID, desk ID, and trader ID. The Commission preliminarily estimates that each registered SDR would face a one-time, initial cost of $30,832 to create a report template and develop the necessary systems and processes to produce a daily report required by proposed Rule 906(a).[339] The Commission further preliminarily believes that there would be an ongoing annual cost for a registered SDR to generate and issue the daily reports, and to enter into its systems the ID information supplied by participants in response to the daily reports, of approximately $29,244.[340]

Accordingly, the Commission preliminarily estimates that the initial aggregate annualized cost for registered SDRs associated with proposed Rule 906(a) would be approximately $600,760, which corresponds to $60,076 per registered SDR.[341] The Commission preliminarily estimates that the ongoing aggregate annualized cost for registered SDRs associated with proposed Rule 906(a) would be approximately $292,440, which corresponds to $29,244 per for registered SDR.[342]

Proposed Rule 906(a) would require a participant that receives a daily report from a registered SDR to provide the missing UICs to the registered SDR within 24 hours. Proposed Rule 906(a) would impose initial and ongoing costs on participants to complete and return the reports received from a registered SDR. The Commission preliminarily estimates that proposed Rule 906(a) would not result in any initial or ongoing costs for participants that are reporting parties. This estimate is based on the Commission's preliminary belief that a reporting party would structure its reporting program to be in compliance with proposed Regulation SBSR, and consequently, would send complete information as relates to itself for each SBS transaction submitted to a registered SDR. The Commission further preliminarily estimates that proposed Rule 906(a) would result in an initial and ongoing aggregate annualized cost for participants of approximately $75,372,500, which corresponds to a cost of approximately $15,100 per participant.[343] This figure is based on the Commission's preliminary estimates of (1) 5,000 participants; (2) 9 transactions per day per participant;[344] and (3) a missing information rate of

[339] The Commission derived its estimate from the following: [(Senior Systems Analyst (40 hours) at $251 per hour) + (Sr. Programmer (40 hours) at $285 per hour) + (Compliance Manager (16 hours) at $294 per hour) + (Director of Compliance (8 hours) at $426 per hour) + (Compliance Attorney (8 hours) at $291)] = $30,832.

[340] The Commission derived its estimate from the following: [(Senior Systems Analyst (24 hours) at $251 per hour) + (Sr. Programmer (24 hours) at $285 per hour) + (Compliance Clerk (260 hours) at $59 per hour)] = $29,244.

[341] The Commission derived its estimate from the following: [($30,832 + $29,244) × (10 registered SDRs)] = $600,760, which corresponds to $60,076 per registered SDR.

[342] The Commission derived its estimate from the following: [($29,244) × (10 registered SDRs)] = $292,440, which corresponds to $29,244 per registered SDR.

[343] This figure is based on the following: [(7 missing information reports per participant per day) × (365 days/year) × (Compliance Clerk (0.1 hours) at $59 per hour) × (5,000 participants)] = $75,372,500, which corresponds to $15,074.50 per participant.

[344] This figure is based on the following: [((15,458,824 estimated annual SBS transactions)/(5,000 estimated participants))/(365 days/year)] = 8.47, or approximately 9 transactions per day. *See supra* note 290. The Commission understands that many of these transactions may arise from previously executed SBS transactions.

80%,[345] or approximately 7 transactions per day per participant.

Proposed Rule 906(b) would require every participant to provide a registered SDR an initial parent/affiliate report, using ultimate parent IDs and participant IDs, and updating that information, as necessary. The Commission preliminarily estimates that the cost for each participant to submit an initial or update report would be $29.50.[346] The Commission preliminarily estimates that each participant would submit two reports each year.[347] In addition, the Commission preliminarily estimates that there may be 5,000 SBS participants and that each one may connect to two registered SDRs. Accordingly, the Commission preliminarily estimates that the initial and ongoing aggregate annualized cost associated with proposed Rule 906(b) would be $590,000, which corresponds to $118 per participant.[348]

The Commission, in proposed Regulation SBSR, is not requiring the development of internationally recognized standards for reference information (such participant IDs or ultimate parent IDs) that could be used across the financial service industry. Therefore, the Commission believes that the costs of developing and sustaining such a system should not be considered costs of proposed Regulation SBSR. However, proposed Regulation SBSR would require a registered SDR and its participants to use UICs generated by such a system, if such system were able to generate such UICs. Although the Commission believes there would be long-term benefits for using UICs generated by such a system, there could be short-term costs imposed on reporting parties to convert to such a system. In addition, under these internationally recognized standards, users of the reference information could have to pay reasonable fees to support the system. These fees also would represent costs of proposed Rule 901. The Commission requests comment on this issue and any potential costs associated with the potential future use of internationally recognized standards.

Proposed Rule 906(c) would require each participant that is a SBS dealer or major SBS participant to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure compliance with any SBS transaction reporting obligations in a manner consistent with proposed Regulation SBSR and the registered SDR's applicable policies and procedures. Proposed Rule 906(c) would also require the review and updating of such policies and procedures at least annually. The Commission preliminarily estimates that developing and implementing written policies and procedures as required under the proposed rule could result in a one-time initial cost to each covered participant of approximately $52,440.[349] Drawing on the Commission's experience with other rules that require entities to establish and maintain policies and procedures,[350] this figure includes the estimated cost to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, and perform necessary testing. In addition, the Commission preliminarily estimates that the annualized cost to maintain such policies and procedures, including a full review at least annually, as required under the proposed rule, would be approximately $29,736 for each covered participant.[351] This figure is based on an estimate of the cost to review existing policies and procedures, make any necessary updates, conduct ongoing training, maintain relevant systems and internal controls systems, and perform necessary testing.

Accordingly, the Commission preliminarily estimates that the initial aggregate annualized cost associated with proposed Rule 906(c) would be approximately $82,176,000, which corresponds to $82,176 per covered participant.[352] The Commission preliminarily estimates that the ongoing aggregate annualized cost associated with proposed Rule 906(c) would be approximately $29,736,000, which corresponds to $29,736 per covered participant.[353]

In total, the Commission preliminarily believes that proposed Rule 906 would result in an initial, aggregate annualized cost of $159,094,260,[354] and an ongoing, aggregate annualized cost of $106,350,860 for all covered entities.[355]

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 906 discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

278. How can the Commission more accurately estimate the costs and benefits?

279. Would proposed Rule 906 create any additional costs or benefits not discussed here?

280. What would be the costs and benefits of having reference identifiers established under the auspices of an IRSB—for participants? For registered SDRs? What fees might be charged to support such a system? How much would those fees be? Who would have to pay them?

281. What would be the costs to verify ultimate parent and affiliate information under the auspices of an IRSB and maintain it over time? What would be the benefits of having such information verified and maintained?

282. To what extent do participants already have policies and procedures in place for reporting information to an SDR? To what extent would proposed Rule 906(c) impose costs on covered

[345] In other words, the Commission is estimating that 80% of the time the reporting party would not know and thus would not be able to report the necessary UICs of its counterparty. Therefore, a registered SDR would have to obtain the missing UICs through the process described in proposed Rule 906(a).

[346] This figure is based on the following: [(Compliance Clerk (0.5 hours) at $59 per hour) × (1 report)] = $29.50.

[347] During the first year, the Commission preliminarily believes each participant would submit its initial report and one update report. In subsequent years, the Commission preliminarily estimates that each participant would submit two update reports.

[348] This figure is based on the following: [($29.50/report) × (2 reports/year/SDR connection) × (2 SDR connections/participant) × (5,000 participants)] = $590,000, which corresponds to $118 per participant.

[349] The Commission derived its estimate from the following: [(Sr. Programmer (40 hours) at $285 per hour) + (Compliance Manager (40 hours) at $294 per hour) + (Compliance Attorney (40 hours) at $291 per hour) + (Compliance Clerk (40 hours) at $59 per hour) + (Sr. Systems Analyst (32 hours) at $251 per hour) + (Director of Compliance (24 hours) at $426 per hour)] = $52,440 per covered participant.

[350] *See supra* note 256.

[351] The Commission derived its estimate from the following: [(Sr. Programmer (8 hours) at $285 per hour) + (Compliance Manager (24 hours) at $294 per hour) + (Compliance Attorney (24 hours) at $291 per hour) + (Compliance Clerk (24 hours) at $59 per hour) + (Sr. Systems Analyst (16 hours) at $251 per hour) + (Director of Compliance (24 hours) at $426 per hour)] = $29,736 per participant.

[352] The Commission derived its estimate from the following: [($52,440 + $29,736) × (1,000 covered participants)] = $82,176,000.

[353] The Commission derived its estimate from the following: [($29,736) × (1,000 covered participants)] = $29,736,000.

[354] This figure is based on the following: [($600,760 for registered SDRs under proposed Rule 906(a)) + ($75,372,500 for non-reporting-party participants under proposed Rule 906(a)) + ($945,000 for participants under proposed Rule 906(b)) + ($82,176,000 for covered participants under proposed Rule 906(c))] = $159,094,260.

[355] This figure is based on the following: [($297,360 for registered SDRs under proposed Rule 906(a)) + ($75,372,500 for non-reporting-party participants under proposed Rule 906(a)) + ($945,000 for participants under proposed Rule 906(b)) + ($29,736,000 for covered participants under proposed Rule 906(c))] = $106,350,860.

participants that they have not already incurred?

H. Policies and Procedures of Registered SDRs—Rule 907 of Regulation SBSR

Proposed Rule 907 would require a registered SDR to establish and maintain compliance with written policies and procedures: (1) That enumerate the specific data elements of an SBS or a life cycle event that a reporting party would report; (2) that specify data formats, connectivity requirements, and other protocols for submitting information; (3) for specifying how reporting parties are to report corrections to previously submitted information, making corrections to information in its records that is subsequently discovered to be erroneous, and applying an appropriate indicator to any transaction report required to be disseminated by proposed Rule 905(b)(2), which would denote that the report relates to a previously disseminated transaction; (4) describing how reporting parties shall report and, consistent with the enhancement of price discovery, how the registered SDR shall publicly disseminate, reports of, and adjustments due to, life cycle events; SBS transactions that do not involve an opportunity to negotiate any material terms, other than the counterparty; and any other SBS transactions that, in the estimation of the registered SDR, do not accurately reflect the market; (5) for assigning transaction IDs and UICs related to its participants; and (6) for periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any other participant(s) with which the counterparty is affiliated, using applicable UICs.

In addition, proposed Rule 907(b) would require a registered SDR to establish and maintain written policies and procedures for calculating and publicizing block trade thresholds for all SBS instruments reported to the registered SDR in accordance with the criteria and formula for determining block size as specified by the Commission.

Under proposed Rules 907(c) and (d), a registered SDR would be required to make its policies and procedures publicly available on its Web site, and review, and update as necessary, its policies and procedures at least annually, indicating the date on which they were last reviewed. Finally, proposed Rule 907(e) would require 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 proposed Regulation SBSR and the registered SDR's policies and procedures thereunder.

1. Benefits

In proposed Regulation SBSR, the Commission is establishing a number of broad policy goals for implementing Title VII of the Dodd-Frank Act. Proposed Rule 907 would permit a registered SDR some flexibility regarding how to meet those goals. In many cases, there could be many ways that that these goals could be carried out effectively, and it may not be necessary or appropriate in all cases to establish one particular way by rule. By requiring a registered SDR, in proposed Rule 907, to develop policies and procedures for completing many of the details of an SBS transaction reporting and dissemination system, the Commission seeks to harness the knowledge and experience of registered SDRs and harness market incentives to develop the policies and procedures that are most effective in meeting the policy goals in an efficient manner. The Commission expects that, over time, registered SDRs, participants, and the Commission could identify best practices for the reporting and dissemination of SBS transactions.

Proposed Rules 907(a)(1) and (2) would require a registered SDR to develop and maintain policies and procedures to specify the data elements of a SBS or a life cycle event that a reporting party must report, as well as the data formats, connectivity requirements, and other protocols for submitting information. The Commission preliminarily believes that assigning this responsibility to a registered SDR would provide a level of flexibility and transparency that is necessary in this developing market. Furthermore, this approach would allow registered SDRs (perhaps, but not necessarily, after consultation with their participants) to quickly identify and address potential weaknesses in the SBS transaction reporting process as set out under proposed Regulation SBSR.

Proposed Rule 907(a)(3) would require a registered SDR to establish and maintain compliance with policies and procedures for specifying how reporting parties are to report corrections to previously submitted information, making corrections to information in its records that is subsequently discovered to be erroneous, and applying an appropriate indicator to any transaction report required to be disseminated by proposed Rule 905(b)(2), which would denote that the report relates to a previously disseminated transaction. The Commission preliminarily believes that a registered SDR is in the best position to determine how these corrections are submitted, and believes that a consistent regime for the submission of correction by participants would benefit all market participants.

Proposed Rule 907(a)(4) would require a registered SDR to develop and maintain policies and procedures that describe how reporting parties would report and, consistent with the enhancement of price discovery, how the registered SDR would publicly disseminate reports of, and adjustments to, life cycle events; SBS transactions that do not involve an opportunity to negotiate any material terms, other than the counterparty; and any other SBS transactions that, in the estimation of the registered SDR, do not accurately reflect the market. The Commission believes that the entire SBS market could benefit if a registered SDR, using its knowledge of the market, would develop consistent and transparent standards when certain SBS might have characteristics that reduce or eliminate entirely their price discovery value. For example, while an inter-affiliate SBS transaction would be required to be reported (so that the registered SDR obtains information about the legal owner), it could be disseminated with indication that the transaction was not at arm's length.

Proposed Rule 907(a)(5) would require a registered SDR to establish and maintain compliance with policies and procedures for assigning a transaction ID to each SBS that is reported to it, and for assigning UICs, including participant IDs, ultimate parent IDs, desk IDs, broker IDs, and trader IDs. As noted above, all such UICs would have to be assigned by or on behalf of an IRSB (or, if no standards-setting body meet the required criteria or the IRSB has not assigned a UIC to a particular person or unit thereof, by the registered SDR). Proposed Rule 906 could result in significant benefits by encouraging the creation and widespread use of internationally recognized standards for reference information. The Commission preliminarily believes that reporting of information using UICs would promote effective oversight, enforcement, and surveillance of the SBS market by the Commission and other regulators. For example, activity could be tracked by a particular participant, a particular desk, or a particular trader. Regulators could observe patterns and connections in trading activity, or examine whether a trader had engaged in questionable trading activity across different SBS instruments. UICs also could facilitate aggregation and monitoring of the positions of SBS counterparties, which

could be of significant benefit for prudential and systemic risk management.

The Commission understands that some efforts have been undertaken—in both the private and public sectors, both domestically and internationally—to establish a comprehensive and widely accepted system for identifying entities that participate not just in the SBS market, but in the financial markets generally. Such a system would be of significant benefit to regulators worldwide, as each market participant could readily be identified using a single reference code regardless of the jurisdiction or product market in which the market participant was engaging. Such a system also could be of significant benefit to the private sector, as market participants would have a common identification system for all counterparties and reference entities, and would no longer have to use multiple identification systems. The enactment of the Dodd-Frank Act and the establishment of a comprehensive system for reporting and dissemination of SBSs—and for reporting and dissemination of swaps, under the jurisdiction of the CFTC—offer a unique opportunity to facilitate the establishment of a comprehensive and widely accepted system for identifying entities that participate not just in the SBS market, but in the financial markets generally.

Furthermore, requiring a registered SDR to establish and maintain compliance with written policies and procedures could result in more accurate reporting by reporting parties, and thus more reliable dissemination of SBS transaction data. Higher quality reporting and dissemination of SBS transaction data should generate greater confidence among registered SDRs, market participants, and regulators, thus strengthening the SBS market the market as a whole.

The Commission preliminarily believes that requiring a registered SDR to calculate and publish block trade thresholds pursuant to proposed Rule 907(b) should help market participants, the Commission, and other regulators monitor block trade thresholds and track changes in the market for particular SBS instruments over time. The Commission preliminarily believes that a registered SDR is best placed to deliver these benefits, because an SDR has access to the necessary data and the ability to calculate and publicize the block trade thresholds efficiently.

The Commission preliminarily believes that requiring a registered SDR to make publicly available on its Web site the policies and procedures required by proposed Regulation SBSR, pursuant to proposed Rule 907(c), would promote greater understanding of and compliance with such policies and procedures. Periodic review of the policies and procedures would also ensure that they are up-to-date.

Finally, proposed Rule 907(e) would require 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 proposed Regulation SBSR and the registered SDR's policies and procedures thereunder. There could be benefits in obtaining information from each registered SDR related to the timeliness, accuracy, and completeness of data reported to the registered SDR. Required data submissions that are untimely, inaccurate, or incomplete could compromise the regulatory data that the Commission would utilize to carry out its oversight responsibilities. Furthermore, required data submissions that are untimely, inaccurate, or incomplete could diminish the value of publicly disseminated reports that promote transparency and price discovery. Information or reports provided to the Commission by a registered SDR related to the timeliness, accuracy, and completeness of data could assist the Commission in examining for compliance with proposed Regulation SBS and in bringing enforcement or other administrative actions as necessary and appropriate.

2. Costs

The Commission preliminarily estimates that ten registered SDRs would be subject to proposed Rule 907, and that developing and implementing written policies and procedures as required under proposed Rule 907 could result in an initial, one-time cost to each registered SDR of approximately $3,831,000.[356] This figure includes the estimated cost to develop a set of written policies and procedures, program systems, implement internal controls and oversight, train relevant employees, perform necessary testing, monitor participants, and compile data.[357] In addition, the Commission preliminarily estimates that the annualized cost to maintain such policies and procedures, including a full review at least annually; making its policies and procedures publicly available on its Web site; and developing the capacity to provide the Commission information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to proposed Regulation SBSR and the registered SDR's policies and procedures would be approximately $7,662,000 for each registered SDR.[358] This figure is based on an estimate of the cost to review existing policies and procedures, make necessary updates, conduct ongoing training, maintain relevant systems and internal controls systems, calculate and publish block trade thresholds, perform necessary testing, monitor participants, and collect data. Accordingly, the Commission preliminarily estimates that the initial annualized cost associated with proposed Rule 907 would be approximately $11,492,500 per registered SDR, which corresponds to an initial annualized aggregate cost of approximately $114,924,500.[359] The Commission preliminarily estimates that the ongoing annualized cost associated with proposed Rule 907 would be approximately $7,662,000 per registered SDR, which corresponds to an ongoing annualized aggregate cost of approximately $76,617,000.[360] These figures are based, in part, on the

[356] The Commission derived its estimate from the following: [(Sr. Programmer (1,667 hours) at $285 per hour) + (Compliance Manager (3,333 hours) at $294 per hour) + (Compliance Attorney (5,000 hours) at $291 per hour) + (Compliance Clerk (2500 hours) at $59 per hour) + (Sr. Systems Analyst (1,667 hours) at $251 per hour) + (Director of Compliance (833 hours) at $426 per hour)] = $3,830,722 per SDR. The Commission preliminarily believes that potential SDRs that have similar policies and procedures in place may find that these costs would be lower, while potential SDRs that do not have similar policies and procedures in place may find that the potential costs would be higher.

[357] This figure includes time necessary to design and program systems and implement policies and procedures to calculate and publish block trade thresholds for all SBS instruments reported to the registered SDR as required by proposed Rule 907(b). It also includes time necessary to design and program systems and implement policies and procedures to determine which reported trades would not be considered block trades pursuant to proposed Rule 907(b). This figure also includes time necessary to design and program systems and implement policies and procedures to assign certain IDs, as required by proposed Rule 907(a)(5).

[358] The Commission derived its estimate from the following: [Sr. Programmer (3,333 hours) at $285 per hour) + (Compliance Manager (6,667 hours) at $294 per hour) + (Compliance Attorney (10,000 hours) at $291 per hour) + (Compliance Clerk (5,000 hours) at $59 per hour) + (Sr. Systems Analyst (3,333 hours) at $251 per hour) + (Director of Compliance (1,667 hours) at $426 per hour)] = $7,661,728 per registered SDR. The Commission preliminarily believes that potential SDRs that have similar policies and procedures in place may find that these costs would be lower, while potential SDRs that do not have similar policies and procedures in place may find that the potential costs would be higher.

[359] The Commission derived its estimate from the following: [((3,830,722) + ($7,661,728)) × (10 registered SDRs)] = $114,924,500.

[360] The Commission derived its estimate from the following: [($7,661,728) × (10 registered SDRs)] = $76,617,280.

Commission's experience with other rules that require entities to establish and maintain compliance with policies and procedures.[361]

In addition, proposed Rule 907(a)(5) could impose certain costs on registered SDRs in connection with the use of internationally recognized standards for reference information. The Commission, in proposed Regulation SBSR, is not requiring the development of such standards that could be used across the financial service industry. Therefore, the Commission believes that the costs of developing and sustaining such a system should not be considered costs of proposed Regulation SBSR. However, proposed Regulation SBSR would require a registered SDR to use UICs generated by such a system, if such system is able to generate such UICs. Although the Commission believes there would be long-term benefits for using UICs generated by such a system, there could be short-term costs imposed on registered SDRs to convert to such a system. In addition, under these internationally recognized standards, users of the reference information could have to pay reasonable fees to support the system. These fees also would represent costs of proposed Rule 901. The Commission requests comment on this issue and any potential costs associated with the potential future use of internationally recognized standards.

There could be a potential cost of proposed Rule 907 in that registered SDRs would retain flexibility to shape the details of a SBS trade reporting and dissemination system. It could be that such flexibility could result in varying approaches by each registered SDR and, thus, complicate the reporting of SBS transactions, impede the use of SBS transaction information that is publicly disseminated, or make market oversight more difficult. These potential costs could be avoided were the Commission to implement more of the details through rulemaking. The Commission requests comment on the costs, if any, associated with providing a registered SDR a certain amount of flexibility, and how those costs should be balance with the potential benefits as discussed above of providing the registered SDRS with flexibility.

Finally, with respect to proposed Rule 907(e), the Commission preliminarily believes that, as part of its core functions, a registered SDR would 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 proposed Regulation SBSR and the registered SDR's policies and procedures. Proposed Rule 13n–5(b) would require a registered SDR to establish, maintain, and enforce written policies and procedures to satisfy itself by reasonable means that the transaction data that has been submitted to the security-based swap data repository is accurate, and also to ensure that the transaction data and positions that it maintains are accurate.[362] The Commission preliminarily believes that these capabilities would enable a registered SDR to provide the Commission information or reports as may be requested pursuant to proposed Rule 907(e). Thus, the Commission does not believe that proposed Rule 907(e) would impose any additional costs on a registered SDR.

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 907 discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

283. How can the Commission more accurately estimate the costs and benefits?

284. Would proposed Rule 907 create any additional costs or benefits not discussed here?

285. Is it a potential cost that the policies and procedures sufficiently detailed such that participants would be able to know what is required of them?

286. What are the costs and benefits of allowing a registered SDR some flexibility to determine whether certain SBSs may not have price discovery value and to use certain indicators to that effect in the publicly disseminated transaction reports?

287. What costs would be imposed on a registered SDR to use UICs that had been established by or on behalf of an IRSB? Would the registered SDR have to pay fees to support the system? To whom? How much would the fees be? What would be the costs of transitioning to such a system? How would these overall costs compare to the costs that would be incurred by a registered SDR to assign UICs using its own methodology?

288. What are the costs of allowing registered SDRs flexibility to shape many of the details of a SBS trade reporting and dissemination system? What are the benefits?

I. Jurisdictional Matters—Rule 908 of Regulation SBSR

1. Benefits

The Commission believes that, in proposing Rule 908, the Commission has no discretion about which entities or SBSs are subject to the Exchange Act, as amended by the Dodd-Frank Act. A federal agency does not have the power to expand or circumscribe the reach of U.S. law. Therefore, because the Commission has no discretion in the matter, there are no benefits to proposed Rule 908 other than those inherent in the Exchange Act, as amended by the Dodd-Frank Act.

2. Costs

Similarly, because the Commission has no discretion in the matter, there are no costs to proposed Rule 908 other than those inherent in the Exchange Act, as amended by the Dodd-Frank Act.

J. Registration of Security-Based Swap Data Repository as Securities Information Processor—Rule 909 of Regulation SBSR

Proposed Rule 909 would require each registered SDR also to register with the Commission as a SIP on existing Form SIP.

1. Benefits

The Commission preliminarily believes that SIP registration of a registered SDR would help ensure fair access to important SBS transaction data reported to and publicly disseminated by the registered SDR. Requiring a registered SDR to register with the Commission as a SIP would subject it to Section 11A(b)(5) of the Exchange Act,[363] which provides that a registered SIP must notify the Commission whenever it prohibits or limits any person's access to its services. Upon its own motion or upon application by any aggrieved person, the Commission could review the SIP's action.[364] If the Commission finds that the person has been discriminated against unfairly, it could require the SIP to provide access to that person.[365] Section 11A(b)(6) of the Exchange Act[366] also provides the Commission authority to take certain regulatory action as may be necessary or appropriate against a registered SIP.[367]

[361] *See supra* note 256.

[362] *See* SDR Registration Proposing Release, *supra* note 6, proposed Rules 13n–5(b)(1)(iii) and 13n–5(b)(3) under the Exchange Act.

[363] 15 U.S.C. 78k–1(b)(5).

[364] *See* 15 U.S.C. 78k–1(b)(5)(A).

[365] *See* 15 U.S.C. 78k–1(b)(5)(B).

[366] 15 U.S.C. 78k–1(b)(6).

[367] Section 11A(b)(6) of the Exchange Act provides that the Commission, by order, may censure or place limitations upon the activities, functions, or operations of any registered SIP or suspend for a period not exceeding 12 months or revoke the registration of any such processor, if the

Continued

The Commission preliminarily believes that potential consumers of SBS market data would benefit from the Commission having the additional authority over a registered SDR/SIP provided by Sections 11A(b)(5) and 11A(b)(6) of the Exchange Act to help ensure that these entities offer their SBS market data on terms that are fair and reasonable and not unreasonably discriminatory.

2. Costs

The Commission preliminarily believes that the costs of proposed Rule 909 would be minimal. As noted above, proposed Rule 909 would impose an initial one-time cost on each registered SDR associated with the submission of Form SIP.[368] The Commission notes that Form SDR, which all SDRs would be required to complete and submit to the Commission pursuant to proposed Rule 13n-1 under the Exchange Act,[369] and Form SIP are similar in many respects. Thus, the Commission preliminarily believes that a registered SDR, which must complete Form SDR, would be able to complete Form SIP more easily and with less cost than otherwise would be the case. The Commission preliminarily estimates that the one-time cost to each SDR to complete Form SIP would be about one-quarter the cost of completing proposed Form SDR, or approximately $14,600.[370] In addition, the Commission preliminarily estimates that each SDR would incur approximately one half of the ongoing annual costs—corresponding to an average of six months of operations—during the first year. The Commission preliminarily estimates this cost would be approximately $730 per SDR/SIP.[371]

With regard to ongoing costs, the Commission preliminarily estimates that the aggregate annualized cost for providing amendments to Form SIP would be one-tenth of the cost to complete the initial Form SIP, or approximately $1,460 per SDR/SIP.[372] This figure is based on a preliminary estimate that each registered SDR would submit one amendment on Form SIP each year. SIP registration also would require a registered SDR to provide notice to the Commission of prohibitions or limitations on access to its services. The Commission preliminarily believes that the notice would be a simple form, and that prohibitions or limitations on access to information provided by a registered SDR would be not be prevalent. Thus, the Commission does not believe that providing such notice would result in economically significant costs.

Accordingly, the Commission preliminarily estimates that the initial aggregate annualized costs associated with proposed Rule 909 would be approximately $153,300, which corresponds to $15,330 per registered SDR.[373] The Commission further preliminary estimates that the ongoing aggregate annualized costs associated with proposed Rule 909 would be approximately $14,600, or an ongoing annual cost of approximately $1,460 for each registered SDR/SIP.[374] The Commission solicits comments as to the accuracy of these estimates.

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 909 discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

289. How can the Commission more accurately estimate the costs and benefits?

290. Would proposed Rule 909 create any additional costs or benefits not discussed here?

291. Are the Commission's preliminary estimates reasonable?

292. Is SIP registration likely to impose costs not addressed? If so, what are they?

K. Implementation of Security-Based Swap Reporting and Dissemination—Rule 910 of Regulation SBSR

1. Benefits

Proposed Rule 910 addresses implementation of the obligations imposed by proposed Regulation SBSR. Proposed Rule 910(a) would require a reporting party to report to a registered SDR any pre-enactment SBSs subject to reporting under proposed Rule 901(i) no later than January 12, 2012 (180 days after the effective date of the Dodd-Frank Act). The proposed timeframe would help ensure that the Commission has relevant information about SBS transactions necessary to prepare reports required by the Dodd-Frank Act.[375] Further, proposed Rule 910 would help ensure timely implementation of Regulation SBSR, and thereby facilitate achievement of the goals articulated in the Dodd-Frank Act.

Proposed Rule 910(b) would establish a phase-in period for each SDR that registers with the Commission, as well as its participants. The phase-in period would give both the registered SDR and its participants a reasonable period in which to acquire or configure the necessary systems, engage and train the necessary staff, and develop and implement the necessary policies and procedures to implement the proposed rules. In the absence of the measured and incremental approach specified in proposed Rule 910(b), market participants might not evaluate and develop their systems, processes, and procedures with sufficient care and analysis. Furthermore, without the phase-in period afforded by proposed Rule 910(b), registered SDRs and their participants could be forced to devote an undue amount of capital and resources to becoming compliant with proposed Regulation SBSR, thus diverting capital and resources from other productive endeavors.

2. Costs

The Commission preliminarily believes that proposed Rule 910(a) would not require reporting parties to materially change their current practices or operations with respect to recordkeeping for the pre-enactment SBSs or transitional SBSs. Any reporting party, as part of its regular business operations, would already maintain records covering most if not all of the data elements associated with a SBS. Furthermore, proposed Rule 910(a) would not require reporting parties to report any data elements (such as the

Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest, necessary or appropriate for the protection of investors, or to assure the prompt, accurate, or reliable performance of the functions of such SIP, and that such SIP has violated or is unable to comply with any provision of this title or the rules or regulations thereunder.

[368] *See supra* Section XII.J.

[369] *See* SDR Registration Proposing Release, *supra* note 6.

[370] The Commission derived its estimate from the following: [(Compliance Attorney (37.5 hours) at $291 per hour) + (Compliance Clerk (62.5 hours) at $59 per hour)] = $14,600. *See* Section XII(J) *supra;* SDR Registration Proposing Release, *supra* note 6.

[371] The Commission derived its estimate from the following: [($1,460/2)] = $730. *See infra* note 372.

[372] The Commission derived its estimate from the following: [($14,600) × (0.1)] = $1,460. *See supra* note 370.

[373] The Commission derived its estimate from the following: [(($14,600) + ($730)) × (10 registered SDRs)] = $153,300. *See supra* notes 370 and 371.

[374] The Commission derived its estimate from the following: [($1,460) × (10 registered SDRs)] = $14,600. *See supra* notes 372.

[375] *See* Section 719 of the Dodd-Frank Act.

time of execution) that were not already available. Therefore, proposed Rule 910(a) would not require reporting parties to search for or reconstruct any missing data elements.

To comply with the reporting obligations of proposed Rule 910(a), reporting parties likely would incur many of the costs that they otherwise would incur in order to comply with proposed Rule 901.[376] Because of the substantial overlap between the costs necessitated by proposed Rule 910 and proposed Rule 901 (for reporting parties) and proposed Rule 902, the Commission preliminarily estimates that that the initial annualized, cost for each reporting party associated with proposed Rule 910 would be *de minimis.*

The Commission preliminarily estimates two types of costs associated with proposed Rule 910(b): One stemming from the possibility that the phase-in period is too long and the other stemming from the possibility that the phase-in period is too short. If the phase-in period were too long, the benefits from better recordkeeping and regulatory information, as well as from post-trade transparency in the SBS market, would be inappropriately delayed. However, if the phase-in period were too short, market participants might not have enough time to develop appropriate systems and procedures to effectively implement proposed Regulation SBSR. In proposing Rule 910(b), the Commission seeks an appropriate balance between these two considerations.

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 910 discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

293. How can the Commission more accurately estimate the costs and benefits?

294. Would proposed Rule 910 create any additional costs or benefits not discussed here?

295. How many entities would be affected by the rule?

296. Are there additional costs involved in complying with the proposed rule that have not been identified? What are the types, and amounts, of the costs?

297. Are there additional benefits from the rule that have not been identified? If so, please identify and quantify to the extent feasible.

L. Prohibition During Phase-In Period—Rule 911 of Regulation SBSR

Proposed Rule 911 would provide that a reporting party to a SBS would not report a SBS to a registered SDR in a phase-in period described in proposed Rule 910 during which the registered SDR is not yet required to publicly disseminate transaction reports for that SBS instrument unless: (1) The SBS is also reported to an registered SDR that is disseminating transaction reports for that SBS instrument consistent with proposed Rule 902; or (b) No other registered SDR is able to receive, hold, and publicly disseminate transaction reports regarding that SBS instrument.

1. Benefits

The Commission preliminarily believes that proposed Rule 911 would have two clear benefits to the marketplace. First, it is meant to preserve the goal of post-trade transparency for SBSs, as codified in the Dodd-Frank Act, even as new SDRs are phased in, as specified in proposed Rule 910, during which time they may have no obligation or only a limited obligation to publicly disseminate SBS data. Second, the proposed rule would prevent reporting parties from engaging in regulatory arbitrage by avoiding reporting SBS data to an existing registered SDR that is publicly disseminating SBS transaction reports and instead reporting only to a new SDR subject to a phase-in period, in an effort to avoid having their SBS transactions publicly disseminated in real time. Proposed Rule 911 would prohibit such conduct.

2. Costs

The Commission believes that the costs imposed by proposed Rule 911 on reporting parties and registered SDRs would be minimal, as the rule would restrict the ability of a reporting party to report a SBS to one registered SDR rather than another, but would not otherwise create any quantifiable costs beyond those already required by proposed Rule 901. To the extent there are costs, they may include the following. First, proposed Rule 911 potentially could dampen competition among those entities considering registering as SDRs. Potential SDR registrants could perceive the proposed rule as a barrier to entry to the marketplace insofar as their business may be limited during the phase-in period. Second, as a result of proposed Rule 911, there may be some costs associated with double-reporting of SBS information—both to an existing SDR as well as to a new SDR in a phase-in period. Indeed, proposed Rule 911 contemplates the potential of such double-reporting. This could result require regulators to incur costs to accurately identify double-counted transactions, where the same SBS transaction is captured by two different registered SDRs.

3. Request for Comment

The Commission requests comment on the costs and benefits of proposed Rule 911 discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

298. How can the Commission more accurately estimate the costs and benefits?

299. Would proposed Rule 911 create any additional costs or benefits not discussed here?

M. Amendments to Rule 31

Rule 31 under the Exchange Act[377] sets forth a procedure for the calculation and collection of fees payable under Section 31 of the Exchange Act.[378] The Dodd-Frank Act classifies SBSs as securities,[379] thereby subjecting them to Section 31 fees. The proposed amendment to Rule 31 would add "security-based swaps" to the list of "exempt sales," and thereby exempt SBSs from Section 31 fees.[380]

The Commission preliminarily believes that the proposed amendments to Rule 31 would have a neutral effect on existing costs and benefits. It would not impose any additional costs or impact the transaction fees currently paid on other securities transactions. Likewise, because market participants have never monitored or collected fees on SBS transactions, there would be no benefit to exempting these transactions from Section 31 fees other than that affected entities would not have to take any steps to pay fees on SBS transactions.

However, eliminating Section 31 fee for SBS transactions theoretically could result in slightly higher fees on transactions in other securities that would not benefit from a Section 31

[376] *See supra* Section XIV.B.2.

[377] 17 CFR 240.31.

[378] 15 U.S.C. 78ee.

[379] *See* 15 U.S.C. 78c(a)(10).

[380] The Commission is also proposing to make a technical correction to Rule 31(a)(10)(ii), to correct a date (from "September 30" to "September 25"), as required by the Dodd-Frank Act. The Commission does not believe there are any material costs or benefits to this change.

exemption. Section 31 requires the Commission to adjust Section 31 fees so that such rates are reasonably likely to produce aggregate fee collections that equal amounts prescribed under Section 31.[381] Thus, although the Commission may exempt certain securities from Section 31, it cannot reduce the total amount of fees that it is required to collect under Section 31. An exemption granted to certain securities could, therefore, result in a higher rate paid on transactions in the other, non-exempted securities.

The Commission requests comment on the costs and benefits of the proposed amendments to Rule 31, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits.

N. Aggregate Total Costs

Based on the foregoing, the Commission preliminarily estimates that proposed Regulation SBSR would impose an aggregate total first-year cost of approximately $1,038,947,500 on all covered entities.[382] This amount includes an estimated total first-year cost of approximately $852,850,500 on participants (reporting parties and non-reporting parties), and approximately $186,097,000 on registered SDRs. The Commission preliminarily estimates that proposed Regulation SBSR would impose a total ongoing annualized aggregate cost of approximately $703,147,540 for all covered entities.[383] This amount includes an estimated total ongoing annualized cost of approximately $598,021,500 on participants (reporting parties and non-reporting parties), and approximately $105,126,040 on registered SDRs.

With regard to registered SDRs, the Commission preliminarily estimates that proposed Regulation SBSR would impose an initial aggregate one-time cost of approximately $80,978,260,[384] and an ongoing aggregate annual cost of $105,126,400.[385] The Commission further preliminarily estimates that the proposed SDR registration rules would impose an initial aggregate one-time cost of approximately $214,913,592,[386] and an ongoing aggregate annual cost of approximately $140,302,120 on registered SDRs.[387] Summing these estimates, proposed Regulation SBSR and the proposed SDR registration rules would impose initial costs on registered SDRs of approximately $295,891,852,[388] and ongoing annualized costs on registered SDRs of approximately $245,428,520.[389]

XV. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act[390] 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 whether the action would promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act[391] requires the Commission, when making rules under the Exchange Act, to consider the impact of such rules on competition. Section 23(a)(2) also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

A. Analysis of Proposed Regulation SBSR

The Commission preliminarily believes that public availability of transaction and pricing data for SBSs, as required by the Dodd-Frank Act and implemented by proposed Regulation SBSR, would promote efficiency, competition, and capital formation by reducing information asymmetries, lowering transaction costs, and encouraging market participation from a larger number of firms. Public, real-time dissemination of last-sale information aids dealers in deriving appropriate quotations, and aids investors in evaluating current quotations—thus furthering efficient price discovery. Increased transparency ultimately should provide the opportunity for increased competition among market participants and thus contribute to a more efficient market. The Commission believes that knowledge that all market participants are subject to the same reporting rules and can see the same price information creates certainty, fosters investor confidence, and promotes participation in the markets.

The Commission's experience with other asset classes is that post-trade transparency reduces transaction costs. For example, a number of studies have found that post-trade transparency in the corporate bond market, resulting from the introduction of TRACE, has reduced transaction costs.[392] Post-trade transparency could have the same effect in the SBS market, although the Commission acknowledges that the differences between the SBS market and other securities markets might be sufficiently great that post-trade transparency might not have the same effects in the SBS market. The Commission requests comment on whether post-trade transparency would have a similar effect on the SBS market as it has in other securities markets—and if not, why not. To the extent that post-trade transparency in the SBS

[381] *See* 15 U.S.C. 78ee(j).

[382] The Commission derived its estimate from the following: [($511,013,000 proposed Rule 901 first-year costs on reporting parties) + ($778,480 proposed Rule 901 first-year costs on registered SDRs) + ($64,006,400 proposed Rule 902 first-year costs on registered SDRs) + ($27,360 proposed Rule 904 first-year costs on registered SDRs) + ($11,419,000 proposed Rule 905 first-year costs on reporting parties) + ($5,603,700 proposed Rule 905 first-year costs on registered SDRs) + ($172,280,000 proposed Rule 905 first-year costs on non-reporting parties) + ($82,176,000 proposed Rule 906 first-year costs on reporting parties) + ($600,760 proposed Rule 906 first-year costs on registered SDRs) + ($75,962,500 proposed Rule 906 first-year costs on all SDR participants) + ($114,927,000 proposed Rule 907 first-year costs on registered SDRs) + ($153,300 proposed Rule 909 first-year costs on registered SDRs)] = $1,038,947,500.

[383] The Commission derived its estimate from the following: [($316,116,000 proposed Rule 901 ongoing annual costs on reporting parties) + ($436,440 proposed Rule 901 ongoing annual costs on registered SDRs) + ($24,002,400 proposed Rule 902 ongoing annual costs on registered SDRs) + ($27,360 proposed Rule 904 ongoing annual costs on registered SDRs) + ($3,927,000 proposed Rule 905 ongoing annual costs on reporting parties) + ($3,735,800 proposed Rule 905 ongoing annual costs on registered SDRs) + ($172,280,000 proposed Rule 905 ongoing annual costs on non-reporting parties) + ($29,736,000 proposed Rule 906 ongoing annual costs on reporting parties) + ($292,440 proposed Rule 906 ongoing annual costs on registered SDRs) + ($75,962,500 proposed Rule 906 ongoing annual costs on all SDR participants) + ($76,617,000 proposed Rule 907 ongoing annual costs on registered SDRs) + ($14,600 proposed Rule 909 ongoing annual costs on registered SDRs)] = $703,147,540.

[384] The Commission derived its estimate from the following: [($342,040 proposed Rule 901 one-time costs on registered SDRs) + ($40,004,000 proposed Rule 902 one-time costs on registered SDRs) + ($1,867,900 proposed Rule 905 one-time costs on registered SDRs) + ($308,320 proposed Rule 906 one-time costs on registered SDRs) + ($38,310,000 proposed Rule 907 one-time costs on registered SDRs) + ($146,000 proposed Rule 909 one-time costs on registered SDRs)] = $80,978,260.

[385] The Commission derived its estimate from the following: [($436,440 proposed Rule 901 ongoing annual costs on registered SDRs) + ($24,002,400 proposed Rule 902 ongoing annual costs on registered SDRs) + ($27,360 proposed Rule 904 ongoing annual costs on registered SDRs) + ($3,735,800 proposed Rule 905 ongoing annual costs on registered SDRs) + ($292,440 proposed Rule 906 ongoing annual costs on registered SDRs) + ($76,617,000 proposed Rule 907 ongoing annual costs on registered SDRs) + ($14,600 proposed Rule 909 ongoing annual costs on registered SDRs)] = $105,126,400.

[386] *See* SDR Registration Proposing Release, *supra* note 6.

[387] *See id.*

[388] The Commission derived its estimate from the following: [($80,978,260) + ($214,913,592)] = $295,891,852.

[389] The Commission derived its estimate from the following: [($105,126,400) + ($140,302,120)] = $245,428,520.

[390] 15 U.S.C. 78c(f).

[391] 15 U.S.C. 78w(a)(2).

[392] *See supra* note 88.

market would lower transaction costs, this would be evidence of greater competition and efficiency. Furthermore, money saved in transaction costs can assist in additional capital formation.

The proposed rules on block trades of SBSs are designed to minimize any adverse impact on efficiency, competition, and capital formation. Though temporarily withholding the full size of a block trade may have some immediate adverse effect on efficiency, as other market participants would lack complete real-time information about large transactions, the Commission's approach is designed to promote efficiency in the longer-term, by allowing SBS market participants to engage in large transactions without the risk of other market participants using this information in ways that promote artificial and adverse short-term price movements. Encouraging such market participants to continue to execute in large size is designed to promote efficiency, competition, and capital formation. The Commission requests comment on the effect of its proposed block trade rules on these considerations.

Proposed Regulation SBSR is designed to provide the Commission and other regulators with detailed, up-to-date information about both positions of particular entities and financial groups as well as positions by multiple market participants in particular instruments. A well-regulated SBS market—where the Commission and other regulators have access to information about all SBS transactions captured and retained in the registered SDRs—could increase the confidence in the soundness and fairness of the market, potentially drawing additional participants and thereby increasing efficiency. The Commission and other regulators also would have greater information with which to surveil the SBS market and bring appropriate enforcement actions. Together, these regulatory factors should have a positive impact on efficiency, competition, and capital formation.

The Commission preliminarily believes that post-trade transparency in the SBS market could improve market participants' ability to value SBSs. In transparent markets with sufficient liquidity, valuations generally can be derived from recent quotations and/or last-sale prices. However, in opaque markets or markets with low liquidity, recent quotations or last-sale prices may not exist or, if they do exist, may not be widely available. Therefore, market participants holding assets that trade in opaque markets or markets with low liquidity frequently rely instead on pricing models. These models might be based on assumptions subject to the evaluator's discretion, and can be imprecise. Thus, market participants holding the same asset but using different valuation models might arrive at significantly different values for the same asset.

The Commission preliminarily believes that post-trade transparency, even in relatively illiquid markets—such as corporate bonds or SBSs—could represent an improvement over relying on valuation models alone, particularly if post-trade information is used as an input to, rather than a substitute for, independent valuation and pricing decisions by other market participants. Market participants might devise means to consider last-sale reports of the asset to be valued, reports of related assets, or reports of benchmark products that include the asset to be valued or closely related assets. There is evidence to suggest that post-trade transparency helps reduce the range of valuations of assets that trade in illiquid markets.[393] The Commission preliminarily believes that post-trade transparency in the SBS market could result in more accurate valuations of SBSs generally, as all market participants would have the benefit of knowing how counterparties to an SBS valued the SBS at a specific moment in time. Especially with complex instruments, investment decisions generally are predicated on a significant amount of due diligence to value the instrument properly. A post-trade transparency system permits other market participants to derive at least some informational benefit from obtaining the views of the two counterparties who traded that instrument.

Better valuations could have a significant impact on efficiency and capital allocation. Efficient allocation of capital is premised on accurate knowledge of asset prices. Overvaluing asset prices could result in a misallocation of capital, as investors seek to obtain more of an asset that cannot deliver the anticipated risk-adjusted return. By the same token, assets that are inappropriately undervalued represent investment opportunities that might go unpursued, because investors do not realize that a good risk-adjusted return is available. To the extent that post-trade transparency enables asset valuations to move closer to their fundamental values, capital may be more efficiently allocated.

Better valuations resulting from post-trade transparency also could reduce prudential and systemic risks. Some financial institutions, including many of the most systemically important financial institutions, have large portfolios of SBSs. The financial system would benefit greatly if the assets of these institutions were more accurately valued. To the extent that post-trade transparency affirms the valuation of an institution's portfolio, regulators, the individual firm, and the market as a whole would have more certainty as to whether the firm would or would not pose prudential or systemic risks. In some cases, however, post-trade transparency in the SBS market might cause an individual firm to revalue its positions and lower the overall value of its portfolio. The sooner that accurate valuations can be made, the more quickly that regulators and the individual firm can take appropriate steps to minimize the firm's prudential risk profile, and the more quickly that regulators and other market participants can take appropriate steps to address any systemic risk concerns raised by that firm.

Finally, the Commission has considered how proposed Regulation SBSR could affect market participation generally, measured by both the number of market participants and the number of SBSs executed. The regulatory environment created by proposed Regulation SBSR would permit all market participants to see last-sale prices in real time, and could thereby incentivize more market participants to enter the market, trade more frequently, and compete with large dealers on price. Reducing information asymmetries is pro-competitive, because it reduces the competitive advantage that certain market participants have solely because they have access to more or better information about the market. Reducing information asymmetries also reduces the likelihood that a less-informed market participant would enter into a trade at an imprudent price. To the extent that fewer such trades occur, efficiency and capital formation could be improved. Moreover, proposed Regulation SBSR could result in greater confidence in the market generally, which could have a beneficial impact on efficiency, competition, and capital formation.

It is also possible that implementing post-trade transparency in the SBS market and the costs of complying with proposed Regulation SBSR could cause some market participants to execute fewer SBSs or to exit the market completely. This could result in a detrimental impact on efficiency,

[393] *See supra* note 314.

competition, and capital formation. For example, certain market participants that are currently active in the SBS market might find the costs of complying with proposed Regulation SBSR too high. If these market participants respond by reducing their trading activity or exiting the market completely, competition could suffer because there would be fewer participants competing in the market. Moreover, efficiency could suffer because risk that otherwise might have been allocated to the market participant optimally suited to manage it would, if that participant has left the market, necessarily have to reside at a suboptimal location. Moreover, capital formation could be negatively impacted if market participants with risks to hedge find it more difficult or costly to find a counterparty with which to transact and instead reserve more capital against the risk of loss.

On the other hand, the possibility exists that, in certain circumstances, efficiency, competition, and capital formation would be positively impacted even if fewer SBS transactions occur because of proposed Regulation SBSR. This could be the case if market participants that are unable or unwilling to properly manage the attendant risks of participation in the SBS market are deterred from participating, or if there were a reduction in the number of SBS transactions where there is a significant information asymmetry between the counterparties. In the latter case, efficiency, competition, and capital formation could benefit if uninformed parties are deterred from unwittingly taking on imprudent positions in the SBS market.

It is difficult at this stage to ascertain how proposed Regulation SBSR and other measures to implement the Dodd-Frank Act might increase or decrease participation in the SBS market, and what impacts such an increase or decrease might have on efficiency, competition, and capital formation. However, the Commission requests comment on those impacts.

B. Analysis of Amendments to Rule 31 Under the Exchange Act

The Commission preliminarily believes that the proposed amendments to Rule 31 under the Exchange Act would have no significant impact on efficiency, competition, and capital formation. Exempting SBSs from Section 31 fees should have little or no impact on the overall amount of fees collected by the Commission, as the Commission is required to adjust the fee rate to a level that is reasonably likely to produce the aggregate fee collections stipulated in Section 31(d).[394] Exempting SBSs from Section 31 fees would result in other classes of securities that remain subject to Section 31 fees continuing to bear the burden of meeting the aggregate fee collection. Allowing SBSs to become subject to Section 31 fees, however, could result in a competitive imbalance between brokers and SBS dealers. Specifically, the burden for funding Section 31 fees would fall on brokers, rather than SBS dealers. Exempting SBSs from Section 31 fees, therefore, would avoid this concern and any impact it might have on the development of the SBS market.

The Commission requests comment on all aspects of this analysis and, in particular, on whether proposed Regulation SBSR and the proposed amendments to Rule 31 under the Exchange Act would place a burden on competition, as well as the effect of the proposal on efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views, if possible.

XVI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA")[395] the Commission must advise the OMB whether the proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in: (1) An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation. If a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review.

The Commission requests comment on the potential impact of proposed Regulation SBSR on the economy on an annual basis, on the costs or prices for consumers or individual industries, and on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

XVII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act ("RFA")[396] requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) of the Administrative Procedure Act,[397] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on "small entities."[398] Section 605(b) of the RFA[399] states that this requirement shall not apply to any proposed rule or proposed rule amendment which, if adopted, would not have a significant economic impact on a substantial number of small entities.

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;[400] or (2) a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[401] 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.[402]

Based on input from SBS market participants and its own information, the Commission preliminarily believes that the majority of SBS transactions have at least one counterparty that is either as SBS dealer or major SBS 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.

[394] *See* 15 U.S.C. 78ee(j).

[395] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[396] 5 U.S.C. 601 *et seq.*

[397] 5 U.S.C. 603(a).

[398] Although Section 601(b) of the RFA defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term "small entity" for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10 under the Exchange Act, 17 CFR 240.0–10. *See* Securities Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. AS–305).

[399] 5 U.S.C. 605(b).

[400] *See* 17 CFR 240.0–10(a).

[401] 17 CFR 240.17a–5(d).

[402] *See* 17 CFR 240.0–10(c).

Moreover, even in cases where one of the counterparties to an SBS is not covered by these definitions, the Commission preliminarily does not believe that any such entities would be "small entities" as defined in Commission Rule 0–10. Feedback from industry participants and the Commission's own information about the SBS market indicate that only persons or entities with assets significantly in excess of $5 million participate in the SBS market. 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 and Trusts are held by those with assets over $10 billion.[403] Given the magnitude of this figure, and the fact that it so far exceeds $5 million, the Commission preliminarily believes that the vast majority of, if not all, SBS transactions are between large entities for purposes of the RFA.

In addition, the Commission preliminarily believes that the entities likely to register as SDRs would not be small entities. Based on input from SBS market participants and its own information, the Commission preliminarily believes that most if not all the registered SDRs would be part of large business entities, and that all registered SDRs would have assets exceeding $5 million and total capital exceeding $500,000. Therefore, the Commission preliminarily believes that none of the registered SDRs would be small entities.

On this basis, the Commission preliminarily believes that the number of SBS transactions involving a small entity as that term is defined for purposes of the RFA would be *de minimis.* Moreover, the Commission does not believe that any aspect of proposed Regulation SBSR would be likely to alter the type of counterparties presently engaging in SBS transactions. Therefore, the Commission preliminarily does not believe that proposed Regulation SBSR would impact any small entities.

For the foregoing reasons, the Commission certifies that Regulation SBSR would not have a significant economic impact on a substantial number of small entities for purposes of the RFA. The Commission encourages written comments regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities, indicate whether they believe that participants and registered SDRs are unlikely to be small entities, and provide empirical data to support their responses.

[403] *See* Office of the Comptroller of the Currency, "Quarterly Report on Bank Trading and Derivatives Activities Second Quarter 2010" (2010).

XVIII. Statutory Basis and Text of Proposed Rule

The Commission is proposing to adopt Regulation SBSR, and Rule 900–911 thereunder, pursuant to the Exchange Act.

List of Subjects in 17 CFR Parts 240 and 242

Brokers, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Amend § 240.31 by:

a. Removing "September 30" at the beginning of paragraph (a)(10)(ii) and adding in its place "September 25";

b. Removing the "and" at the end of paragraph (a)(11)(vii);

c. Removing the period at the end of paragraph (a)(11)(viii) and adding in its place "; and";

d. Adding paragraph (a)(11)(ix); and

e. Adding new paragraph (a)(19) to read as follows:

§ 240.31 Section 31 transaction fees.

(a) * * *

(11) * * *

(ix) Any sale of a security-based swap.

* * * * *

(19) The term *security-based swap* has the same definition as provided in Section 3(a)(68) of the Act (15 U.S.C. 78c(a)(68)).

* * * * *

PART 242—REGULATIONS M, SHO, ATS, AC, NMS, AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

3. 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), 78l, 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.

4. The part heading for part 242 is revised as set forth above.

5. Add §§ 242.900, 242.901, 242.902, 242.903, 242.904, 242.905, 242.906, 242.907, 242.908, 242.909, 242.910, and 242.911 to read as follows:

§ 242.900 Definitions.

Terms used in this Regulation SBSR (§§ 242.900 through 242.911) that appear in Section 3 of the Exchange Act (15 U.S.C. 78c) have the same meaning as in Section 3 of the Exchange Act (15 U.S.C. 78c) and the rules or regulations thereunder. In addition, the following definitions shall apply:

Affiliate means any person that, directly or indirectly, controls, is controlled by, or is under common control with, a person.

Asset class means those security-based swaps in a particular broad category, including, but not limited to, credit derivatives, equity derivatives, and loan-based derivatives.

Block trade means a large notional security-based swap transaction that meets the criteria set forth in § 242.907(b).

Broker ID means the UIC assigned to a person acting as a broker for a participant.

Confirm means the production of a confirmation that is agreed to by the parties to be definitive and complete and that has been manually, electronically, or, by some other legally equivalent means, signed.

Control means, for purposes of §§ 242.900 through 242.911, the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. A person is presumed to control another person if the person:

(1) Is a director, general partner or officer exercising executive responsibility (or having similar status or functions);

(2) Directly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities; or

(3) In the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25 percent or more of the capital.

Derivatives clearing organization means the same as provided under the Commodity Exchange Act.

Desk ID means the UIC assigned to the trading desk of a participant or of a broker of a participant.

Effective reporting date, with respect to a security-based swap data repository, means the date six months after the registration date.

Exchange Act means the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*), as amended.

Life cycle event means, with respect to a security-based swap, any event that would result in a change in the information reported to a registered security-based swap data repository under § 242.901, including a counterparty change resulting from an assignment or novation; a partial or full termination of the security-based swap; a change in the cash flows originally reported; for a security-based swap that is not cleared, any change to the collateral agreement; or a corporate action affecting a security or securities on which the security-based swap is based (*e.g.,* a merger, dividend, stock split, or bankruptcy). Notwithstanding the above, a life cycle event shall not include the scheduled expiration of the security-based swap, a previously described and anticipated interest rate adjustment (such as a quarterly interest rate adjustment), or other event that does not result in any change to the contractual terms of the security-based swap.

Parent means a legal person that controls a participant.

Participant means:

(1) A U.S. person that is a counterparty to a security-based swap that is required to be reported to a registered security-based swap data repository; or

(2) A non-U.S. person that is a counterparty to a security-based swap that is:

(i) Required to be reported to a registered security-based swap data repository; and

(ii) Executed in the United States or through any means of interstate commerce, or cleared through a clearing agency that has its principal place of business in the United States.

Participant ID means the UIC assigned to a participant.

Phase-in period means the period immediately after a security-based swap data repository has registered with the Commission during which it is not required to disseminate security-based swap data pursuant to an implementation schedule, as provided in § 242.910.

Pre-enactment security-based swap means any security-based swap executed before July 21, 2010 (the date of enactment of the Dodd-Frank Act (Pub. L. 111–203, H.R. 4173)), the terms of which had not expired as of that date.

Price means the price of a security-based swap transaction, expressed in terms of the commercial conventions used in that asset class.

Product ID means the UIC assigned to a security-based swap instrument.

Publicly disseminate means to make available through the Internet or other electronic data feed that is widely accessible and in machine-readable electronic format.

Real time means, with respect to the reporting of security-based swap information, as soon as technologically practicable, but in no event later than 15 minutes after the time of execution of the security-based swap transaction.

Registered security-based swap data repository means a security-based swap data repository that is registered with the Commission pursuant to Section 13(n) of the Exchange Act (15 U.S.C. 78m(n)) and any rules or regulations thereunder.

Registration date, with respect to a security-based swap data repository, means the date on which the Commission registers the security-based swap data repository, or, if the Commission registers the security-based swap data repository before the effective date of §§ 242.900 through 242.911.

Reporting party means the counterparty to a security-based swap with the duty to report information in accordance with §§ 242.900 through 242.911 to a registered security-based swap data repository, or if there is no registered security-based swap data repository that would receive the information, to the Commission.

Security-based swap instrument means each security-based swap in the same asset class, with the same underlying reference asset, reference issuer, or reference index.

Time of execution means the point at which the counterparties to a security-based swap become irrevocably bound under applicable law.

Trader ID means the UIC assigned to a natural person who executes security-based swaps.

Transaction ID means the unique identification code assigned by a registered security-based swap data repository to a specific security-based swap.

Transitional security-based swap means a security-based swap executed on or after July 21, 2010, and before the effective reporting date.

Ultimate parent means a legal person that controls a participant and that itself has no parent.

Ultimate parent ID means the UIC assigned to an ultimate parent of a participant.

Unique Identification Code or *UIC* means the unique identification code assigned to a person, unit of a person, or product by or on behalf of an internationally recognized standards-setting body that imposes fees and usage restrictions that are fair and reasonable and not unreasonably discriminatory. If no standards-setting body meets these criteria, a registered security-based swap data repository shall assign all necessary UICs using its own methodology. If a standards-setting body meets these criteria but has not assigned a UIC to a particular person, unit of a person, or product, a registered security-based swap data repository shall assign a UIC to that person, unit of a person, or product using its own methodology.

U.S. person means a natural person that is a U.S. citizen or U.S. resident or a legal person that is organized under the corporate laws of any part of the United States or has its principal place of business in the United States.

§ 242.901 Reporting obligations.

(a) *Reporting party.* The reporting party shall be as follows:

(1) Where only one counterparty to a security-based swap is a U.S. person, the U.S. person shall be the reporting party;

(2) Where both counterparties to a security-based swap are U.S. persons:

(i) With respect to a security-based swap in which only one counterparty is a security-based swap dealer or major security-based swap participant, the security-based swap dealer or major security-based swap participant shall be the reporting party;

(ii) With respect to a security-based swap in which one counterparty is a security-based swap dealer and the other a major security-based swap participant, the security-based swap dealer shall be the reporting party; and

(iii) With respect to any other security-based swap not described in paragraphs (a)(2)(i) and (ii) of this section, the counterparties to the security-based swap shall select a counterparty to be the reporting party.

(3) If neither counterparty is a U.S. person but the security-based swap meets the criteria of § 242.908(a)(2) or (a)(3), the counterparties to the security-based swap shall select a counterparty to be the reporting party.

(b) *Recipient of security-based swap information.* For each security-based swap for which it is the reporting party, the reporting party shall provide the information required by §§ 242.900 through 242.911 to a registered security-based swap data repository or, if there is no registered security-based swap

data repository that would accept the information, to the Commission.

(c) *Information to be reported in real time.* For each security-based swap for which it is the reporting party, the reporting party shall report the following information in real time:

(1) The asset class of the security-based swap and, if the security-based swap is an equity derivative, whether it is a total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the security-based swap is based;

(2) Information that identifies the security-based swap instrument and the specific asset(s) or issuer(s) of any security on which the security-based swap is based;

(3) The notional amount(s), and the currency(ies) in which the notional amount(s) is expressed;

(4) The date and time, to the second, of execution, expressed using Coordinated Universal Time (UTC);

(5) The effective date;

(6) The scheduled termination date;

(7) The price;

(8) The terms of any fixed or floating rate payments, and the frequency of any payments;

(9) Whether or not the security-based swap will be cleared by a clearing agency;

(10) If both counterparties to a security-based swap are security-based swap dealers, an indication to that effect;

(11) If applicable, an indication that the transaction does not accurately reflect the market; and

(12) If the security-based swap is customized to the extent that the information provided in paragraphs (c)(1) through (11) of this section does not provide all of the material information necessary to identify such customized security-based swap or does not contain the data elements necessary to calculate the price, an indication to that effect.

(d) *Additional information that must be reported.* (1) In addition to the information required under paragraph (c) of this section, for each security-based swap for which it is the reporting party, the reporting party shall report:

(i) The participant ID of each counterparty;

(ii) As applicable, the broker ID, desk ID, and trader ID of the reporting party;

(iii) The amount(s) and currency(ies) of any up-front payment(s) and a description of the terms and contingencies of the payment streams of each counterparty to the other;

(iv) The title of any master agreement, or any other agreement governing the transaction (including the title of any document governing the satisfaction of margin obligations), incorporated by reference and the date of any such agreement;

(v) The data elements necessary for a person to determine the market value of the transaction;

(vi) If the security-based swap will be cleared, the name of the clearing agency;

(vii) If the security-based swap is not cleared, whether the exception in Section 3C(g) of the Exchange Act was invoked;

(viii) If the security-based swap is not cleared, a description of the settlement terms, including whether the security-based swap is cash-settled or physically settled, and the method for determining the settlement value; and

(ix) The venue where the security-based swap was executed.

(2) Any information required to be reported pursuant to paragraph (d)(1) of this section must be reported promptly, but in no event later than:

(i) Fifteen minutes after the time of execution for a security-based swap that is executed and confirmed electronically;

(ii) Thirty minutes after the time of execution for a security-based swap that is confirmed electronically but not executed electronically; or

(iii) Twenty-four hours after the time of execution for a security-based swap that is not executed or confirmed electronically.

(e) *Duty to report any life cycle event of a security-based swap.* For any life cycle event, and any adjustment due to a life cycle event, that results in a change to information previously reported pursuant to paragraph (c), (d), or (i) of this section, the reporting party shall promptly provide updated information reflecting such change to the entity to which it reported the original transaction, using the transaction ID, subject to the following exceptions:

(1) If a reporting party ceases to be a counterparty to a security-based swap due to an assignment or novation, the new counterparty shall be the reporting party following such assignment or novation, if the new counterparty is a U.S. person.

(2) If, following an assignment or novation, the new counterparty is not a U.S. person, the counterparty that is a U.S. person shall be the reporting party following such assignment or novation.

(f) *Time stamping incoming information.* A registered security-based swap data repository shall time stamp, to the second, its receipt of any information submitted to it pursuant to paragraph (c), (d), or (e) of this section.

(g) *Assigning transaction ID.* A registered security-based swap data repository shall assign a transaction ID to each security-based swap reported by a reporting party.

(h) *Format of reported information.* The reporting party shall electronically transmit the information required under this section in a format required by the registered security-based data repository, and in accordance with any applicable policies and procedures of the registered security-based swap data repository.

(i) *Reporting of pre-enactment and transitional security-based swaps.* With respect to any pre-enactment security-based swap or transitional security-based swap, the reporting party shall report all of the information required by paragraphs (c) and (d) of this section, to the extent such information is available.

§ 242.902 Public dissemination of transaction reports.

(a) *Dissemination of transaction reports.* Except in the case of a block trade, a registered security-based swap data repository shall publicly disseminate a transaction report of a security-based swap immediately upon receipt of information about the security-based swap from a reporting party, or upon re-opening following a period when the registered security-based swap data repository was closed. The transaction report shall consist of all the information reported by the reporting party pursuant to § 242.901, plus any indicator or indicators contemplated by the registered security-based swap data repository's policies and procedures that are required by § 242.907.

(b) *Dissemination of block trades.* A registered security-based swap data repository shall publicly disseminate a transaction report of a security-based swap that constitutes a block trade immediately upon receipt of information about the block trade from the reporting party. The transaction report shall consist of all the information reported by the reporting party pursuant to § 242.901(c), except for the notional size, plus the transaction ID and an indicator that the report represents a block trade. The registered security-based swap data repository shall publicly disseminate a complete transaction report for such block trade (including the transaction ID and the full notional size) as follows:

(1) If the security-based swap was executed on or after 05:00 UTC and before 23:00 UTC of the same day, the transaction report (including the transaction ID and the full notional size)

shall be disseminated at 07:00 UTC of the following day.

(2) If the security-based swap was executed on or after 23:00 UTC and up to 05:00 UTC of the following day, the transaction report (including the transaction ID and the full notional size) shall be disseminated at 13:00 UTC of that following day.

(3) Notwithstanding the foregoing, if a registered security-based swap data repository is in normal closing hours or special closing hours at a time when it would be required to disseminate information about a block trade pursuant to this section, the registered security-based swap data repository shall instead disseminate information about the block trade immediately upon re-opening.

(c) *Non-disseminated information.* A security-based swap data repository shall not disseminate:

(1) The identity of either counterparty to a security-based swap;

(2) With respect to a security-based swap that is not cleared at a registered clearing agency and that is reported to a registered security-based swap data repository, any information disclosing the business transactions and market positions of any person; or

(3) Any information regarding a security-based swap reported pursuant to § 242.901(i).

(d) *Temporary restriction on other market data sources.* No person other than a registered security-based swap data repository shall make available to one or more persons (other than a counterparty) transaction information relating to a security-based swap before the earlier of 15 minutes after the time of execution of the security-based swap; or the time that a registered security-based swap data repository publicly disseminates a report of that security-based swap.

§ 242.903 Coded information.

A reporting party may provide information to a registered security-based swap data repository pursuant to § 242.901 and a registered security-based swap data repository may publicly disseminate information pursuant to § 242.902 using codes in place of certain data elements, provided that the information necessary to interpret such codes is widely available on a non-fee basis.

§ 242.904 Operating hours of registered security-based swap data repositories.

A registered security-based swap data repository shall have systems in place to continuously receive and disseminate information regarding security-based swaps pursuant to §§ 242.900 through 242.911, subject to the following exceptions:

(a) A registered security-based swap data repository may establish normal closing hours during periods when, in its estimation, the U.S. market and major foreign markets are inactive. A registered security-based swap data repository shall provide reasonable advance notice to participants and to the public of its normal closing hours.

(b) A registered security-based swap data repository may declare, on an *ad hoc* basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. A registered security-based swap data repository shall: to the extent reasonably possible under the circumstances, avoid scheduling special closing hours during when, in its estimation, the U.S. market and major foreign markets are most active; and provide reasonable advance notice of its special closing hours to participants and to the public.

(c) During normal closing hours, and to the extent reasonably practicable during special closing hours, a registered security-based swap data repository shall have the capability to receive and hold in queue information regarding security-based swaps that has been reported pursuant to §§ 242.900 through 242.911.

(d) When a registered security-based swap data repository re-opens following normal closing hours or special closing hours, it shall disseminate transaction reports of security-based swaps held in queue, in accordance with the requirements of § 242.902.

(e) If a registered security-based swap data repository could not receive and hold in queue transaction information that was required to be reported pursuant to §§ 242.900 through 242.911, it must immediately upon re-opening send a message to all participants that it has resumed normal operations. Thereafter, any participant that had an obligation to report information to the registered security-based swap data repository pursuant to §§ 242.900 through 242.911, but could not do so because of the registered security-based swap data repository's inability to receive and hold in queue data, must immediately report the information to the registered security-based swap data repository.

§ 242.905 Correction of errors in security-based swap information.

(a) *Duty of counterparties to correct.* Any counterparty to a security-based swap that discovers an error in information previously reported pursuant to §§ 242.900 through 242.911 shall correct such error in accordance with the following procedures:

(1) If a counterparty that was not the reporting party for a security-based swap discovers an error in the information reported with respect to such security-based swap, the counterparty shall promptly notify the reporting party of the error; and

(2) If the reporting party 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 party shall promptly submit to the entity to which the security-based swap was originally reported an amended report pertaining to the original transaction report. If the reporting party reported the initial transaction to a registered security-based swap data repository, the reporting party shall submit an amended report to the registered security-based swap data repository in a manner consistent with the policies and procedures contemplated by § 242.907(a)(3).

(b) *Duty of registered security-based swap data repository to correct.* A registered security-based swap data repository shall:

(1) Upon discovery of the error or receipt of a notice of the error from a reporting party, verify the accuracy of the terms of the security-based swap and, following such verification, promptly correct the erroneous information regarding such security-based swap contained in its system; and

(2) If such erroneous information falls into any of the categories of information enumerated in § 242.901(c), publicly disseminate a corrected transaction report of the security-based swap promptly following verification of the trade by the parties to the security-based swap, with an indication that the report relates to a previously disseminated transaction.

§ 242.906 Other duties of participants.

(a) *Reporting by non-reporting-party counterparty.* A registered security-based swap data repository shall identify any security-based swap reported to it for which the registered security-based swap data repository does not have the participant ID and (if applicable) the broker ID, desk ID, and trader ID of each counterparty. Once a day, a registered security-based swap data repository shall 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 security-based swap data repository lacks participant ID and (if

applicable) broker ID, desk ID, and trader ID. A participant that receives such a report shall provide the missing information to the registered security-based swap data repository within 24 hours.

(b) *Duty to provide ultimate parent and affiliate information.* Each participant of a registered security-based swap data repository shall provide to the registered security-based swap data repository information sufficient to identify its ultimate parent(s) and any affiliate(s) of the participant that also are participants of the registered security-based swap data repository, using ultimate parent IDs and participant IDs. A 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 and major security-based swap participants.* Each participant that is a security-based swap dealer or major security-based swap participant shall establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that it complies with any obligations to report information to a registered security-based swap data repository in a manner consistent with §§ 242.900 through 242.911 and the registered security-based swap data repository's applicable policies and procedures. Each such participant shall review and update its policies and procedures at least annually.

§ 242.907 Policies and procedures of registered security-based swap data repositories.

(a) *General policies and procedures.* With respect to the receipt, reporting, and dissemination of data pursuant to §§ 242.900 through 242.911, a registered security-based swap data repository shall establish and maintain written policies and procedures:

(1) That enumerate the specific data elements of a security-based swap or a life cycle event that a reporting party must report, which shall include, at a minimum, the data elements specified in § 242.901(c) and (d);

(2) That specify one or more acceptable data formats (each of which must be an open-source structured data format that is widely used by participants), connectivity requirements, and other protocols for submitting information;

(3) For specifying how reporting parties are to report corrections to previously submitted information, making corrections to information in its records that is subsequently discovered to be erroneous, and applying an appropriate indicator to any transaction report required to be disseminated by § 242.905(b)(2) that the report relates to a previously disseminated transaction;

(4) Describing how reporting parties shall report and, consistent with the enhancement of price discovery, how the registered security-based swap depository shall publicly disseminate, reports of, and adjustments due to, life cycle events; security-based swap transactions that do not involve an opportunity to negotiate any material terms, other than the counterparty; and any other security-based swap transactions that, in the estimation of the registered security-based swap data repository, do not accurately reflect the market;

(5) For assigning:

(i) A transaction ID to each security-based swap that is reported to it; and

(ii) UICs established by or on behalf of an internationally recognized standards-setting body that imposes fees and usage restrictions that are fair and reasonable and not unreasonably discriminatory (or, if no standards-setting body meets these criteria or a standards-setting body meets these criteria but has not assigned a UIC to a particular person, unit of a person, or product, using its own methodology).

(6) For periodically obtaining from each participant information that identifies the participant's ultimate parent(s) and any other participant(s) with which the counterparty is affiliated, using ultimate parent IDs and participant IDs.

(b) *Policies and procedures regarding block trades.* (1) A registered security-based swap data repository shall establish and maintain written policies and procedures for calculating and publicizing block trade thresholds for all security-based swap instruments reported to the registered security-based swap data repository in accordance with the criteria and formula for determining block size as specified by the Commission.

(2) *Exceptions.* Notwithstanding the above, a registered security-based swap data repository shall not designate as a block trade any security-based swap:

(i) That is an equity total return swap or is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the security-based swap is based; or

(ii) Contemplated by Section 13(m)(1)(C)(iv) of the Exchange Act (15 U.S.C. 78m(m)(1)(C)(iv)).

(c) *Public availability of policies and procedures.* A registered security-based swap data repository shall make the policies and procedures required by §§ 242.900 through 242.911 publicly available on its Web site.

(d) *Updating of policies and procedures.* A registered security-based swap data repository shall review, and update as necessary, the policies and procedures required by §§ 242.900 through 242.911 at least annually. Such policies and procedures shall indicate the date on which they were last reviewed.

(e) A registered security-based swap data repository shall 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 §§ 242.900 through 242.911 and the registered security-based swap data repository's policies and procedures thereunder.

§ 242.908 Jurisdictional matters.

(a) Notwithstanding any other provision of §§ 242.900 through 242.911, no security-based swap is required to be reported to a registered security-based swap data repository, and no registered security-based swap data repository is required to publicly disseminate a report of a security-based swap, unless the security-based swap:

(1) Has at least one counterparty that is a U.S. person;

(2) Was executed in the United States or through any means of interstate commerce; or

(3) Was cleared through a clearing agency having its principal place of business in the United States.

(b) Notwithstanding any other provision of §§ 242.900 through 242.911, a counterparty to a security-based swap shall not incur any obligation under §§ 242.900 through 242.911 unless it is:

(1) A U.S. person;

(2) A counterparty to a security-based swap executed in the United States or through any means of interstate commerce; or

(3) A counterparty to a security-based swap cleared through a clearing agency having its principal place of business in the United States.

§ 242.909 Registration of security-based swap data repository as a securities information processor.

A registered security-based swap data repository shall also register with the Commission as a securities information processor on Form SIP (§ 249.1001 of this chapter).

§ 242.910 Implementation of security-based swap reporting and dissemination.

(a) *Reporting of pre-enactment security-based swaps.* The reporting party shall report to a registered

security-based swap data repository any pre-enactment security-based swaps no later than January 12, 2012 (180 days after the effective date of the Dodd-Frank Act (Pub. L. 111–203, 124 Stat. 1376)).

(b) *Phase-in of compliance dates.* A registered security-based swap data repository and its participants shall be subject to the following phased-in compliance schedule:

(1) *Phase 1,* six months after the registration date (*i.e.,* the effective reporting date):

(i) Reporting parties shall report to the registered security-based swap data repository any transitional security-based swaps.

(ii) With respect to any security-based swap executed on or after the effective reporting date, reporting parties shall comply with §§ 242.901.

(iii) Participants and the registered security-based swap data repository shall comply with § 242.905 (except with respect to dissemination) and § 242.906(a) and (b).

(iv) Participants that are SBS dealers or major SBS participants shall comply with § 242.906(c).

(2) *Phase 2,* nine months after the registration date: *Wave 1* of public dissemination—The registered security-based swap data repository shall comply with § 242.902 and 242.905 (with respect to dissemination of corrected transaction reports) for 50 security-based swap instruments.

(3) *Phase 3,* 12 months after the registration date: *Wave 2* of public dissemination The registered security-based swap data repository shall comply with § 242.902 and 242.905 (with respect to dissemination of corrected transaction reports) for an additional 200 security-based swap instruments.

(4) *Phase 4,* 18 months after the registration date: *Wave 3* of public dissemination—All security-based swaps reported to the registered security-based swap data repository shall be subject to real-time public dissemination as specified in § 242.902.

§ 242.911 Prohibition during phase-in period.

A reporting party shall not report a security-based swap to a registered security-based swap data repository in a phase-in period described in § 242.910 during which the registered security-based swap data repository is not yet required or able to publicly disseminate transaction reports for that security-based swap instrument unless:

(a) The security-based swap is also reported to a registered security-based swap data repository that is disseminating transaction reports for that security-based swap instrument consistent with § 242.902; or

(b) No other registered security-based swap data repository is able to receive, hold, and publicly disseminate transaction reports regarding that security-based swap instrument.

By the Commission.

Dated: November 19, 2010.

Elizabeth M. Murphy,

Secretary.

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